Briefing on How To Use the Federal Register
For information on briefings in San Francisco, CA and Seattle, WA, see announcement on the inside cover of this issue.
THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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.
3. The important elements of typical Federal Register documents.
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.

SAN FRANCISCO, CA
WHEN: July 22, at 9:00 am
WHERE: Federal Building and U.S. Courthouse, Conference Room 7209-A, 450 Golden Gate Avenue, San Francisco, CA
RESERVATIONS: Federal Information Center, 1-800-726-4995

SEATTLE, WA
WHEN: July 23, at 1:00 pm
WHERE: Henry M. Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, WA
RESERVATIONS: Federal Information Center, 1-800-726-4995

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Father's Day, 1992

By the President of the United States of America

A Proclamation

Father's Day not only brings due honor to the men who have dedicated themselves to one of life's highest callings but also provides the American people with an opportunity to reflect on all that fatherhood means to us as individuals and as a Nation.

A person who has been blessed with a loving, responsible, and supportive father is considered, by all accounts, to be very lucky. In some respects, he or she is. Yet, however fortunate one may feel to have a faithful and devoted father, we know that "luck" ultimately has little to do with it. It is not luck that motivates a man to protect, nurture, and provide for his children. It is not luck that keeps a man at his family's side when times are tough. No, it is not luck; rather, it is the unconditional love and lifelong commitment of a man who understands and accepts his responsibilities and is determined to endure the hard work and sacrifices that are an inevitable part of family life.

This, of course, is not to deny that some families and fathers experience a tragic share of misfortune—that some dads, no matter how hard they might try, encounter extraordinary obstacles and setbacks. However, the American who counts himself lucky on Father's Day gives thanks, not for the blind charity of fate, but for the deliberate courage of a father who always tried his best, even in the face of adversity; who always labored to provide full measures of love and discipline; and who, above all, constantly strived to instill in his children the virtues of faith, industry, personal responsibility, and concern for others. A good father may be rich or poor, worldly or simple, but in every case he is determined to look after the safety and well-being of his children, as well as their physical, emotional, and spiritual development.

A loving father makes a difference by his presence alone. Indeed, youngsters who look forward to their dad's return from work or other responsibilities are delighted by the sound of his car in the driveway or of his sure step upon the threshold. Children treasure their father's attention and affection, as well as his encouragement and guidance, and in his company they find security, reassurance, and direction. While many a dad has been called far from home, either by military duty or by some other serious obligation, a loving father remains ever close in heart—and eager to return one day. In such cases, a father's absence is redeemed as an expression of love—like that of the distant soldier who is resolved to promote a safer, more peaceful world for his children.

While a father's presence makes a profound difference in the lives of his children, most important is his active participation in the development of their character and values. Parenthood is, from its most fundamental level, oriented by nature toward partnership and union. Thus, if the family is the foundation of society, then fatherhood may well be described as a cornerstone: just as the physical structure of a house stands with each brick supporting the other, so do the institutions of home and family life endure through the mutual support of husband and wife.
Finally, it is not surprising that we are reminded that the Fourth Commandment given to man by God is the first with a promise: Honor your father and your mother, “that it may be well with you and that you may live long on the earth.” This injunction might readily apply to nations, as well as to individuals—each of us should honor not only our own moms and dads but also the divinely ordained institutions of motherhood and fatherhood. These are the twin pillars of strong, loving families and stable, caring communities, and the very future of our Nation begs that we offer them our respect and support.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972 (36 U.S.C. 142a), do hereby proclaim Sunday, June 21, as Father’s Day. I urge all Americans to observe that day with appropriate activities, including prayer in their homes and places of worship, as a mark of abiding appreciation and respect for their fathers. I direct government officials to display the flag of the United States on all Federal buildings on that day, and I encourage individual citizens to display the flag at their homes and other suitable places as well.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of June, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.
DEPARTMENT OF AGRICULTURE
Agricultural Marketing Service
7 CFR Part 29
[TB-91-016]
Tobacco Inspection; Growers' Referendum Results
AGENCY: Agricultural Marketing Service, USDA.
ACTION: Notice of results of referendum.
SUMMARY: This document contains the determination with respect to the referendum on the merger of Williamson, Robersonville, and Windsor, North Carolina, to become a single consolidated market. A mail referendum was conducted during the period of April 27–May 1, 1992, among tobacco growers who sold tobacco on these markets in 1991 to determine producer approval/disapproval of the designation of these three markets as one consolidated market. Growers did not approve the merger. Therefore, the three markets will remain individually designated markets.
EFFECTIVE DATE: June 19, 1992.
FOR FURTHER INFORMATION CONTACT: Ernest Price, Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Room 502 Annex, Washington, DC 20090-6456, telephone (202) 720-0567.
SUPPLEMENTARY INFORMATION: A notice was published in the April 22, 1992, issue of the Federal Register (57 FR 14669) announcing that a referendum would be conducted among active flue-cured producers who sold tobacco on either Williamson, Robersonville, or Windsor during the 1991 marketing season to ascertain if such producers favored the consolidation.

The notice of referendum announced the determination by the Secretary that the consolidated market of Williamson, Robersonville, and Windsor, North Carolina, would be designated as a flue-cured tobacco auction market and receive mandatory, Federal grading of tobacco sold at auction for the 1992 and succeeding seasons, subject to the results of the referendum. The determination was based on the evidence and arguments presented at a public hearing held in Williamson, North Carolina, on November 7, 1991, pursuant to applicable provisions of the regulations issued under the Tobacco Inspection Act, as amended. The referendum was held in accordance with the provisions of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations set forth in 7 CFR part 28.74.

Ballots for the April 27–May 1 referendum were mailed to 1,347 producers. Approval required votes in favor of the proposal by two-thirds of the eligible voters who cast valid ballots. The department received a total of 309 responses: 187 eligible producers voted in favor of the consolidation; 197 eligible producers voted against the consolidation; and 15 ballots were determined to be invalid. Since only 40 percent of the eligible votes received approved the consolidation, Williamson, Robersonville, and Windsor will remain separate auction markets.

Kenneth C. Clayton,
Acting Administrator.
[FR Doc. 92-14450 Filed 6-18-92; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 915
[Docket No. FV-91-449FR]
Avocados Grown in South Florida; Finalize Relaxed Grade Requirements
AGENCY: Agricultural Marketing Service, USDA.
ACTION: Final rule.
SUMMARY: The Department is adopting as a final rule an interim final rule which relaxed grade requirements for Florida avocados to permit handlers to ship avocados of dissimilar varieties in the same container. The final rule has been reviewed by the Office of Management and Budget and determined to be a "non-major" rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in

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Friday, June 19, 1992
which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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

There are about 40 handlers of Florida avocados subject to regulation under Marketing Order No. 915, and about 300 avocado producers in the production area in South Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural services firms are defined as those whose annual receipts are less than $3,500,000. The majority of the avocado handlers and producers may be classified as small entities.

The interim final rule amending § 915.306 (7 CFR 915.306) was published in the Federal Register on January 31, 1992, with a 30-day comment period ending March 2, 1992. No comments were received.

The interim final rule amended § 915.306 by relaxing grade requirements so that handlers could ship avocados of dissimilar varieties in the same container when they are shipped to destinations within the production area. Prior to this amendment, all of the avocados in a particular container shipped to any destination were required to have similar varietal characteristics in order to meet a minimum grade requirement of U.S. No. 2. The U.S. No. 2 grade requirements are defined in the United States Standards for Grades of Florida Avocados. Container regulations for Florida avocados are specified in §§ 915.305 and 915.306.

The interim final rule was designed to facilitate the picking and preparation of avocados for production area markets when more than one avocado variety matures at the same time, and help the Florida avocado industry more efficiently market its crop. Growers and handlers sometimes have relatively small quantities of avocados consisting of several dissimilar varieties ready for picking and packing at the same time, which they intend to ship to markets within the production area only. These growers and handlers believe that time and expense savings may be realized when commingling of such avocados in the same picking and shipping containers is permitted.

Avocados imported into the United States must grade at least U.S. No. 2, as provided in § 944.28 (7 CFR 944.28), at the present time. The grade requirement for imported avocados was not changed, since the amendment did not change the minimum grade requirement of U.S. No. 2 specified in § 915.306 for avocados handled to points outside the production area. Section 8e of the Act (7 U.S.C. 608e-1) requires that whenever specified commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity into the United States must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

Maturity requirements for Florida avocados handled to points both within and outside the production area are specified in § 915.322. These requirements, based on minimum weights and diameters, remain in effect unchanged by this rule. Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act. After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, as published in the Federal Register (57 FR 3715, January 31, 1992), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

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

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA


2. Accordingly, the interim final rule amending the provisions of § 915.306, which was published in the Federal Register (57 FR 3715, January 31, 1992) is adopted as a final rule without change.

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


Robert C. Keeney, Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-14451 Filed 6-18-92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 916

[Docket No. FV–91–461FR]

Nectarines Grown in California; Temporarily Relaxed Minimum Size Requirements for Nectarines for the 1992 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule an interim final rule which temporarily relaxed the minimum size requirements for fresh shipments of May Glo variety nectarines to size 96 from the current size 96 for the period April 15, 1992, through May 5, 1992, after which period the minimum size reverts back to size 96 for the remainder of the season. This rule also relaxed the minimum size requirements for April Glo variety nectarines to size 108 from the current applicable tighter requirements for the entire 1992 shipping season. These relaxations were based on this season's productive crop and market demand conditions, and are expected to help in the successful marketing of the 1992 season May Glo and April Glo variety nectarine crops.

EFFECTIVE DATE: July 20, 1992.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 90456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5331, or Kurt Kimmel, Marketing Field Office, USDA/AMS, 2202 Monterey St., suite 102–B, Fresno, California 93721; telephone: (209) 487–5901.
SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 916 (7 U.S.C. 607-674) regulating the handling of nectarines grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Deparm.mental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a “non-major” rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or in which the Secretary has his principal place of business, has jurisdiction in equity to review the Secretary’s ruling on the petition, provided a bill in equity is filed not later than 20 days after the entry of the ruling.

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

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

There are about 245 California nectarine handlers subject to regulation under the marketing order covering nectarines grown in California, and about 740 producers of nectarines in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000. A majority of these handlers and producers may be classified as small entities.

The interim final rule was published in the Federal Register on February 3, 1992, with a 30-day comment period ending March 4, 1992. No comments were received. That rule amended § 916.356 (7 CFR 916.356, as amended at 56 FR 22106, May 14, 1991, and 56 FR 40220, August 14, 1991), which specifies grade, maturity, and size requirements for fresh California nectarine shipments.

This rule is in effect on a continuing basis subject to amendment, modification, or repeal as may be recommended by the Nectarine Administrative Committee (committee) and approved by the Secretary. The committee met on December 4, 1991, and unanimously recommended that the minimum size requirements for May Glo and April Glo variety nectarines be temporarily relaxed during the 1992 season.

The interim final rule amended paragraphs (a)(2) and (a)(3) of § 916.356 to relax minimum size requirements for fresh shipments of May Glo variety nectarines to size 108 from the current size 96 for the period April 15, 1992, through May 5, 1992, and to reestablish the size 96 requirement for the remainder of the season on and after May 6, 1992. May Glo variety nectarines shipped on and after May 6, 1992, are generally expected to be of sufficient size to meet the size 96 requirement. Paragraph (a)(3) of § 919.356 provides that no handler shall ship any package or container of May Glo variety nectarines unless the nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of standard pack, not more than 108 nectarines in the lug box, and unless such nectarines, when packed in any other container, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 92 nectarines. Such nectarines are referred to as size 108 fruit.

The interim final rule also relaxed the minimum size requirements for April Glo variety nectarines to size 108 from the current tighter requirements for the entire 1992 shipping season. April Glo variety nectarines mature very early in the season at relatively small sizes, and they are not expected to attain sufficient size this season to meet the current minimum size requirements.

The interim final rule relaxed the minimum size requirements for April Glo variety nectarines specified in paragraphs (a)(6), (a)(7), and (a)(8) of § 916.356, by exempting that variety from such requirements and by adding a new paragraph (a)(9) specifying that April Glo variety nectarines must be at least size 108. Such nectarines are of a size that, when packed in molded forms (tray packs) in a No. 22D standard lug box, will pack, in accordance with the requirements of standard pack, not more than 108 nectarines in a lug box; or are of a size that, in any other container, a 16-pound sample, representative of the nectarines in the package or container, contains not more than 92 nectarines. In the absence of these changes, April Glo nectarines would have had to meet the more restrictive size requirements specified in paragraphs (a)(6), (a)(7), and (a)(8) of § 916.356.

The committee reported that most nectarines of these varieties are grown in the Coachella Valley desert area in California where they mature very early in the season at relatively small sizes. Fruit grown in this area generally does not size as well as fruit grown in other areas of the State, due to the onset of very hot weather early in the season which retards further fruit growth. Relaxation of the minimum size requirements as specified is expected to result in more May Glo and April Glo nectarines being shipped to the fresh market and increase returns to California nectarine growers.

The minimum size requirements established for California nectarines recognize that larger sized nectarines provide greater consumer satisfaction than those of smaller sizes. Different minimum size requirements have been issued for the various nectarine varieties, reflecting both seasonal and varietal influences which affect average fruit sizes. Smaller minimum sizes...
generally have been established for earlier maturing varieties, while later maturing varieties, since they tend to attain a larger size at maturity, have been required to meet larger minimum sizes.

The desert area of the Coachella Valley is the growing area in California with the earliest nectarine harvests. Fruit grown in this area generally does not size as well as fruit grown in other areas of the State, due to the onset of very hot weather early in season which retards further growth and results in a relatively short growing season. In general, fruit grown in the Coachella Valley is smaller in size than fruit grown in other parts of the State. Nectarines have been grown commercially in the Coachella Valley for about six years.

Most May Glo and April Glo variety nectarines in California are grown in the Coachella Valley where they mature very early in the season at relatively small sizes compared with most other nectarines varieties grown in the State. The May Glo and April Glo 1992 harvest season is expected to begin about mid-April in the Coachella Valley, and continue for about three weeks, depending on temperatures during the harvest period. May Glo nectarines from other parts of the State will continue to be shipped for several more weeks and are expected to reach the size 96 level. The size relaxations for May Glo and April Glo nectarines is for the 1992 season only to permit further evaluation of the sizing characteristics of these varieties in the Coachella Valley and other areas of the State.

This action reflects the committee's and the Department's appraisal of the need to maintain the relaxed requirements. The Department believes that relaxed requirements will have a beneficial impact on producers and handlers because it will provide handlers and growers additional opportunities for marketing the 1992 season May Glo and April Glo nectarine crops.

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

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, as published in the Federal Register (57 FR 3918, February 3, 1992), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 916
Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 916 is amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 916 continues to read as follows:

2. Accordingly, the interim final rule amending the provisions of § 916.358, which was published in the Federal Register (57 FR 3918, February 3, 1992), is adopted as a final rule without change.

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

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-14452 Filed 6-18-92; 8:45 am]
BILLING CODE: 3410-02-M

7 CFR Parts 966 and 980
(Docket No. FV-91-434)
Tomatoes Grown in Florida, and Tomatoes Imported Into the United States; Change in the Effective Date for Domestic and Imported Tomato Handling Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule changes the effective period of the handling regulations in effect for fresh market shipments of Florida tomatoes and imported tomatoes from June 30 to June 15 each season. Currently, both the domestic and import tomato handling regulations are in effect each season from October 10 through June 30. The change in the effective period applicable to domestic tomatoes is based on a recommendation of the Florida Tomato Committee, which works with the Department of Agriculture in administering the Federal marketing order for Florida tomatoes. The change applicable to tomatoes offered for importation is necessary under section 8c of the Agricultural Marketing Agreement Act of 1937.

DATES: This rule is effective June 15, 1992; comments received by July 20, 1992, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 90456, room 2523-S, Washington, DC 20090-6456. Three copies of all written material should be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 90456, room 2523-S, Washington, DC 20090-6456, telephone (202) 720-2170.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Marketing Order No. 966 (7 CFR part 966), both as amended, regulating the handling of tomatoes grown in Florida. The marketing agreement and order are authorized under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a “non-major” rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has
The current regulation establishes three tomato size designations which are defined as medium, large, and extra-large. Each size designation is in terms of a minimum and maximum diameter. For example, medium size tomatoes range from a minimum diameter of 2½ inches to a maximum diameter of 2½ inches. There is a ½ inch overlap between the current size designations. Growers in the production area produce and harvest tomatoes into late June. In recent years, supplies of tomatoes grown in North Florida have been available in late June and in direct competition with tomatoes produced in the production area. Heavy supplies of North Florida tomatoes are expected to be available this season.

Tomatoes grown outside the production area are not covered by the marketing order and therefore are not required to meet the grade, size, pack, and container requirements established for tomatoes grown in the production area, even when packed in the production area. According to the Committee, handlers regulated under the marketing order believe that having to meet the requirements of the handling regulation during the last two weeks that the handling regulation is in effect places them at a competitive disadvantage. Since tomatoes produced in North Florida are not regulated, handlers of such tomatoes do not have to pay inspection fees, and are able to sell their tomatoes at a lower price. The Committee believes that ending the handling requirements two weeks early will allow handlers of production area tomatoes to successfully compete in the marketplace with tomatoes produced in other areas.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for tomatoes under a domestic marketing order, imported tomatoes must meet the same or comparable requirements. Because this interim final rule changes the effective period of the domestic handling regulation, a corresponding change is needed in the tomato import regulation. For clarity, § 966.323 paragraph (f), Applicability to imports, will be removed from the domestic handling regulation, and the requirements therein will be relocated to the tomato import regulation. The tomato import regulation which appears in § 980.212 will be changed to reflect this action.

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

The United States Trade Representative (USTR) has reviewed this action to determine whether it is inconsistent with U.S. international trade obligations and concurs with its implementation.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This rule relieves handling requirements and to be of maximum benefit for the 1992 season should be effective by June 15; (2) tomato shippers are aware of this action which was unanimously recommended by the Committee at a public meeting; (3) there is no special preparation required of affected handlers; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects
7 CFR Part 966
Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.
7 CFR Part 980
Import regulations, Tomatoes.

For the reasons set forth in the preamble, 7 CFR parts 966 and 980 are amended to read as follows:
1. The authority citation for 7 CFR parts 966 and 980 are amended to read as follows:


PART 966—TOMATOES GROWN IN FLORIDA

2. Section 966.323 is amended by revising the introductory text and removing paragraph (f) to read as follows:

§ 966.323 Handling regulation.

From October 10 through June 15 of each season, except as provided in paragraph (b) and (d) of this section, no person shall handle any lot of tomatoes produced in the production area for shipment outside the regulated area unless it meets the requirements of paragraph (a) of this section, and no person shall handle any lot of tomatoes...
for shipment within the regulated area unless it meets the requirements of paragraphs (a)(1), (a)(2)(i), and (a)(4) of this section.

PART 980—VEGETABLES; IMPORT REGULATIONS

3. Section 980.212 is amended by revising paragraph (b)(1) to read as follows:

§ 980.212 Import regulations; tomatoes.

(b) * * *

(1) From October 10 through June 15 of each season, tomatoes offered for importation shall be at least 2-8/32 inches in diameter. Not more than 10 percent, by count, in any lot may be smaller than the minimum specified diameter. All lots with a minimum diameter of 2-17/32 inches and larger shall be at least U.S. No. 3 grade. All other tomatoes shall be at least U.S. No. 2 grade. Any lot with more than 10 percent of its tomatoes less than 2-17/32 inches in diameter shall grade at least U.S. No. 2.


W.H. Crocker,
Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-14453 Filed 6-18-92; 8:45 am]
BILLING CODE 3110-02-M

7 CFR Part 981
[Docket No. FV-92-040FR]

Handling of Almonds Grown in California; Extension of Date for Satisfying Handler Reserve Disposition Obligations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule extends from March 10 to September 1, 1992, the date by which handlers of California almonds must satisfy their 1990-91 crop year reserve disposition obligations. A preliminary injunction hearing regarding the disposition of reserve almonds was held on April 6, 1992, and no decision has been made on the matter. Therefore, this action allows handlers to continue disposing of their reserve almonds until September 1, 1992.

EFFECTIVE DATE: March 10, 1992.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Specialist, MOAB, F&amp;V, AMS, USDA. P.O. Box 96456, room 2523-S, Washington, DC 20009-6456; telephone: (202) 205-2530.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), as amended, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action extends from March 10 to September 1, 1992, the date by which handlers of California almonds must satisfy their 1990-91 crop year reserve disposition obligations. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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

There are approximately 115 handlers of almonds who are subject to regulation under the almond marketing order and approximately 7,300 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action relaxes restrictions on almond handlers and will not impose any additional burden or costs on handlers.

The salable, reserve, and export percentages for the 1990-91 almond crop were first established in a final rule published in the Federal Register on September 21, 1990 (55 FR 36793). The initial salable percentage was 65 percent, the reserve percentage was 35 percent, and the export percentage was 0 percent. The Board based its recommendations on the then current estimates of marketable supply and combined domestic and export trade demand for the 1990-91 crop year.

On December 3, 1990, the Board unanimously recommended revising the salable and reserve percentages.

Subsequently, an interim final rule revising the salable percentage from 65 to 70 percent and revising the reserve percentage from 35 to 30 percent was published in the Federal Register on February 11, 1991 (56 FR 5307).

At its February 21, 1991, meeting, the Board unanimously recommended to further revise the almond salable and reserve percentages for the 1990-91 crop year from 70 to 80 percent and 30 to 20 percent, respectively. A final rule was published in the Federal Register on May 31, 1991 (56 FR 24078).

The Board made its final review of the 1990-91 crop year salable and reserve percentages at its May 10, 1991, meeting. The Board unanimously recommended to increase the salable percentage from 80 percent to 90 percent and to decrease the reserve percentage from 20 percent to 7 percent. A final rule was published in the Federal Register on September 30, 1991 (56 FR 49392).

Section 981.66(e) of the order provides that all reserve almonds which remain unsold as of September 1 of the next crop year shall be disposed of by the Board as soon as practicable through the most readily available reserve outlets. The date of September 1 may be extended to a later date by the
Effective December 31, 1991, a final rule extended the disposition obligation date to January 20, 1992 (57 FR 1856, January 15, 1992) to allow all handlers to continue disposing of their reserve almonds after the December 31 deadline. This action was taken because on December 19, 1991, a temporary restraining order (TRO) was granted in U.S. District Court in Fresno, California, preventing the Board from disposing of a handler's remaining 1990-91 reserve almonds after the December 31 deadline.

At that time, a hearing for a preliminary injunction was scheduled for January 13, 1992. However, that hearing was delayed until March 3, 1992. Thus, the January 20, 1992, disposition obligation date was extended to March 10, 1992 (57 FR 2984, January 27, 1992).

This action further extends the disposition date from March 10 to September 1, 1992. The hearing for the preliminary injunction was held on April 6, 1992, and no decision has been made on the matter. Therefore, the disposition date is being extended to September 1, 1992.

This action also further extends from June 30 to December 1, 1992, the date by which handlers are required to submit documentation to the Board verifying their disposition of reserve almonds to eligible outlets. Pursuant to § 981.467, the Board may authorize handlers to act as its agents in disposing of reserve almonds. The agency agreement in place for the 1990-91 crop year specifies the terms and conditions that handlers are required to meet when acting as the Board's agents. The extension of the document filing date to December 1, 1992, will provide handlers adequate time to prepare and submit the required documentation on their reserve dispositions.

Based on the above, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic effect on a substantial number of small entities. After consideration of all relevant material presented and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) This action relaxes restrictions on handlers by extending until September 1, 1992, the date for disposing reserve almonds; and (2) this action should be taken as soon as possible so that handlers may plan their operations accordingly.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:


Subpart—Administrative Rules and Regulations

2. Paragraph (d) of § 981.467 is revised to read as follows:

§ 981.467 Disposition in reserve outlets by handlers.

(d) For the 1990-91 crop year only, the reserve disposition obligation date is extended until September 1, 1992, and the date for submitting documentation verifying reserve dispositions is extended to December 1, 1992.


Robert C. Keenary,
Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-14450 Filed 6-18-92; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1421

Grain and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations at 7 CFR part 1421 with respect to the farmer-owned reserve (FOR) program which is conducted by the Commodity Credit Corporation (CCC) in accordance with section 110 of the Agricultural Act of 1949 (the 1949 Act), as amended. This rule implements the changes made to section 110 by the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act). This rule simply codifies the determination made by the Secretary of Agriculture that 1991 crop feed grains may not be pledged as collateral for FOR loans.


FOR FURTHER INFORMATION CONTACT: Philip W. Srone, Director, Feed Grains Analysis Division (PEGAD), room 3744, South Building, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013 or call (202) 720-4417.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and it has been designated as "major". A Final Regulatory Impact Analysis has been prepared and is available from the above-named individual. The title and number of the Federal assistance program, as found in the catalogue of Federal Domestic Assistance, to which this rule applies are Grain Reserve—10.007.

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V published at 48 FR 29115 (June 24, 1983).

This final rule has been reviewed in accordance with Executive Order 12777. This rule does not involve the preemption of State law; it is retroactive to March 15, 1992; and it does not involve any exhaustion of administrative remedy issues.

Background

Section 110 of the 1949 Act sets forth the statutory authority for the FOR program which was added to the 1949 Act by the Food and Agriculture Act of 1977. The FOR was originally intended to encourage producers to store wheat and feed grains during times of surplus.
for orderly marketing at a later time. As noted in the Conference Report to the 1992 Act, experience has shown that the FOR has not operated in an efficient manner:

The managers feel that the FOR has not been operated in an efficient manner in the recent past. The changes made in this section are intended to provide for a more moderate transition of grain into and out of the reserve. The managers note that the program has, in the past, had the effect of completely isolating the reserve from the market—some wheat from the 1978 crop remains in the reserve at the time this Act is being completed. The managers intend that the changes made in the Act will allow for a more orderly flow of grain into and out of the FOR. Accordingly, the amendments adopted in the conference substitute become effective December 1, 1990, to govern the administration of the FOR as of that date.

In order to ensure that unreasonably large quantities of grain are not placed in the FOR, the Act amended section 110 to provide that the maximum quantity of wheat in the FOR cannot exceed 450 million bushels and the maximum quantity of feed grains cannot exceed 900 million bushels; there are no minimum quantities which must be maintained in the FOR. The maximum quantity of wheat in the FOR may be established within the range of 300–450 million bushels and the maximum quantity of feed grains within a range of 600–900 million bushels.

Entry into the FOR is triggered based upon price and stocks-to-use ratios. Section 110 provides:

(2) Discretionary Entry—The Secretary may make extended loans available to producers of wheat or feed grain if:

(A) The Secretary determines that the average market price for wheat or corn, respectively, for the 90-day period prior to December 15 for wheat or March 15 for feed grains is less than 120 percent of the current loan rate for wheat or corn, respectively; or

(B) As of the appropriate date specified above the Secretary estimates that the stocks-to-use ratio on the last day of the current marketing year will be:

(i) In the case of wheat, more that 37.5 percent; and

(ii) In the case of corn, more than 22.5 percent.

(3) Mandatory Entry—The Secretary shall make extended loans available to producers of wheat or feed grain if the conditions specified in subparagraphs (A) and (B) of paragraph (2) are met for wheat and feed grains, respectively.

If neither of the price or stocks-to-use ratio conditions is met, the Secretary has no authority to make extended loans available to producers of wheat or feed grains.

Section 110 provides that the determination of whether or not there will be entry of wheat into the FOR will be announced by December 15 of the year in which the crop of wheat was harvested and, in the case of feed grains, March 15 of the year following the year in which the crop of corn was harvested.

If entry into the FOR is allowed, as noted in the Conference Report, the terms and conditions of the FOR loans are designed to allow greater flexibility to producers than was previously allowed under section 110:

The current statutory restrictions on access to FOR grain severely restrict usefulness of the FOR. The amendments adopted in the conference substitute will allow producers to gain access to FOR-held grain to encourage producers to redeem grain from the FOR as market conditions and individual marketing plans warrant. The amendments allow all producers to redeem FOR loans at any time without imposition of penalties, as exist in current law. The amendments also provide that once market prices reach 95% of the current established price for the commodity, storage payments will end, and loans extended for FOR grain will begin accruing interest once market prices reach (sic) 100% of the established price for the commodity.

Storage payments will be paid with respect to FOR grain after the fact on a quarterly basis. Section 110 also provides:

Although the FOR program was intended to ensure that grain would come out of the FOR when prices were high, producers have shown a reluctance to repay FOR loans. In large part, this is due to the storage payments which they could earn under the FOR and due to the special Internal Revenue Code tax provisions which allow producers the option to defer the declaration of the proceeds of CCC price support loans as income until the maturity of the loan.

In order to ensure orderly management of the FOR, section 110 provides that producers may, if entry is allowed, only enter the FOR after the maturity of the regular 9-month price support loan expired. Also, in order to provide for equitable treatment of producers, section 110 provides that the Secretary shall take regional differences into consideration when administering the FOR.

As discussed above, the determination as to whether there will be entry into the FOR is based upon a review of the market prices for the 90 days immediately preceding the determination, as well as upon a projection of the estimated stocks-to-use ratio which is projected to exist at the end of the marketing year for wheat and corn, respectively. Accordingly, on March 13, 1991, the Secretary announced that the 1991 corn "stocks-to-use" ratio was less than 22.5 percent and that the 90-day market price of corn was in excess of 120 percent of the 1991 price support level.

Based on a review of existing and projected market conditions, the Secretary has no authority to allow the 1991 crop feed grains into the FOR. This final rule amends 7 CFR part 1421 to set forth this determination.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

Final Rule

Accordingly, 7 CFR part 1421 is amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:


2. Section 1421.742 is revised to read as follows:

§ 1421.742 Reserve quantity.

(a) The maximum quantity of 1990 crop wheat which may be stored under the provisions of section 110 of the Agricultural Act of 1949, as amended, is 300 million bushels. No quantity of 1990 crop feed grains may be stored under the provisions of section 110 of the Agricultural Act of 1949, as amended.

(b) No quantity of 1991 crop wheat and feed grains may be stored under the provisions of section 110 of the Agricultural Act of 1949, as amended.

Signed at Washington, DC on June 12, 1992.

John A. Stevenson,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92-14481 Filed 6-18-92; 8:45 am]
BILLING CODE 3410-05-M
Airworthiness Directives: de Havilland, Inc., Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to de Havilland Model DHC-7 series airplanes, that requires a one-time dye penetrant inspection to detect cracks in flap track no. 1, and replacement of cracked flap tracks; and modification of the lower surface of flap track no. 1. This amendment is prompted in accordance with 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 119.89.

§ 39.13 [Amended]

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

92-12-04. de Havilland, Inc.: Amendment 39-8284. Docket 91-NM-267-AD.

Applicability: de Havilland Model DHC-7 series airplanes: serial numbers 1 through 23; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of flap track no. 1, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a one-time dye penetrant inspection to detect cracks in flap track no. 1, in accordance with de Havilland Service Bulletin 7-53-15, Revision A, dated November 27, 1981.

(b) If cracks are evident or suspected as a result of the inspection required by paragraph (a) of this AD, prior to further flight, replace the flap track in accordance with de Havilland Service Bulletin 7-53-15, Revision A, dated November 27, 1981.

(c) If no cracks are evident or suspected as a result of the inspection required by paragraph (a) of this AD, within 6 months after the effective date of this AD, modify the lower surface of flap track no. 1 in accordance with de Havilland Service Bulletin 7-53-15, Revision A, dated November 27, 1981.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE-170, FAA, Engine and Propeller Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE-170.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.

39.13 [Amended]

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

92-12-04. de Havilland, Inc.: Amendment 39-8284. Docket 91-NM-267-AD.

Applicability: de Havilland Model DHC-7 series airplanes: serial numbers 1 through 23; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of flap track no. 1, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a one-time dye penetrant inspection to detect cracks in flap track no. 1, in accordance with de Havilland Service Bulletin 7-53-15, Revision A, dated November 27, 1981.

(b) If cracks are evident or suspected as a result of the inspection required by paragraph (a) of this AD, prior to further flight, replace the flap track in accordance with de Havilland Service Bulletin 7-53-15, Revision A, dated November 27, 1981.

(c) If no cracks are evident or suspected as a result of the inspection required by paragraph (a) of this AD, within 6 months after the effective date of this AD, modify the lower surface of flap track no. 1 in accordance with de Havilland Service Bulletin 7-53-15, Revision A, dated November 27, 1981.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE-170, FAA, Engine and Propeller Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE-170.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.

39.13 [Amended]

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

92-12-04. de Havilland, Inc.: Amendment 39-8284. Docket 91-NM-267-AD.

Applicability: de Havilland Model DHC-7 series airplanes: serial numbers 1 through 23; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of flap track no. 1, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a one-time dye penetrant inspection to detect cracks in flap track no. 1, in accordance with de Havilland Service Bulletin 7-53-15, Revision A, dated November 27, 1981.

(b) If cracks are evident or suspected as a result of the inspection required by paragraph (a) of this AD, prior to further flight, replace the flap track in accordance with de Havilland Service Bulletin 7-53-15, Revision A, dated November 27, 1981.

(c) If no cracks are evident or suspected as a result of the inspection required by paragraph (a) of this AD, within 6 months after the effective date of this AD, modify the lower surface of flap track no. 1 in accordance with de Havilland Service Bulletin 7-53-15, Revision A, dated November 27, 1981.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE-170, FAA, Engine and Propeller Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE-170.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.
DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 601
RIN 1545-AP25
Statement of Procedural Rules; Correction
AGENCY: Internal Revenue Service, Treasury.
ACTION: Correcting amendments.
SUMMARY: This document contains correcting amendments to the Statement of Procedural Rules which were published in the Federal Register on Tuesday, May 28, 1991, (56 FR 24001). The Statement of Procedural Rules sets forth the procedural rules of the Internal Revenue Service for all taxes it administers as well as certain rules that apply to the Bureau of Alcohol, Tobacco, and Firearms.
FOR FURTHER INFORMATION CONTACT: Mr. Patrick W. McDonough of the Office of Director of Practice, Internal Revenue Service, at (202) 535-6787 (not a toll-free number).
SUPPLEMENTARY INFORMATION:
Background
The procedural rules that are the subject of this correction are a revision and restatement of the Conference and Practice Requirements contained in the Statement of Procedural Rules (26 CFR part 601). The requirements contain the procedural rules for powers of attorney required for representation of taxpayers before the Internal Revenue Service.
Need for Correction
As published, the procedural rules contain errors which may prove to be misleading and are in need of clarification.
List of Subjects in 26 CFR Part 601
Administrative practice and procedure, Aged, Alcohol and alcohol beverages, Arms and munitions, Cigars and cigarettes, Claims, Freedom of information, Petroleum, Reporting and recordkeeping requirements, Taxes.

PART 601—STATEMENT OF PROCEDURAL RULES

Accordingly, 26 CFR part 601 is corrected by making the following correcting amendments:

1. The authority citation for subpart E of part 601 continues to read as follows:

§ 601.502 [Amended]

2. The paragraphs under § 601.502 are redesignated as follows:

<table>
<thead>
<tr>
<th>Old paragraph</th>
<th>New paragraph</th>
</tr>
</thead>
<tbody>
<tr>
<td>Undesignated first paragraph</td>
<td>(a)</td>
</tr>
<tr>
<td>(a)</td>
<td>(a)(1)</td>
</tr>
<tr>
<td>(b)</td>
<td>(a)(2)</td>
</tr>
<tr>
<td>(c)</td>
<td>(a)(3)</td>
</tr>
</tbody>
</table>

§§ 601.501 through 601.505 [Amended]

3. In the list below, for each section indicated in the left column, remove the language indicated in the middle column from wherever it appears in the section, and add the language indicated in the right column.

<table>
<thead>
<tr>
<th>Section</th>
<th>Remove</th>
<th>Add</th>
</tr>
</thead>
<tbody>
<tr>
<td>601.501(a)</td>
<td>601.502(b)</td>
<td>601.502(c)</td>
</tr>
<tr>
<td>601.501(b)(4)</td>
<td>601.502(b)</td>
<td>601.502(c)</td>
</tr>
<tr>
<td>601.502(a)(2)</td>
<td>601.502(a)</td>
<td>601.502(b)</td>
</tr>
<tr>
<td>601.502(a)(3)</td>
<td>601.502(b)</td>
<td>601.502(c)</td>
</tr>
<tr>
<td>601.502(a)(4)</td>
<td>601.502(b)</td>
<td>601.502(c)</td>
</tr>
<tr>
<td>601.503(b)(1)</td>
<td>601.502(b)</td>
<td>601.502(c)</td>
</tr>
<tr>
<td>601.504(b)(2)(i)</td>
<td>601.502(a)</td>
<td>601.502(b)</td>
</tr>
<tr>
<td>601.504(b)(2)(ii)</td>
<td>601.502(b)</td>
<td>601.502(c)</td>
</tr>
<tr>
<td>601.502(b)(3)(i)</td>
<td>601.502(b)</td>
<td>601.502(c)</td>
</tr>
<tr>
<td>601.502(b)(3)(ii)</td>
<td>601.502(b)</td>
<td>601.502(c)</td>
</tr>
</tbody>
</table>

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

DEPARTMENT OF JUSTICE
28 CFR Part 43
[AG Order No. 1594-92]
Recovery of Cost of Hospital and Medical Care and Treatment Furnished by the United States
AGENCY: Department of Justice.
ACTION: Final rule.
SUMMARY: This order amends Department of Justice regulations to increase the settlement and waiver authority delegated to the departments and agencies of the United States responsible for the furnishing of hospital, medical, surgical, or dental care. This change responds to the increase in medical costs since 1978, when the current level of delegated settlement and waiver authority was fixed, and will further the efficient operation of the Government.

EFFECTIVE DATE: June 19, 1992.

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

SUPPLEMENTARY INFORMATION: These amendments represent the first increase in the settlement and waiver authority delegated to the departments and agencies of the United States responsible for the furnishing of hospital, medical, surgical, or dental care since 1978. During the intervening period, the cost of medical care and treatment has increased substantially. This increase warrants a corresponding increase in settlement and waiver authority to further the efficient operation of the Government.

These amendments are exempt from the requirements of Executive Order 12291 as a regulation related to agency organization and management. Furthermore, this regulation will not have a significant economic impact on a substantial number of small entities because its effect is internal to the Department of Justice. 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 43
Claims, Health care.

Accordingly, by virtue of the authority vested in the Attorney General by 42 U.S.C. 2651-2653 and Executive Order 11060 (2 CFR, 1959-1963 Comp., p. 651), part 43 of title 28 of the Code of Federal Regulations is amended as follows:

PART 43—[AMENDED]

1. The authority citation for part 43 is revised to read as follows:


2. Section 43.3 is revised to read as follows:

§ 43.3 Settlement and waiver of claims.

(a) The head of the Department or Agency of the United States asserting such claim, or his or her designee, may:

(1) Accept the full amount of a claim and execute a release therefor;
(2) Compromise or settle and execute a release of any claim, not in excess of $100,000, which the United States has for the reasonable value of such care and treatment; or

(3) Waive and in this connection release any claim, not in excess of $100,000, in whole or in part, either for the convenience of the Government, or if the head of the Department or Agency, or his or her designee, determines that collection would result in undue hardship upon the person who suffered the injury or disease resulting in the care and treatment described in § 43.1.

(b) Claims in excess of $100,000 may be compromised, settled, waived, and released only with the prior approval of the Department of Justice.

(c) The authority granted in this section shall not be exercised in any case in which:

(1) The claim of the United States for such care and treatment has been referred to the Department of Justice; or

(2) A suit by the third party has been instituted against the United States or the individual who received or is receiving the care and treatment described in § 43.1 and the suit arises out of the occurrence which gave rise to the third-party claim of the United States.

(d) The Departments and Agencies concerned shall consult the Department of Justice in all cases involving:

(1) Unusual circumstances;

(2) A new point of law which may serve as a precedent; or

(3) A policy question where there is or may be a difference of views between any of such Departments and Agencies.

Dated: June 1, 1992.

William P. Barr,
Attorney General.

[FR Doc. 92-13586 Filed 6-18-92; 8:45 am]

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-7044]

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.


SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community. The respective addresses are listed in the following table.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modifications, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This interim rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This interim rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This interim rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This interim rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:


§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

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<table>
<thead>
<tr>
<th>State</th>
<th>County</th>
<th>Location</th>
<th>Dates and name of newspaper where notice was published</th>
<th>Chief executive officer of community</th>
<th>Effective date of modification</th>
<th>Community No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>Santa Cruz</td>
<td>Unincorporated areas</td>
<td>May 27, 1992, June 3, 1992, Nogales International</td>
<td>The Honorable Ron Montes, Chairman, Santa Cruz County, Board of Supervisors, 2100 North Congress Drive, Nogales, Arizona 85621.</td>
<td>May 5, 1992</td>
<td>040060</td>
</tr>
<tr>
<td>California</td>
<td>Sacramento</td>
<td>Unincorporated areas</td>
<td>May 21, 1992, May 28, 1992, Sacramento Bee</td>
<td>Mr. Douglas M. Freleigh, Director, Sacramento County Department of Public Works, 827 Seventh Street, Room 304, Sacramento, California 95814.</td>
<td>May 7, 1992</td>
<td>060262</td>
</tr>
<tr>
<td>Colorado</td>
<td>Boulder</td>
<td>City of Broomfield</td>
<td>May 21, 1992, May 28, 1992, Broomfield Enterprise</td>
<td>The Honorable Robert Schultz, Mayor, City of Broomfield, Number Six Garden Office Center, P.O. Box 1415, Broomfield, Colorado 80020.</td>
<td>May 8, 1992</td>
<td>090573</td>
</tr>
<tr>
<td>Do</td>
<td>DuPage</td>
<td>Unincorporated areas</td>
<td>May 6, 1992, May 15, 1992, Daily Herald</td>
<td>The Honorable Aldo E. Botto, Chairman, DuPage County Board of Commissioners, 421 North County Farm Road, Wheaton, Illinois 60187.</td>
<td>Apr. 26, 1992</td>
<td>170187</td>
</tr>
<tr>
<td>Nevada</td>
<td>Independent City</td>
<td>City of Carson City</td>
<td>June 3, 1992, June 10, 1992, Nevada Appeal</td>
<td>The Honorable Mary Teelker, Mayor, City of Carson City, 2621 Northgate Lane, Carson City, Nevada 89706.</td>
<td>May 11, 1992</td>
<td>320001</td>
</tr>
<tr>
<td>Ohio</td>
<td>Medina</td>
<td>City of Brunswick</td>
<td>May 14, 1992, May 21, 1992, Brunswick Sun Times</td>
<td>The Honorable Judith A. Beadell-Rapp, Mayor of the City of Brunswick, Medina County, 4031 Center Road, Brunswick, Ohio 44212.</td>
<td>May 5, 1992</td>
<td>390380 B</td>
</tr>
</tbody>
</table>
WASHINGTON

<table>
<thead>
<tr>
<th>State</th>
<th>County</th>
<th>Location</th>
<th>Chief executive officer of community</th>
<th>Effective date of modification</th>
<th>Community No.</th>
</tr>
</thead>
</table>

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents. The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10. Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance. Floodplains. Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:


§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:
<table>
<thead>
<tr>
<th>State</th>
<th>County</th>
<th>Location</th>
<th>Date and name of newspaper where notice was published</th>
<th>Chief executive officer of community</th>
<th>Effective date of modification</th>
<th>Community No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>Pima</td>
<td>City of Tucson</td>
<td>January 31, 1992, February 7, 1992, Arizona Daily Star</td>
<td>The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85720</td>
<td>January 27, 1992</td>
<td>040076</td>
</tr>
<tr>
<td>Arizona</td>
<td>Pima</td>
<td>Unincorporated areas</td>
<td>March 6, 1992, March 13, 1992, Arizona Daily Star</td>
<td>The Honorable Sh Operations, Chairman, Pima County, Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, Arizona 85701</td>
<td>February 10, 1992</td>
<td>040073</td>
</tr>
<tr>
<td>California</td>
<td>Ventura</td>
<td>Unincorporated areas</td>
<td>January 24, 1992, January 31, 1992, Star Free Press</td>
<td>The Honorable Maggie, Erickson Kids, Chairman, Ventura, County Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009</td>
<td>January 21, 1992</td>
<td>060413</td>
</tr>
<tr>
<td>Colorado</td>
<td>Summit</td>
<td>Town of Frisco</td>
<td>January 22, 1992, January 29, 1992, Summit Sentinel</td>
<td>The Honorable Jim Spenst, Mayor, Town of Frisco, P.O. Box 370, Frisco, Colorado 80443</td>
<td>December 27, 1991</td>
<td>060245</td>
</tr>
<tr>
<td>Florida</td>
<td>Nassau</td>
<td>Unincorporated areas</td>
<td>December 18, 1991, December 24, 1991, Fernandina Beach News Leader</td>
<td>The Honorable Jim B. Higginbotham, Chairman, Nassau County Board, P.O. Drawer 1010, Fernandina Beach, Florida 32034</td>
<td>November 20, 1991</td>
<td>120170</td>
</tr>
<tr>
<td>Kansas</td>
<td>Douglas</td>
<td>City of Lawrence</td>
<td>December 27, 1991, January 3, 1992, Journal World.</td>
<td>The Honorable Bob Walters, Mayor, City of Lawrence, P.O. Box 706, Lawrence, Kansas 66044-0706</td>
<td>December 16, 1991</td>
<td>200090</td>
</tr>
<tr>
<td>Kansas</td>
<td>Sedgwick and Sumner</td>
<td>City of Mulvane</td>
<td>January 2, 1992, January 9, 1992, Mulvane News.</td>
<td>The Honorable Gerald S. Wing, Mayor, City of Mulvane, 211 North Second Street, Mulvane, Kansas 67110</td>
<td>December 18, 1991</td>
<td>200326</td>
</tr>
<tr>
<td>Minnesota</td>
<td>Dakota</td>
<td>City of Lakeville</td>
<td>December 30, 1991, January 6, 1992, The Lakeville Life &amp; Times</td>
<td>The Honorable Duane Zaun, Mayor, City of Lakeville, 20185 Hollyoke Avenue West, Lakeville, Minnesota 55044</td>
<td>December 17, 1991</td>
<td>270107</td>
</tr>
<tr>
<td>Minnesota</td>
<td>Olmsted</td>
<td>Unincorporated areas</td>
<td>January 10, 1992, January 17, 1992, Rochester Post Bulletin</td>
<td>The Honorable James Rosman, Chairperson, Olmsted County, Board of Commissioners, 515 Second Street SW, Rochester, Minnesota 55902</td>
<td>December 26, 1991</td>
<td>270626</td>
</tr>
<tr>
<td>Virginia</td>
<td>Loudoun</td>
<td>Town of Leesburg</td>
<td>February 20, 1992, February 27, 1992, Loudoun Times Mirror</td>
<td>The Honorable Steven C. Brown, Manager, Town of Leesburg, 25 West Market Street, P.O. Box 68, Leesburg, Virginia 22075</td>
<td>February 12, 1992</td>
<td>510090</td>
</tr>
</tbody>
</table>
This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodplain areas in accordance with 44 CFR part 60.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Interested lessees and owners of real property are encouraged to review the floodproof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance. Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:


§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

### ARIZONA

<table>
<thead>
<tr>
<th>Chino Valley (town), Yavapai County (FEMA Docket No. 7032)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Santa Cruz Wash:</td>
</tr>
<tr>
<td>At East Parkview Road</td>
</tr>
<tr>
<td>At Road 2 North</td>
</tr>
<tr>
<td>At Road 1 South</td>
</tr>
<tr>
<td>150 feet north of Road 4 South</td>
</tr>
<tr>
<td>Chino Wash:</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Maps are available for review at the Department of Planning and Zoning, 102 West Parentino Street, Chino Valley, Arizona.</td>
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<tr>
<td>Pima County (unincorporated areas), (FEMA docket No. 7042)</td>
</tr>
<tr>
<td>Santa Cruz River:</td>
</tr>
<tr>
<td>At Real Pima County Line</td>
</tr>
<tr>
<td>Just upstream to Taco Road</td>
</tr>
<tr>
<td>Approximately 100 feet upstream of Trico Marene Road</td>
</tr>
<tr>
<td>Approximately 6,400 feet downstream of Standford Road</td>
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<tr>
<td>Approximately 2,800 feet upstream of Sanders Road</td>
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<tr>
<td>Approximately 11,000 feet upstream of Sanders Road</td>
</tr>
<tr>
<td>Approximately 10,000 feet downstream of Avra Valley Road</td>
</tr>
<tr>
<td>At Avra Valley Road</td>
</tr>
<tr>
<td>Approximately 100 feet upstream of Cortaro Road (relocated)</td>
</tr>
<tr>
<td>At Ina Road</td>
</tr>
<tr>
<td>At the intersection of Canada Del Oro</td>
</tr>
<tr>
<td>Approximately 2,100 feet upstream of Sunset Road</td>
</tr>
<tr>
<td>Approximately 2,300 feet upstream of Valencia Road</td>
</tr>
<tr>
<td>Approximately 4,500 feet upstream of Valencia Road</td>
</tr>
<tr>
<td>Approximately 5,700 feet downstream of San Xavier Road</td>
</tr>
<tr>
<td>At Sunset of Interstate 19 Northbound</td>
</tr>
<tr>
<td>Canada Del Oro:</td>
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<tr>
<td>Approximately 1,000 feet upstream of Magne Road</td>
</tr>
<tr>
<td>Approximately 2,100 feet downstream of La Cholla Boulevard</td>
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<tr>
<td>Approximately 375 feet downstream of La Cholla Boulevard</td>
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<tr>
<td>Approximately 375 feet downstream of La Cholla Boulevard</td>
</tr>
<tr>
<td>Approximately 50 feet downstream of Orvilon Road</td>
</tr>
<tr>
<td>Pine Wash:</td>
</tr>
<tr>
<td>Approximately 4,200 feet upstream of Ina Road</td>
</tr>
<tr>
<td>Approximately 6,400 feet upstream of Ina Road</td>
</tr>
<tr>
<td>Approximately 8,200 feet upstream of Ina Road (at Coronado National Forest Boundary)</td>
</tr>
<tr>
<td>Rio Rico Creek:</td>
</tr>
<tr>
<td>Just downstream of Filling Wells Road</td>
</tr>
<tr>
<td>Approximately 1,100 feet downstream of North Oracle Road U.S. Highway 80, 89</td>
</tr>
<tr>
<td>Approximately 2,600 feet upstream of North First Avenue</td>
</tr>
<tr>
<td>Approximately 250 feet upstream of Dodge Boulevard</td>
</tr>
<tr>
<td>Just downstream of Swan Road</td>
</tr>
<tr>
<td>At the confluence with Pantano Wash and Tanque Verde Creek</td>
</tr>
<tr>
<td>Sabino Creek:</td>
</tr>
<tr>
<td>Approximately 0.92 mile above the confluence with Tanque Verde Creek</td>
</tr>
<tr>
<td>Approximately 1.57 miles above the confluence with Tanque Verde Creek</td>
</tr>
<tr>
<td>Source of flooding and location</td>
</tr>
<tr>
<td>---------------------------------</td>
</tr>
<tr>
<td><strong>Tanque Verde Creek</strong></td>
</tr>
<tr>
<td>At the confluence with Rillito River and Panano Wash</td>
</tr>
<tr>
<td>Approximately 50 feet upstream of North Craycroft Road</td>
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<tr>
<td>Approximately 0.6 mile (3,175 feet) downstream of North Craycroft Road</td>
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<tr>
<td>Approximately 0.36 mile (1,000 feet) downstream of the confluence with Ventana Wash</td>
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<tr>
<td><strong>Enchanted Hills Wash</strong></td>
</tr>
<tr>
<td>Maps are available to review at the Pima County Department of Transportation and Flood Control District, Public Works Building, 251 North Stone Avenue, Tucson, Arizona.</td>
</tr>
</tbody>
</table>

**Tucson (city), Pima County (FEMA Docket No. 7040)**

| Santa Cruz River:                  |                                                 |
| Approximately 5,750 feet downstream of El Camino Del Cerro | 2,128 |
| Approximately 50 feet upstream of El Camino Del Cerro | 2,234 |
| At Bear Avenue | 2,296 |
| Approximately 100 feet downstream of the confluence with Silvercreek Wash | 2,279 |
| Approximately 200 feet upstream of West Grant Road | 2,305 |
| Approximately 100 feet upstream of West Speedway Boulevard | 2,323 |
| Approximately 50 feet downstream of West Colorado Street | 2,345 |
| Approximately 100 feet upstream of Silverlake Wash | 2,370 |
| Approximately 20 feet downstream of Apo Way | 2,297 |
| Approximately 100 feet upstream of Irvin Road | 2,415 |
| Approximately 3,000 feet upstream of Valencia Road | 2,455 |
| Approximately 6,300 feet upstream of Valencia Road (at Tucson Corporate Limits) | 2,475 |
| **Rillito Creek**                 |                                                 |
| Approximately 2,000 feet downstream of North Oracle Road (I-808 and 80) | 2,290 |
| Just upstream of North First Avenue | 2,316 |
| Approximately 50 feet downstream of North Campbell Avenue | 2,337 |
| Approximately 3,400 feet downstream of Dodge Boulevard | 2,374 |
| Just upstream of Dodge Boulevard | 2,382 |
| Just downstream of Swan Road | 2,406 |
| **Suburban Stream**               |                                                 |
| At the confluence of Tanque Verde Creek | 2,492 |
| Approximately 1,200 feet upstream of the confluence of Tanque Verde Creek | 2,497 |
| Approximately 3,775 feet upstream of the confluence with Tanque Verde Creek | 2,506 |
| Approximately 4,000 feet upstream of the confluence with Tanque Verde Creek | 2,511 |
| **Hidden Hills Wash**             |                                                 |
| Approximately 100 feet downstream of Rosewood Street | 2,629 |
| Approximately 20 feet upstream of Fifth Street | 2,656 |
| Approximately 60 feet downstream of Golden West Street | 2,684 |
| Approximately 175 feet downstream of East Broadway Boulevard | 2,702 |
| **Enchanted Hills Wash**          |                                                 |
| Approximately 120 feet upstream of the confluence with West Branch Santa Cruz River | 2,306 |
| Approximately 85 feet downstream of Mission Road | 2,417 |
| Approximately 860 feet upstream of Mission Road | 2,426 |
| Approximately 1,320 feet upstream of Mission Road | 2,435 |
| **Agua Tibia**                   |                                                 |
| Approximately 200 feet downstream of East Grant Road | 2,477 |
| Approximately 120 feet downstream of East Pima Street | 2,477 |
| Approximately 60 feet downstream of Speedway Boulevard | 2,507 |
| Approximately 20 feet upstream of East Broadway Boulevard | 2,534 |
| Approximately 60 feet downstream of Southwest Boulevard | 2,572 |
| Approximately 60 feet upstream of East 22nd Street | 2,580 |

**CALIFORNIA**

<table>
<thead>
<tr>
<th>Source of flooding and location</th>
<th>#Depth in feet above ground, Elev. in feet (NGVD)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Folsom (city), Sacramento County (FEMA Docket No. 7040)</strong></td>
<td></td>
</tr>
<tr>
<td>Humbug Creek:</td>
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<tr>
<td>At East Bass Road</td>
<td>2,245</td>
</tr>
<tr>
<td>Approximately 100 feet downstream of Lake Avenue</td>
<td>2,256</td>
</tr>
<tr>
<td>Just upstream of 10th Street</td>
<td>2,255</td>
</tr>
<tr>
<td>Just downstream of Aviation Avenue</td>
<td>2,268</td>
</tr>
<tr>
<td>Just downstream of 36th Street</td>
<td>2,291</td>
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<tr>
<td><strong>Railroad Wash</strong></td>
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<tr>
<td>At the confluence with Tucson Arroyo</td>
<td>2,390</td>
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<tr>
<td>Just upstream of 10th Street</td>
<td>2,434</td>
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<tr>
<td>Just downstream of Aviation Avenue</td>
<td>2,442</td>
</tr>
<tr>
<td>Just downstream of 36th Street</td>
<td>2,491</td>
</tr>
<tr>
<td><strong>Sacramento River</strong></td>
<td></td>
</tr>
<tr>
<td>Approximately 100 feet downstream of East Grand Avenue</td>
<td>2,444</td>
</tr>
<tr>
<td>Approximately 100 feet upstream of East Pima Street</td>
<td>2,467</td>
</tr>
<tr>
<td>Approximately 100 feet upstream of East Bass Street</td>
<td>2,483</td>
</tr>
<tr>
<td><strong>Lake County (unincorporated areas) (FEMA Docket No. 7040)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Cache Creek</strong></td>
<td></td>
</tr>
<tr>
<td>At the confluence with Cappsy Creek</td>
<td>1,331</td>
</tr>
<tr>
<td>Approximately 3,000 feet downstream of Lake Street</td>
<td>1,331</td>
</tr>
<tr>
<td>Approximately 1,000 feet downstream of Lake Street</td>
<td>1,331</td>
</tr>
<tr>
<td>Just upstream of Lake Street</td>
<td>1,331</td>
</tr>
<tr>
<td>At State Highway 53</td>
<td>1,331</td>
</tr>
<tr>
<td><strong>Solitaire Canyon Creek</strong></td>
<td></td>
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<tr>
<td>At the confluence with Cache Creek</td>
<td>1,331</td>
</tr>
<tr>
<td><strong>Maps are available for review at the Public Works Department, Engineering Division, 300 Persier Street, Folsom, California.</strong></td>
<td></td>
</tr>
</tbody>
</table>

**COLORADO**

<table>
<thead>
<tr>
<th>Source of flooding and location</th>
<th>#Depth in feet above ground, Elev. in feet (NGVD)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sandy Creek</strong></td>
<td></td>
</tr>
<tr>
<td>At the east corporate limits, approximately 2,900 feet downstream of State Highway 119</td>
<td>2,787</td>
</tr>
<tr>
<td>Approximately 80 feet downstream of State Highway 119</td>
<td>2,850</td>
</tr>
<tr>
<td>Just upstream of Emmons Road</td>
<td>2,930</td>
</tr>
<tr>
<td>At State Highway 119</td>
<td>3,019</td>
</tr>
<tr>
<td>At the western corporate limits, approximately 2,000 feet downstream of State Highway 33</td>
<td>3,064</td>
</tr>
<tr>
<td><strong>Nordy Sandy Creek</strong></td>
<td></td>
</tr>
<tr>
<td>Approximately 1,260 feet downstream of Airport Road, at the corporate limits</td>
<td>736</td>
</tr>
<tr>
<td>At Airport Road</td>
<td>764</td>
</tr>
<tr>
<td>Approximately 1,150 feet upstream of Airport Road, at the north corporate limits</td>
<td>778</td>
</tr>
</tbody>
</table>

**Maps are available for review at the Department of Public Works, 206 East Kern Street, Taft, California.**

**COLORADO**

<table>
<thead>
<tr>
<th>Source of flooding and location</th>
<th>#Depth in feet above ground, Elev. in feet (NGVD)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Riverside County (unincorporated areas) (FEMA Docket No. 7049)</strong></td>
<td></td>
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<tr>
<td>Perris Valley Storm Drain:</td>
<td></td>
</tr>
<tr>
<td>At Orange Avenue</td>
<td>1,430</td>
</tr>
<tr>
<td>Approximately 2,600 feet upstream of Orange Avenue</td>
<td>1,434</td>
</tr>
</tbody>
</table>

**Maps are available for review at the Riverside County Flood Control and Water Conservation District, 1959 Market Street, Riverside, California.**

**Taft (city), Kern County (FEMA Docket No. 7042)**

| Sandy Creek:                   |                                                 |
| At the Corporate Limits, 3,000 feet downstream of State Highway 190 | 787 |
| Approximately 80 feet downstream of State Highway 119 | 850 |
| Just upstream of Emmons Road | 850 |
| At State Highway 119 | 930 |
| At the western corporate limits, approximately 2,000 feet downstream of State Highway 33 | 1,019 |
| **North Sandy Creek**          |                                                 |
| Approximately 1,260 feet downstream of Airport Road, at the corporate limits | 736 |
| At Airport Road | 764 |
| Approximately 1,150 feet upstream of Airport Road, at the north corporate limits | 778 |
| **Maps are available for review at the Department of Public Works, 206 East Kern Street, Taft, California.** |  |

**South Shocks Run:               |                                                 |
| At the confluence with Fountain Creek | 5,688 |
| Just downstream of Costilla Street | 5,950 |
| Approximately 150 feet upstream of Willamette Avenue | 6,008 |
| Approximately 1,650 feet upstream of East San Miguel Street | 6,060 |

| Tempe State Floodway:           |                                                 |
| Just downstream of Hopeful Drive | 5,460 |
| Just downstream of Barnes Road | 5,605 |

**Templeton Gap South Overflow:**

- At the confluence with Templeton Gap Floodway | 5,368
- At the confluence with Templeton Gap Floodway, approximately 1,450 feet upstream of Half Turn Road | 5,407

**Cheyenne Run:**

- At the confluence with Cheyenne Creek | 5,920
- At Lorraine Street | 5,981

- Approximately 30 feet downstream of the intersection of Skyway Boulevard and Saturn Drive | 6,054

- At the intersection of Skyway Boulevard and Mars Drive | 6,045

**Templeton Gap South Tributary:**

- Just downstream of Hopeful Drive | 6,455
- Approximately 100 feet downstream of Picture Spring Drive | 6,473

**Spring Run:**

- At the confluence with Fountain Creek | 5,688
- Just downstream of Southgate Road | 5,925
- Approximately 200 feet downstream of South Fork Avenue | 5,976
- Approximately 250 feet downstream of Springmill Drive | 6,058

**Springmill Drive Overview:**

- At the confluence with Spring Run | 5,886
- Approximately 400 feet upstream of South El Paso Avenue | 5,911
- Approximately 500 feet upstream of South El Paso Avenue | 5,925
- **Sand Creek** | 6,125
- At Murray Boulevard | 6,208
- Just downstream of Colorado and Eastern Railroad | 6,255
- Just downstream of Mainland Road | 6,205
### Connecticut

**Source of flooding and location**

<table>
<thead>
<tr>
<th>#</th>
<th>Depth in feet above ground</th>
<th>Elevation in feet (NGVD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>6,436</td>
<td>804</td>
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<tr>
<td>2</td>
<td>6,528</td>
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<tr>
<td>3</td>
<td>8,150</td>
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### Federal Register / Vol. 57, No. 119 / Friday, June 19, 1992 / Rules and Regulations

<table>
<thead>
<tr>
<th>Source of flooding and location</th>
<th>#Depth in feet above ground</th>
<th>Elevation in feet (NGVD)</th>
</tr>
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<tbody>
<tr>
<td>About 400 feet downstream of Southeast 14th Street.</td>
<td>968</td>
<td>*969</td>
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<tr>
<td>Easter Lake: Along shoreline.</td>
<td>970</td>
<td>*970</td>
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<tr>
<td>Raccoon River.</td>
<td>911</td>
<td>*912</td>
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<tr>
<td>Just upstream of First Street.</td>
<td>914</td>
<td>*915</td>
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<tr>
<td>Just upstream of 75th Street.</td>
<td>917</td>
<td>*918</td>
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<tr>
<td>Just upstream of Interstate 35.</td>
<td>964</td>
<td>*965</td>
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<tr>
<td>Saylor Creek.</td>
<td>904</td>
<td>*905</td>
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<tr>
<td>At mouth.</td>
<td>906</td>
<td>*907</td>
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<tr>
<td>About 500 feet downstream of State Highway 415.</td>
<td>945</td>
<td>*946</td>
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<tr>
<td>Backset Creek.</td>
<td>855</td>
<td>*856</td>
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<tr>
<td>At mouth.</td>
<td>865</td>
<td>*866</td>
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<tr>
<td>About 3,260 feet upstream of Chicago and Northwestern Railroad.</td>
<td>917</td>
<td>*918</td>
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<tr>
<td>Machinckin Creek.</td>
<td>921</td>
<td>*922</td>
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<tr>
<td>At mouth.</td>
<td>924</td>
<td>*925</td>
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<tr>
<td>About 2,500 feet upstream of Northwest 46th Street.</td>
<td>878</td>
<td>*879</td>
</tr>
<tr>
<td>Spring Creek.</td>
<td>894</td>
<td>*895</td>
</tr>
<tr>
<td>Just upstream of Vandalia Drive.</td>
<td>986</td>
<td>*987</td>
</tr>
<tr>
<td>Just upstream of Southeast 82nd Street.</td>
<td>989</td>
<td>*990</td>
</tr>
<tr>
<td>North Walnut Creek of Alumni Drive.</td>
<td>993</td>
<td>*994</td>
</tr>
<tr>
<td>At county boundary.</td>
<td>996</td>
<td>*997</td>
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<tr>
<td>About 300 feet upstream of Northwest 100th Street.</td>
<td>1,003</td>
<td>*1,004</td>
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<tr>
<td>Maxford Creek.</td>
<td>1,006</td>
<td>*1,007</td>
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<tr>
<td>At mouth.</td>
<td>1,009</td>
<td>*1,010</td>
</tr>
<tr>
<td>Just upstream of Southeast 56th Avenue.</td>
<td>1,013</td>
<td>*1,014</td>
</tr>
</tbody>
</table>

Maps available for inspection at the Kansas City Metropolitan Area Planning Department, 1111 Main Street, Kansas City, Missouri.

---

### Kentucky

**Lexington-Fayette Urban County Government, Fayette County (FEMA docket No. 7308)**

- **Cane Run:**
  - Just upstream of Private Drive... | 912 |
  - Just upstream of Newton Road... | 915 |
- **Spring Fork:**
  - Just upstream of Old Versailles Road... | 918 |
  - Just upstream of Highway Mill Road... | 921 |
- **Cedar Creek:**
  - At mouth. | 924 |
  - About 1,000 feet upstream of mouth... | 927 |
- **Quarry Run:**
  - At mouth. | 930 |
  - About 950 feet upstream of Clay Mill Road. | 933 |
  - Just upstream of Rowland Road. | 936 |
  - Just downstream of Rowland Road. | 939 |
- **Hood River:**
  - Just downstream of Rowland Road. | 942 |
  - Just upstream of Rowland Road. | 945 |
- **Hibbs Mill Road Tributary:**
  - At mouth. | 948 |
  - About 1,790 feet upstream of mouth. | 951 |

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### Maryland

**Perryville (town), Cecil County (FEMA Docket No. 7404)**

- **Susquehanna River:** For its entire shoreline affecting the community. | 12 |

Maps available for inspection at the County Planning Office, 222 Washington Street, Perryville, Maryland.

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### Massachusetts

**Lowell city, Middlesex County (FEMA Docket No. 7043)**

- Menemsha River:
  - At mouth. | 58 |
  - Approximately 200 feet upstream of School Street. | 95 |
- Concord River:
  - Approximately 300 feet downstream of State Route 110 (Church Street). | 68 |
  - At confluence with Merrimack River. | 71 |
- Beaver Brook:
  - At confluence with Merrimack River... | 71 |
  - Downstream side of Beaver Street. | 71 |

Maps available for inspection at the Lowell City Hall, Planning and Zoning Department, 50 Andover Drive, Lowell, Massachusetts.

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### Mississippi

**Hinds County (unincorporated areas) (FEMA Docket No. 7369)**

- Pearl River:
  - At county boundary... | 251 |
  - Approximately 7.71 miles upstream of Old Byram Road... | 254 |
- Rhodes Creek:
  - At confluence with the Pearl River... | 257 |
  - Just downstream of Seven Springs Road... | 260 |
- Triboro Creek Tributary 1:
  - At confluence with Triboro Creek... | 263 |
  - Just upstream of Terry Road. | 266 |
- Straight Fork Creek:
  - Just upstream of Williamson Road... | 269 |
  - Just downstream of Prentice Road. | 272 |

Maps available for inspection at the Hinds County Permit and Zoning Office, Jackson, Mississippi.

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### Missouri

**Smithville (city), Clay County (FEMA Docket No. 7369)**

- Little Plate River:
  - About 1,750 feet downstream of confluence of White Branch. | 913 |
  - About 1.1 miles upstream of confluence of Wilkerson Creek. | 914 |
- Owens Branch:
  - At mouth. | 915 |
  - About 300 feet upstream of State Highway 115... | 916 |
  - About 0.9 mile upstream of U.S. Highway 119. | 917 |
- Second Creek:
  - At mouth. | 918 |
  - About 500 feet upstream of State Highway 115... | 919 |
  - About 0.9 mile upstream of U.S. Highway 119... | 920 |
- Maps available for inspection at the City of Smithville, 107 West Main Street, Smithville, Missouri.

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### Montana

**Kalispell (city), Flathead County (FEMA Docket No. 7404)**

- Ashley Creek:
  - Approximately 1,850 feet downstream of Airport Road... | 2921 |
  - Approximately 100 feet downstream of Airport Road... | 2922 |
  - Approximately 200 feet downstream of Airport Road... | 2923 |
- Bagg Park Drive:
  - Approximately 50 feet downstream of Bagg Park Drive... | 2924 |
  - Approximately 1,150 feet upstream of Bagg Park Drive. | 2925 |
  - Approximately 2,500 feet upstream of Bagg Park Drive... | 2926 |
Maps available for inspection

Ransom Creek:
Maps available for inspection at City Hall, 101 Old Ham Street, City of Emerson, North Dakota.

Maps are available for review at the City of Kasitip, Building Department, 248 Third Avenue East, Kastip, Montana.

Maps available for inspection at
A l a P O ^t a p p ro xim a te ly 1.000 fe e t do w n stre a m
At confluence with Tonawanda Creek.

Maps available for inspection at
North Branch Raritan River

Approximately 250 feet northeast of the intersection of Fifth Avenue West and Sunnyside Drive

Approximately 250 feet southeast of the intersection of Fifth Avenue West and Sunnyside Drive

Approximately 1,500 feet downstream of Sunnyside Drive

Approximately 5,000 feet downstream of Foya Lake Road.

Approximately 850 feet downstream of Foya Lake Road.

Maps are available for review at the City of Kasitip, Building Department, 248 Third Avenue East, Kastip, Montana.

NEBRASKA

Sorbonne (city), Dodge County (FEMA Docket No. 7040)

Puddle Creek:
About 0.4 mile downstream of 11th Street

About 0.8 mile upstream of County Road 13

Maps available for inspection at the City Clerk's Office, 415 3rd Street, Sorbonne, Nebraska.

NEW JERSEY

Mendham (borough), Morris County (FEMA Docket No. 7040)

Beaver Creek:
Approximately 1,700 feet downstream.

Approximately 2,500 feet downstream of the downstream corporate limits.

Maps available for inspection at the Mendham Borough Hall, 2 West Main Street, Mendham, New Jersey.

NEW YORK

Alton (town), Chenango County (FEMA Docket No. 7040)

Susquehanna River:
Approximately 200 feet downstream of the downstream corporate limits.

Approximately 2,500 feet downstream of corporate limits.

Maps available for inspection at the Alton Town Hall, 169 Main Street, Alton, New York.

Amherst (town), Erie County (FEMA Docket No. 7012)

Tonawanda Creek:
At a point approximately 600 feet upstream of the old Conrail Bridge.

Approximately 1,800 feet downstream of E. Robinson Road.

Downstream side of Transit Road.

Black Creek:
At the confluence with Tonawanda Creek.

Approximately 100 feet downstream of Transit Road.

Tonawanda Creek:
At a point approximately 600 feet upstream of the state boundary.

At a point approximately 1,000 feet downstream of the upstream corporate limits.

Maps available for inspection at the Municipal Center, 5163 Main Street, Williamsville, New York.

Windor (town), Broome County (FEMA Docket No. 7040)

Susquehanna River:
At a point approximately 800 feet upstream of the old Conrail Bridge.

At a point approximately 1,000 feet downstream of the upstream corporate limits.

Maps available for inspection at the Windor Town Hall, Building and Zoning Department, 36 Main Street, Windor, New York.

NORTH DAKOTA

Emerado (city), Grand Forks County (FEMA Docket No. 7040)

Hazen Brook:
Approximately 1,000 feet upstream of County Highway No. 3.

#Depth in feet above ground
Source of flooding and location
#Elevation in feet (NGVD)

#Depth in feet above ground
Source of flooding and location
#Elevation in feet (NGVD)

Just upstream of East Hancck Avenue
Just upstream of West Court Drive
Hazen Brook:
At the Burlington Northern Railroad Crossing of Hazen Brook
Maps are available for review at City Hall, 101 Old Ham Street, City of Emerson, North Dakota.

Linton (city), Emmons County (FEMA Docket No. 7042)

Beaver Creek:
Just downstream of County Road located along the extraterritorial limits, west of Linton.

Approximately 500 feet upstream of Farmer's Road.

Just upstream of U.S. Highway 83

Approximately 3,000 feet upstream of Chicago, Milwaukee, St. Paul & Pacific Railroad.

Just upstream of Chicago, Milwaukee, St. Paul & Pacific Railroad:
Approximately 200 feet downstream of Schley Avenue measured along the profile baseline.

Just upstream of Schley Avenue

Just upstream of Chicago, Milwaukee, St. Paul & Pacific Railroad:
Approximately 3,000 feet upstream of Chicago, Milwaukee, St. Paul & Pacific Railroad.

Spring Creek Overfall:
At the confluence with Spring Creek.

Just downstream of U.S. Highway 83.

Just upstream of Chicago, Milwaukee, St. Paul & Pacific Railroad.

Just upstream of Laurel Avenue.

At the confluence with Spring Creek.

Unlimited Course:
At the private drive located approximately 600 feet west of Broadway.

At Broadway.

At Fourth Street extended.

Approximately 550 feet upstream of Sixth Street extended.

Hoover's Run:
At the entrance to the storm sewer located just east of First Street SE.

At Third Street SE. extended.

At the extraterritorial limits located approximately 4,530 feet upstream of Third Street SE. extended.

Maps are available for review at City Hall, City of Linton, 120 East Hickory Avenue, P.O. Box 45, Linton, North Dakota.

OKLAHOMA

Bartlesville (city), Osage and Washington Counties (FEMA Docket No. 7039)

Rice Creek:
Approximately 0.6 mile upstream of U.S. Highway 75 (Washington Boulevard).

Approximately 0.7 mile upstream of Madison Boulevard.

Maps available for inspection at the City Administration Building, 6th and Dewey, Bartlesville, Oklahoma.

Bryan County (unincorporated areas) (FEMA Docket No. 7040)

Red River:
Approximately 2.2 miles downstream of State Route 120.

Approximately 2.04 miles upstream of U.S. Routes 69 & 75.

Lake Texoma (Washita River):
Approximately 850 feet downstream of the upstream corporate limits.

Maps available for inspection at the Bryan County Courthouse, 402 Evergreen Street, 2nd Floor, Durant, Oklahoma.

Maps available for inspection at the Bryan County Courthouse, Newport, Tennessee.

Maps available for inspection at the City of Linton, 120 East Hickory Avenue, P.O. Box 45, Linton, North Dakota.

Maps are available for review at City Hall, City of Linton, 120 East Hickory Avenue, P.O. Box 45, Linton, North Dakota.

PENNSYLVANIA

Ashland (borough), Schuylkill County (FEMA Docket No. 7032)

Mahanoy Creek:
Downstream corporate limits.

Maps available for inspection at the Borough Hall, 5th & Chestnut Streets, Ashland, Pennsylvania.

Lower Chichester (township), Delaware County (FEMA Docket No. 7049)

Johnston Run:
Approximately 275 feet downstream of Edwards Drive.

Approximately 350 feet upstream of Farm Access Road.

Maps available for inspection at the Montgomery Township Building, 11364 Fort Loudon Road, Mercersburg, Pennsylvania.

SOUTH CAROLINA

Mauldin (city), Greenville County (FEMA Docket No. 7039)

Glider Creek Tributary No. 2:
Approximately 3 miles upstream of Corn Road.

Approximately 200 feet upstream of Interstate Route 385 (northbound).

Maps available for inspection at the City of Mauldin, 5 East Butler Street, Mauldin, South Carolina.

TENNESSEE

Chattanooga (City), Hamilton County (FEMA Docket No. 7040)

Chattanooga Creek:
Just upstream of Hardin Road.

Just upstream of Hooker Road.

About 1,000 feet upstream of Burnt Mill Road.

Maps available for inspection at the City Hall, Engineering Department, 6th Street, Chattanooga, Tennessee.

Cocke County (unincorporated areas) (FEMA Docket No. 7037)

Sinking Creek:
Approximately 2,200 feet upstream of confluence with Pigeon River.

Approximately 3,800 feet upstream of Carson Springs Road.

Maps available for inspection at the Cocke County Courthouse, Newport, Tennessee.
### Table: Source of flooding and location

<table>
<thead>
<tr>
<th>Source of flooding and location</th>
<th>#Depth in feet above ground. Elevation in feet (NGVD)</th>
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</thead>
<tbody>
<tr>
<td>Jellico (city), Campbell County (FEMA Docket No. 7037)</td>
<td>*273</td>
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<tr>
<td>Elk Creek: Approximately 2,000 feet upstream from South Pittsburg, Tennessee.</td>
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<td>Maps available for inspection at the City Hall, Jellico, Tennessee.</td>
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<tr>
<td>Newport (city), Cocke County (FEMA Docket No. 7037)</td>
<td>*1,055</td>
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<tr>
<td>Sinking Creek: Approximately 1,000 feet upstream of Fairview Road.</td>
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<td>Maps available for inspection at the Port City Hall, Newport, Tennessee.</td>
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<td>South Pittsburg (city), Marion County (FEMA Docket No. 7040)</td>
<td>*370</td>
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<tr>
<td>Popular Spring Branch: Just downstream of CGS Railroad.</td>
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</tr>
<tr>
<td>About 1,000 feet upstream of Hughes Road.</td>
<td>*370</td>
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<tr>
<td>Battle Creek: At mouth.</td>
<td>*370</td>
</tr>
<tr>
<td>About 3,700 feet upstream of mouth.</td>
<td>*370</td>
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<td>Maps available for inspection at the City Hall, 100 E. Main Street, South Pittsburg, Tennessee.</td>
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<tr>
<td>White Pine (town), Jefferson County (FEMA Docket No. 7039)</td>
<td>*360</td>
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<td>Leadville Creek: Just downstream of South Walnut Street.</td>
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<tr>
<td>Just downstream of Main Street.</td>
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<td>Leadville Creek Tributary:</td>
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<tr>
<td>At mouth.</td>
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<tr>
<td>About 440 feet upstream of Sheila Street.</td>
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<tr>
<td>Maps available for inspection at the Town Hall, 1824 Maple Street, White Pine, Tennessee.</td>
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<tr>
<td>TEXAS</td>
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<tr>
<td>Cameron (City), Milam County (FEMA Docket No. 7042)</td>
<td>*358</td>
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<tr>
<td>Lame Ditch along Burns Avenue: Approximately 1,225 feet downstream of 21st Street.</td>
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<td>At 15th Street</td>
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<td>Flow Path No. 1:</td>
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<tr>
<td>At Jackson Avenue</td>
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<tr>
<td>Approximately 35 feet upstream of 17th Street.</td>
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<td>Maps available for inspection at the City Hall, 526 South Houston Street, Cameron, Texas.</td>
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<tr>
<td>Chambers county (unincorporated area) (FEMA Docket No. 7042)</td>
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<tr>
<td>Trinity River: At Interstate Route 10.</td>
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<tr>
<td>U.S. Highway 278, County boundary.</td>
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<tr>
<td>Maps available for inspection at the County engineer's office, 201 Airport Road, Anahuac, Texas.</td>
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<td>Fort Bend County (unincorporated areas) (FEMA Docket No. 7040)</td>
<td>*10</td>
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<td>Dry Creek: At Brant Road.</td>
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<tr>
<td>Approximately 2,400 feet downstream of Bryon Road.</td>
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<tr>
<td>Maps available for inspection at the County Engineer's Office, 3400 Avenue P, Rosenberg, Texas.</td>
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<tr>
<td>Hardin County (unincorporated areas) (FEMA Docket No. 7046)</td>
<td>*286</td>
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<tr>
<td>Pine Island:</td>
<td>*286</td>
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</tbody>
</table>

### Table: Source of flooding and location

<table>
<thead>
<tr>
<th>Source of flooding and location</th>
<th>#Depth in feet above ground. Elevation in feet (NGVD)</th>
</tr>
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<tbody>
<tr>
<td>Trice Creek: Approximately 3 miles upstream of State Route 326.</td>
<td>*366</td>
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<tr>
<td>Little Pine Island Bayou:</td>
<td>*366</td>
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<tr>
<td>Confluence with Pine Island Bayou.</td>
<td>*366</td>
</tr>
<tr>
<td>Approximately 1.8 miles upstream of Lake Pinewood Dam.</td>
<td>*366</td>
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<tr>
<td>Coon Marsh Gully:</td>
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<tr>
<td>Confluence with Little Pine Island Bayou.</td>
<td>*366</td>
</tr>
<tr>
<td>At State Route 326.</td>
<td>*366</td>
</tr>
<tr>
<td>Clemmons Gully:</td>
<td>*366</td>
</tr>
<tr>
<td>Confluence with Pine Island Bayou.</td>
<td>*366</td>
</tr>
<tr>
<td>Approximately 3.0 miles upstream of Pine Shadow Drive.</td>
<td>*366</td>
</tr>
<tr>
<td>Gaines Creek:</td>
<td>*366</td>
</tr>
<tr>
<td>At confluence with Clemmons Gully.</td>
<td>*366</td>
</tr>
<tr>
<td>At State Route 105.</td>
<td>*366</td>
</tr>
<tr>
<td>Bobbey Creek:</td>
<td>*366</td>
</tr>
<tr>
<td>At Bobbey Creek Road.</td>
<td>*366</td>
</tr>
<tr>
<td>Approximately 140 feet upstream of Bobbey Creek Road.</td>
<td>*366</td>
</tr>
<tr>
<td>Village Creek:</td>
<td>*366</td>
</tr>
<tr>
<td>At confluence with Village Creek.</td>
<td>*366</td>
</tr>
<tr>
<td>At corporate limits.</td>
<td>*366</td>
</tr>
<tr>
<td>Approximately 0.2 miles upstream of confluence with Village Creek.</td>
<td>*366</td>
</tr>
<tr>
<td>Mill Creek:</td>
<td>*366</td>
</tr>
<tr>
<td>At confluence with Village Creek.</td>
<td>*366</td>
</tr>
<tr>
<td>Approximately 4,200 feet upstream of State Route 307.</td>
<td>*366</td>
</tr>
<tr>
<td>Mill Creek Tributary:</td>
<td>*366</td>
</tr>
<tr>
<td>At a point 200 feet upstream of confluence with Mill Creek.</td>
<td>*366</td>
</tr>
<tr>
<td>At corporate limits.</td>
<td>*366</td>
</tr>
<tr>
<td>Approximately 500 feet upstream of confluence with Mill Creek.</td>
<td>*366</td>
</tr>
<tr>
<td>Maps available for inspection at Hardin County Courthouse, Courthouse Square, 326 S. Redwood, Kountze, Texas.</td>
<td></td>
</tr>
<tr>
<td>Irving (city), Dallas County (FEMA Docket No. 7037)</td>
<td>*369</td>
</tr>
<tr>
<td>Hackberry Creek:</td>
<td>*369</td>
</tr>
<tr>
<td>Approximately 800 feet upstream of Celadon Drive.</td>
<td>*369</td>
</tr>
<tr>
<td>At MacArthur Boulevard bridge.</td>
<td>*369</td>
</tr>
<tr>
<td>Maps available for inspection at the City Hall, Public Works Department, Engineering Division, 625 West Irving Boulevard, Irving, Texas.</td>
<td></td>
</tr>
<tr>
<td>Lumberton (city), Hardin County (FEMA Docket No. 7049)</td>
<td>*399</td>
</tr>
<tr>
<td>Village Creek:</td>
<td>*399</td>
</tr>
<tr>
<td>Approximately 8,500 feet downstream of Atchison, Topeka &amp; Santa Fe Railroad.</td>
<td>*399</td>
</tr>
<tr>
<td>Approximately 600 feet upstream of Atchison, Topeka &amp; Santa Fe Railroad.</td>
<td>*399</td>
</tr>
<tr>
<td>At U.S. Route 96.</td>
<td>*399</td>
</tr>
<tr>
<td>Approximately 17,500 feet downstream of U.S. Route 96.</td>
<td>*399</td>
</tr>
<tr>
<td>Walton Creek:</td>
<td>*399</td>
</tr>
<tr>
<td>At corporate limits approximately 100 feet downstream of U.S. Route 96.</td>
<td>*399</td>
</tr>
<tr>
<td>At a point approximately 600 feet upstream of Walton Road.</td>
<td>*399</td>
</tr>
<tr>
<td>Maps available for inspection at the Lumberton City Hall, Highway 96, Lumberton, Texas.</td>
<td></td>
</tr>
<tr>
<td>Pasadena (city), Harris County (FEMA Docket No. 7046)</td>
<td>*430</td>
</tr>
<tr>
<td>Little Venice Bayou:</td>
<td>*430</td>
</tr>
<tr>
<td>At Richard Access Road.</td>
<td>*430</td>
</tr>
<tr>
<td>Approximately 230 feet upstream of Whistle Street.</td>
<td>*430</td>
</tr>
<tr>
<td>Maps available for inspection at the City Hall, 1211 East Southmore, Pasadena, Texas.</td>
<td></td>
</tr>
</tbody>
</table>

### Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance"

- Rose Hill Acres (city), Hardin County (FEMA Docket No. 7040)
  - Pine Island Bayou: Approximately 700 feet upstream of U.S. Route 96, 96 & 287.
  - At confluence of Boggy Creek.
  - Boggy Creek: At confluence with Pine Island Bayou.
  - At Boggy Creek Road.
  - Maps available for inspection at the Rose Hill Acres City Hall, 550 Jordan Road, Silsbee, Texas.

- Rosenberg (city), Fort Bend County (FEMA Docket No. 7040)
  - Dry Creek: Approximately 2,400 feet downstream of Bryan Road.
  - Approximately 4,000 feet downstream of Bryan Road.
  - Maps available for inspection at the Public Works Department, 2110 Fourth Street, Rosenberg, Texas.

- Schertz (city), Bexar, Comal, and Guadalupe Counties (FEMA Docket No. 7040)
  - Ditch Creek: Approximately 200 feet downstream of F.M. 308.
  - Approximately 200 feet upstream of Maske Road.

- Stockton (city), Harris County (FEMA Docket No. 7040)
  - Village Creek Tributary: At corporate limits approximately 2,100 feet downstream of Norvelt Street.
  - Approximately 200 feet upstream of Norvelt Street.
  - Maps available for inspection at the Village City Hall, 105 S. 3rd Street, Silsbee, Texas.

### VERMONT

- West Fairlee (town), Orange County (FEMA Docket No. 7042)
  - CMPompanisquoc River:
    - At upstream corporate limits. At Canadian corporation limits.
    - At upstream corporate limits.
  - Aggen Brook: At confluence with CMPompanisquoc River.
  - At upstream of Access Road.
  - Middle Brook: Approximately 125 feet upstream of State Route 244.
  - At corporate limits approximately 230 feet upstream of confluence with Broot Brook.
  - Bear Notch Brook: At confluence with Middle Brook.
  - At corporate limits approximately 430 feet upstream of Middle Brook Road.
  - At corporate limits approximately 100 feet downstream of Marsh Hill Road.
  - Maps available for inspection at the Town Hall, West Fairlee, Vermont.

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*Source: Federal Register / Vol. 57, No. 119 / Friday, June 19, 1992 / Rules and Regulations*
Summary of Order on Reconsideration

Introduction
The Commission has issued an Order on Reconsideration denying two petitions for reconsideration of its December 13, 1991, Declaratory Ruling, 57 FR 1478 (January 14, 1992), 6 FCC Red 7511 (1991), concerning the lowest unit charge requirement of section 315(b) of the Communications Act. Section 315(b) provides that during specified periods before primary and general elections a broadcast station's charges for advertising time purchased by candidates may not exceed "the lowest unit charge of the station for the same class and amount of time for the same period." 47 U.S.C. 315(b). The Order on Reconsideration affirms that the Commission's prior ruling that federal law preempts state causes of action dependent on any determination of the lowest unit charge or any other duty arising under section 315(b).

The Declaratory Ruling
On October 10, 1991, the Commission released a Public Notice. 56 FR 51895 (October 16, 1991), 6 FCC Red 5954 (1991), which noted the Commission's intention to issue a declaratory ruling concerning whether it has exclusive jurisdiction to determine questions of liability for violations of Section 315(b). The Public Notice also stated that the Commission was considering whether its exclusive jurisdiction should extend beyond the basic liability question and, if so, whether the Commission should preempt state causes of action in which an alleged violation of section 315(b) is an essential element. The Public Notice invited interested parties to comment on these issues.

After considering comments filed by interested persons in response to the Public Notice, the Commission issued its Declaratory Ruling on December 13, 1991. In the Declaratory Ruling, the Commission found that Congress by implication preempted state causes of action involving alleged violations of section 315(b), and declared that the FCC shall be the sole forum for adjudicating complaints arising under that subsection. In addition, as an independent basis for its action, the Commission found that preemption in these circumstances was within the FCC's broad delegated authority to implement and enforce Section 315(b) and necessary to ensure uniform interpretation and enforcement of the statute. The Declaratory Ruling preempted both determinations of liability under section 315(b) and remedies for enforcing the statute. Finally, the Declaratory Ruling established procedures governing complaints filed with the Commission alleging violations of section 315(b).

Petitions for Reconsideration
Two groups of candidates for political office in Georgia and Alabama and their respective campaign committees petitioned the Commission on January 15, 1992, to reconsider the Declaratory Ruling. The petitions challenge the Commission's preemption decision and ask the Commission to withdraw the Declaratory Ruling. The Commission issued a Public Notice on January 30, 1992, 57 FR 6121 (February 20, 1992), which noted the filing of the petitions and established a pleading cycle in accordance with 47 CFR 1.429 (1991). Opposites were filed by three groups of broadcasters, and the petitioners replied to the opposites.

The Commission's Decision on Reconsideration
The Order on Reconsideration denies the petitions for reconsideration and affirms in its entirety the holding of the Declaratory Ruling and the analysis contained therein. The Order on Reconsideration affirms that Congress by implication preempted state causes of action involving breaches of duties arising under Section 315(b). The Commission concludes that Congress's placement of section 315(b) within the Communications Act's existing regulatory framework demonstrates its intent to centralize interpretation and enforcement of the lowest unit charge requirement in the FCC. Moreover, the Commission notes that Congress in section 315(d) vested in the FCC explicit power to implement and enforce the requirements of Section 315. The Commission finds that this express delegation of authority further supports a conclusion that Congress intended only the Commission to resolve lowest unit charge disputes.

In addition, the Commission concludes that the legislative history and statutory objectives of the Federal Election Campaign Act of 1971 (FECA), which enacted the current version of section 315(b), support preemption in these circumstances. The Commission affirms its prior finding that the prospect of differing determinations of liability and remedies by various state courts not only would frustrate the congressional goals of uniformity and certainty in the application and enforcement of section 315(b), but might impede the dissemination of information regarding political campaigns favored by Congress in the FECA. The Commission also concludes that it has ample authority to
ensure enforcement of the lowest unit charge requirement and to fully protect the interests of political candidates, including the authority to require rebates from broadcasters to political candidates for section 315(b) overcharges.

The Order on Reconsideration also rejects the petitioners’ contention that the Commission unlawfully conferred exclusive jurisdiction upon itself. The Commission concludes that, consistent with relevant Supreme Court precedent, its preemption action not only implements implied congressional intent to preempt, but comes within the Commission’s broad, congressionally-delegated authority to enforce section 315(b) and ensure uniformity, certainty and consistency with respect to the lowest unit charge requirement.

Finally, the Order on Reconsideration rejects the petitioners’ assertion that the procedures governing Section 315(b) complaints set forth in the Declaratory Ruling are inadequate and unlawful. To the contrary, the Commission finds that the procedures are consistent with applicable law, fully protect the rights and interests of the parties, and are designed to facilitate timely and fair resolution of section 315(b) complaints.

Conclusion

The Commission denies the petitions for reconsideration of the Declaratory Ruling, and affirms that federal law preempts state causes of action involving any determination of the lowest unit charge or any other duty arising under section 315(b).

Ordering Clauses

Accordingly, it is ordered, Pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, that the petitions for reconsideration filed on January 15, 1992, by certain candidates for political office in Georgia and Alabama and their respective campaign committees are denied.

It is further ordered, Pursuant to sections 1, 4(l), 4(j), 303(r), and 315(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(l), 154(j), 303(r), and 315(b) and (d) of the Administrative Procedure Act, 5 U.S.C. 556(e); and Section 1.2 of the Commission’s rules, 47 CFR 1.2, that the Declaratory Ruling in this proceeding is affirmed.

List of Subjects in 47 CFR Part 73

Television/broadcasting, Elections, Political candidates, Radio broadcasting.

47 CFR Part 73

Radio Broadcasting Services; Fort Bragg, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 237B1 for Channel 237A at Fort Bragg, California, and modifies the license for Station KOZT(FM) to specify operation on the higher powered channel, as requested by California Radio Partners. See 57 FR 6210, February 21, 1992. Coordinates for Channel 237B1 at Fort Bragg are 39°–24′–24″ and 123°–44′–04″. With this action, the proceeding is terminated.

EFFECTIVE DATE: July 31, 1992.

47 CFR Part 73

Radio broadcasting.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 278A and Channel 278C3 at Radcliff, Kentucky, and changes the reference coordinates for vacant but applied for Channel 277A at Santa Claus, Indiana, at the request of W & B Broadcasting, Inc. See 57 FR 90083, February 20, 1992. The coordinates for Channel 278A at Radcliff are North Latitude 37°–50′–34″ and West Longitude 86°–06′–49″. The new reference coordinates for Channel 277A at Santa Claus are North Latitude 38°–12′–50″ and West Longitude 87°–00′–50″. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 834–6930.

Supplementary Information: This is a synopsis of the Commission’s Report and Order, MM Docket No. 92–21, adopted May 21, 1992, and released June 16, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—AMENDED

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


§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 237A and adding Channel 237B1 at Fort Bragg.
and by removing Channel 249A and adding Channel 229A at Sheboygan.

Federal Communications Commission.

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

[FR Doc. 92-14510 Filed 6-18-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 911053-2066]

RIN 0648-AD89

Fee Schedule for Foreign Fishing

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

ACTION: Final rule.

SUMMARY: In accordance with section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), NOAA adopts a fee schedule for foreign fishing which establishes “poundage fees” to be paid for each metric ton of fish harvested by such foreign vessels as may be authorized to conduct directed fishing in the Exclusive Economic Zone (EEZ). The schedule also establishes a permit application fee of $354.00 per vessel which must accompany each foreign fishing application.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 534-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91-49, adopted May 22, 1991, and released June 16, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—(AMENDED)

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


§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 249A and adding Channel 229A at Sheboygan.

The Department of State was consulted about this final rule to establish a fee schedule.

The NPR described the proposed 1992 fee schedule for foreign fishing and discussed the reasoning behind maintaining fees found at § 611.22(b) at 1991 levels. The notice also discussed how fees maintained at such levels were reasonable and nondiscriminatory in accordance with requirements of Section 106 of the Fishery Conservation Amendments of 1990 (Pub. L. 101-627). The NPR was also careful to note that the most recent vote by the Mid-Atlantic Fishery Management Council on the subject of TALFF (Total Allowable Level of Foreign Fishing) resulted in a zero TALFF being recommended for 1992. The notice emphasized that publication of the proposed 1992 fee schedule for foreign fishing should not be construed to imply that any 1992 TALFF is likely or anticipated. Similarly, readers are cautioned that adoption of this final fee schedule is undertaken in the interest of operational orderliness and should not be viewed as any indicator of whether TALFF may or may not be made available in 1992. In addition to the above-referenced NPR, readers are invited to refer to 50 FR 1575, dated January 16, 1991, for further information on foreign fishing fees.

With respect to the FVGDCF, the NPR discussed the current status of the fund, and noted that the fund's current capitalization level makes it highly improbable that a surcharge will be necessary in 1992 or future years. Thus, in the interest of efficiency, the reference at § 611.22(c) to the year a surcharge waiver is effective is being deleted. In the unlikely event that circumstances warrant a surcharge for the FVGDCF in 1992 or future years, an amendment of § 611.22(c) will be effected to reapply the surcharge.

Lastly, in the context of a technical correction, the NPR noted the need to update the address found at § 611.22(a) to which application fees should be directed.

As previously reported, no comments were received regarding the NPR published on November 26, 1991, at 50 FR 59920, and, accordingly, the fees and other charges proposed therein are adopted as final.

Additionally, readers are reminded that while cost-recovery provisions of section 204(b)(10) of the Magnuson Act necessitated development of an annual fee schedule for foreign fishing until passage of the Fishery Conservation Amendments of 1990, no such requirement now exists. Thus, since it is believed that the fee schedule adopted
herein will meet the foreseeable future the present requirements of section 204(b)(10) for fees to be both “reasonable” and applied “nondiscriminatory,” readers are advised that this fee schedule will remain in effect indefinitely. If circumstances warranting a change in the schedule arise for species currently on the schedule or species new to the schedule, fees deemed reasonable and nondiscriminatory for such species will be implemented in an interim final rule. Following a comment period of at least 30 days from the date of publication of the interim final rule, appropriate fees for the species in question will be determined and adopted as final. A fee schedule so adopted will then remain in effect until such time as further changes may be necessary to maintain compliance with section 204(b)(10).

**Classification**

NOAA prepared an RIR for the 1986 fee schedule which discussed the economic consequences and impacts of that fee schedule and alternatives. Copies of that RIR are available (see addresses). Based on that RIR, the Assistant Administrator for Fisheries, NOAA, determined that the 1986 fee schedule complied with the requirements for Section Two of Executive Order 12291. Since the poundage fees proposed for 1989 and 1990 were not increased, and were subsequently lowered in 1991, NOAA anticipated and perceived no new economic impact from the poundage fees adopted in 1991, and none is anticipated from maintaining these poundage fees indefinitely. It has been determined that the fee schedule for foreign fishing does not constitute a major rule.

The General Counsel of the Department of Commerce has certified that the proposed fee schedule will not have a significant economic impact upon a substantial number of small domestic entities for purposes of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This certification was forwarded to the Chief Counsel for Advocacy of the Small Business Administration. Because the fee schedule will not have a significant economic impact upon a substantial number of small domestic entities, a regulatory flexibility analysis was not required.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

The Assistant Administrator for Fisheries, NOAA, under the provisions of section 553(d) of the Administrative Procedure Act, finds for good cause, namely to implement the fee schedule as close to the beginning of the calendar/permit year as possible, that it is impractical and contrary to the public interest to delay the effective date of these regulations for 30 days. Allowing the effective date to be January 1, 1992, will maintain fees at 1991 levels. This action does not require significant changes in the plans or strategies of foreign fishing companies since it does not increase fees over the amounts which applied in 1988, 1989, 1990 and 1991.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not directly affect the coastal zone of any state with an approved coastal zone management program. The rule does not contain policies with federalism implications sufficient to warrant a federalism assessment under E.O. 12012.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.


Samuel W. McKeen,
Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

**PART 611—FOREIGN FISHING**

For the reasons set forth above, 50 CFR part 611 is amended as follows:

1. The authority citation for part 611 continues to read as follows:


§ 611.22 [Amended]

2. In § 611.22, the second sentence in paragraph (a) is amended by revising the phrase “Branch Chief, Fees and Permits Branch, F/TS21, National Marine Fisheries Service, Washington, DC 20235.” to read “Chief, Operations Support and Analysis Division, F/CM1, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910.”.

3. In § 611.22, paragraph (b)(1) is revised to read as follows:

§ 611.22 Fee schedule.

... ... ... ... 

(b) Poundage fees.—(1) Rates. If a nation chooses to accept an allocation, poundage fees must be paid at the rate specified in Table 1, plus the surcharge required by paragraph (c) of this section.

**Table 1.—Species and Poundage Fees**

(Dollars per metric ton, unless otherwise noted)

<table>
<thead>
<tr>
<th>Species</th>
<th>Poundage fees</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Northwest Atlantic Ocean fisheries</em></td>
<td></td>
</tr>
<tr>
<td>1. Butterfish</td>
<td>274.61</td>
</tr>
<tr>
<td>2. Hake, red</td>
<td>163.97</td>
</tr>
<tr>
<td>3. Hake, silver</td>
<td>119.09</td>
</tr>
<tr>
<td>4. Herring</td>
<td>58.33</td>
</tr>
<tr>
<td>5. Mackarel, Atlantic</td>
<td>103.98</td>
</tr>
<tr>
<td>6. Other groundfish</td>
<td>119.09</td>
</tr>
<tr>
<td>7. Squid, Illex</td>
<td>245.73</td>
</tr>
<tr>
<td>8. Squid, Loigo</td>
<td>245.73</td>
</tr>
<tr>
<td><em>Alaska fisheries</em></td>
<td></td>
</tr>
<tr>
<td>20. Sable</td>
<td>128.42</td>
</tr>
</tbody>
</table>

... ... ... ...

§ 611.22 [Amended]

4. In § 611.22, the last sentence in paragraph (c) is amended by revising the phrase “on 1991 fees” to read “until further notice.”.

[FR Doc. 92–14286 Filed 6–18–92; 8:45 am]

BILLING CODE 3510–22–M
This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE
7 CFR Part 13
RIN 0560-AC23

Excessive Manufacturing (Make) Allowances in State Marketing Orders for Milk

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish procedures for implementing section 102 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (the "1990 Act"). Section 102 generally provides that no State shall provide under a milk pricing program, and no milk processor shall collect under such a State program, a greater allowance for the processing of milk than the manufacturing allowance provided under a Federal program. Under the proposed rule, the provisions of section 102 would apply only to those States that establish prices for milk manufactured into butter, nonfat dry milk, and cheese through the use of a product price formula. The State would be in compliance with section 102 if, in establishing such prices, it provides for manufacturing allowances that are no greater than the manufacturing allowances provided for the respective products under the Federal price support program. If a State is not in compliance, a milk processor subject to the State's pricing program could be subject to the assessment of a penalty if the prices paid by the processor for milk manufactured into butter, nonfat dry milk, or cheese are less than the prices that would apply if the State were in compliance.

DATES: Comments must be received on or before July 20, 1992 in order to be considered.

ADDRESS: Comments should be submitted to Dr. Charles N. Shaw, Director, Dairy Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Dr. Charles N. Shaw, Director, Dairy Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 720-7601.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1521-1 and has been classified “not major.” It has been determined that this proposed rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. A preliminary regulatory impact analysis and initial regulatory flexibility analysis is available from the previously mentioned contact.

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10.051.

It has been determined by an environmental evaluation that this program will have no significant impact on the quality of the human environment.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, and 48 FR 29115 (June 24, 1983).

Executive Order 12612 of October 22, 1987, entitled "Federalism," requires that Executive departments and agencies shall, to the extent permitted by law, adhere to certain principles of federalism. Pursuant to that order, a Federalism Assessment has been prepared and is available from the previously mentioned contact person. It has been determined, as set out in that assessment, that these proposed regulations would implement section 102 of the 1990 Act with the minimum interference with the operations of State governments needed to achieve compliance with the provisions and intent of that section.

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule are not retroactive; they preempt State laws to the extent that such laws are not consistent with section 102 of the 1990 Act; and any person who is affected by an adverse determination made pursuant to the provisions of this proposed rule would be required to exhaust administrative remedies available in accordance with 7 CFR part 780 before bringing an action in the appropriate U.S. District Court.

Section 102 of the 1990 Act provides, in part, that “no State shall provide for (and no person shall collect, directly or indirectly) a greater allowance for the processing of milk (hereafter referred to as a ‘make allowance’) than is permitted under a Federal program to establish a Grade A price for manufacturing butter, nonfat dry milk, or cheese.” This section also authorizes the Secretary of Agriculture to issue implementing regulations, investigate any alleged violations, and impose penalties. The U.S. District Courts are given the power to enforce the provisions of section 102.

Under this proposed rule, the provisions of section 102 would apply only to those States that establish prices for milk manufactured into butter, nonfat dry milk, and cheese through the use of a product price formula. Such formulas typically use the market value of products made from milk and manufacturing allowances to determine prices for milk. Presently, it appears that only the States of California, Montana, and Nevada establish milk prices in this manner.

This proposed rule also provides that a State would be out of compliance with section 102 if, in setting such prices, it uses manufacturing allowances, which on a comparable basis, are greater than the manufacturing allowances used in determining the prices at which Commodity Credit Corporation (CCC) acquires dairy products. Under the milk price support program currently operated pursuant to section 204 of the Agricultural Act of 1949, as amended (the “1949 Act”), the price of milk is supported by the removal of surplus milk from the market through purchases.
by the CCC of butter, nonfat dry milk, and cheddar cheese. In determining the purchase prices of these products, manufacturing allowances are used that provide the incentive for manufacturers to pay to producers raw milk prices that, on average, reach the price support level provided for in section 204 of the 1949 Act. Presently, these allowances for milk containing 3.87 percent milkfat are $1.22 per hundredweight of milk that is processed into butter and nonfat dry milk and $1.37 per hundredweight of milk processed into cheese.

In addition to placing certain restrictions on States, section 102 also places restrictions on milk processors in that section 102 specifies that processors cannot “collect” a manufacturing allowance that is greater than that provided under a Federal program. The proposed regulations, if adopted, would provide that the section 102 restrictions would apply only to those milk processors who operate a milk plant in a State where prices are established for milk manufactured into butter, nonfat dry milk, and cheese through the use of a State-established product price formula. Under this proposed rule, the milk processor would be considered to be in compliance with section 102 if the State is in compliance.

If the State is not in compliance with section 102, the law places the compliance burden on the milk processor. Accordingly, a milk processor subject to the State’s pricing program could be subject to the assessment of a penalty if the prices paid to producers by the processor for milk manufactured into butter, nonfat dry milk, or cheese are less than the prices that would apply if the State were in compliance. A milk processor in a noncomplying State, in order to be in compliance with section 102, would have to increase the prices it paid to producers by the same amounts per hundredweight that it would be necessary to increase the prices established by State regulations in order to bring the regulations into compliance with section 102.

Under this proposed rule, any dairy farmer who produces milk that could file with the Administrator, Agricultural Stabilization and Conservation Service (ASCS), or the Administrator’s designee, a written complaint that a milk processor to whom the producer sells milk is collecting a greater manufacturing allowance than is permitted under section 102. The petition should contain a full statement of the facts upon which the complaint is based and any available materials supporting the claim of the alleged violation.

Upon receipt and review of the complaint, the Administrator of ASCS, as needed, would request that the USDA Office of Inspector General (OIG) conduct an investigation of the alleged violation. If, after receiving the results of OIG investigation, the Administrator determines that a violation has occurred, the dairy farmer and the person who is charged with the violation would be notified of the penalty and of the violator’s administrative appeal rights.

Section 102 provides that milk processors who are collecting greater manufacturing allowances than are permitted under that section are liable for penalties that are to be determined by the Secretary and that are enforceable in the U.S. District Courts. Under the proposed rule, and as provided for in section 102 of the 1990 Act, the penalty amount would be equal to the amount obtained by multiplying twice the applicable CCC manufacturing allowance established under this regulation by the quantity of milk determined by the Administrator to have been involved in such violation of the manufacturing allowance requirements.

List of Subjects in 7 CFR Part 13
Administrative practice and procedure, Dairy products, Penalties, Price support programs.

Proposed Rule
Accordingly, it is proposed that title 7 of the Code of Federal Regulations be amended to add a new part 13 to read as follows:

PART 13—EXCESSIVE MANUFACTURING (MAKE) ALLOWANCES IN STATE MARKETING ORDERS FOR MILK

Sec.
13.1 General statement.
13.2 Definitions.
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§ 13.1 General statement.
(a) This part implements section 102 of the Food, Agriculture, Conservation, and Trade Act of 1990, which states in part that no State shall provide for (and no person shall collect, directly or indirectly) a greater allowance for the processing of milk (hereafter referred to as a “make allowance”) than is permitted under a Federal program to establish a Grade A price for manufacturing butter, nonfat dry milk, or cheese.

(b) The administration of this part shall be the responsibility of the Administrator, ASCS. The Office of Inspector General, USDA, at the request of the Administrator shall conduct investigations with respect to matters arising under this part.

§ 13.2 Definitions.
Administrator means the Administrator of the Agricultural Stabilization and Conservation Service of the USDA, or a designee.
ASCS means the Agricultural Stabilization and Conservation Service.
CCC means the Commodity Credit Corporation.

Manufacturing allowances means, the amounts as determined and announced by CCC, which are used in establishing purchase price levels for the milk price support program to provide a return to dairy product manufacturers for handling such surplus commodities.

OIG means the Office of Inspector General, USDA.

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

Price support program means the program for the support of milk prices that is operated by the CCC pursuant to the provisions of the Agricultural Act of 1949.

Producer means a dairy farmer who produces milk that is from cows and is marketed commercially.

Product price formula means a formula that uses in whole or in part the market value of products made from milk and one or more manufacturing allowances to determine a regulatory price for milk.

Secretary means the Secretary of Agriculture of the United States, or a designee.

USDA means the United States Department of Agriculture.

§ 13.3 Applicability of provisions.
The provisions of this part shall apply to:
(a) Any State that pursuant to statute or other authority establishes prices for milk manufactured into butter, nonfat dry milk, or cheese, and does so through the use of a product price formula; and
(b) Any person who operates a milk plant in a State identified under
§ 13.4 States that are in compliance.

A State described in § 13.3(a) shall be considered for purposes of this part to be in compliance with section 102(a) of the Act if, in establishing prices for milk manufactured into butter, nonfat dry milk, or cheese, the State does not provide for, or take into account, manufacturing allowances that are greater than the CCC manufacturing allowances for the respective products.

§ 13.5 Persons who are in compliance; violations.

(a) Any person described in § 13.3(b), shall, for purposes of this part, be considered to be in compliance with section 102(a) of the Act with respect to any purchase or acquisition of milk if the following conditions are met for that milk:

(1) The State in which the person's milk plant is located is in compliance with section 102(a) of the Act, as determined pursuant to § 13.4; and

(2) If the State in which the person's milk plant is located is not in compliance with section 102(a) of the Act, as determined pursuant to § 13.4, the prices paid by the person for milk manufactured into butter, nonfat dry milk, or cheese are not less than the prices that would apply if the State were in compliance.

(b) For any milk with respect to which a person is determined under paragraph (a) of this section to be in compliance with section 102(a) of the Act, such person shall be considered to be in violation of this part and shall be subject to penalties assessed in accordance with § 13.8.

§ 13.6 Filing of a complaint, investigation of alleged violation, and opportunity for a hearing.

(a) Any producer desiring to complain that a person, as described in § 13.3(b), to whom the producer sells milk is not in compliance with section 102(a) of the Act, may file a written petition with the Administrator that contains a full statement of the facts upon which the petition is based, the names and addresses of the parties involved, and any available materials supporting the claim of the alleged violation.

(b) Upon the receipt of a petition, the Administrator, if it is determined that the petition may have merit, shall request the OIG conduct an investigation of the alleged violations unless the Administrator shall designate other officials to conduct such investigation. In conducting the investigation, the provisions of § 13.7 shall apply.

(c) If the Administrator determines that the petition is without merit, the petition shall be denied and the petitioner notified of the grounds for such denial.

(d) If the Administrator based on the information reviewed determines that a violation of the provisions of this part has occurred, the petitioner and the person in violation of the provisions shall be notified of such decision and, the person in violation also shall be notified of any assessed penalty and rights of appeal. Appeal proceedings shall be conducted, in accordance with part 700 of this title, except that the initial request for reconsideration of the notice of the violation shall be filed with the Administrator.

§ 13.7 Investigations.

The Administrator may request such investigations as are necessary for the effective administration of this part. In conducting such investigations, the Administrator or an official of OIG may:

(a) Administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the investigation; and

(b) In the case of contumacy by any person, or refusal of any person, to obey a subpoena, invoke the aid of any court to compel appearance or production.

§ 13.8 Penalties.

(a) Upon the determination by the Administrator that a person described in § 13.3(b) is in violation of this part, the person shall be liable for a penalty equal to an amount obtained by multiplying:

(1) Twice the applicable CCC manufacturing allowance at the time of such violation; by

(2) The quantity of milk determined by the Administrator to have been involved in such violation.

(b) A person assessed such a penalty also shall be liable for an amount of interest on any unpaid penalty from the date that such person was notified of the penalty. Such interest shall accrue at a rate which shall be set out in the notice of violation to the person. Such rate shall be equal to the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the date of notification by the Administration of the violation.

Agricultural Marketing Service

7 CFR Part 926

[Docket No. FV-92-066]

Proposed 1992-93 Fiscal Year Expenditures and Assessment Rate for Tokay Grapes Grown in San Joaquin County, CA

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate for the 1992-93 fiscal year (April 1-March 31) under Marketing Order No. 926. These expenditures and this assessment rate are needed by the Tokay Grape Industry Committee (committee) established under this marketing order to pay marketing order expenses and collect assessments from handlers to pay those expenses. The proposed action would enable the committee to perform its duties and operate the order.

DATES: Comments must be received by June 29, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96496, room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Candace J. Mintz, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96496, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-3823.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 926 (7 CFR part 926) regulating the handling of Tokay grapes grown in San Joaquin County in California. This agreement and order is effective under the Agricultural Marketing Agreement Act.

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

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, California Tokay grapes are subject to assessments. It is intended that the order provisions now in effect, be applicable to all assessable assessment rate as proposed herein will be applicable to all assessable.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year shall apply to all assessable fresh fruit handled from the beginning of that year. An annual budget of expenses is prepared by the committee and submitted to the Secretary for approval. The members of the committee are handlers and producers of the regulated commodity. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed at a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the tons of fresh fruit expected to be shipped under the order. Because the rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The committee met on April 24, 1992, and unanimously recommended a 1992-93 fiscal year budget and assessment rate for this marketing order. The committee's recommendations are based on preseason projections of 1992 season shipments, expenses, and reserve fund levels under the order.

The proposed 1992-93 budget for this marketing order is lower than that for 1991-92. The decrease in the budget reflects a reduction in auditing expenses. The assessment rate for the 1992 season, however, remained constant. In addition, the committee has adequate reserves to fund any expenditures in excess of income for 1992-93.

The proposed expenditures are all for administration of this order. Administrative expenses include those for salaries, and office operations.

The committee recommended a 1992-93 budget of $5,275 and an assessment rate of $0.07 per 23 pound lug of Tokay grapes shipped under M.O. 926. In comparison, the 1991-92 budgeted expenditures were $5,375 and the assessment rate was $0.07 per 23 pound lug.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order.

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

Based on the foregoing, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for the program needs to be expedited. The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 926

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 926 be amended as follows:

1. The authority citation for 7 CFR part 926 continues to read as follows:

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA


2. A new section 926.231 is added to read as follows:

§ 926.231 Expenses and assessment rate.

Expenses of $5,275 by the Tokay Grape Industry Committee are authorized, and an assessment rate of $0.07 per 23 pound lug of assessable California Tokay grapes is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991-92 fiscal year may be carried over as a reserve.


Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 92-14454 Filed 6-18-92; 8:45 am]
Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 948 for the 1992-93 fiscal period (July 1, 1992, through June 30, 1993). Authorization of this budget would permit the Colorado Potato Administrative Committee, Northern Colorado Office (Area III) (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by June 29, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-8546.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-8546, telephone 202-720-9818.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

The proposed rule is reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Colorado potatoes are subject to assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable potatoes handled during the 1992-93 fiscal period, beginning July 1, 1992, through June 30, 1993. This proposed rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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

The proposed rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. The Act provides that if the Secretary determines that any handler is operating under the order in an unreasonable or discriminatory manner, he shall rule on any such complaint. The Secretary would rule on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

The Act provides that each marketing order and its accompanying regulations shall be construed and applied to effectuate the purposes of the Act, and that the provisions of the Act, as amended by the Marketing Act of 1981, are declared to be the national policy of the United States. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.
passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992-93 fiscal period for the program begins on July 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable Colorado Area III potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects In 7 CFR Part 948
- Reporting and recordkeeping requirements.

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

2. A new § 948.208 is added to read as follows:

§ 948.208 Expenses and assessment rate

Expenses of $15,134 by the Colorado Potato Administrative Committee, Northern Colorado Office (Area III) are authorized, and an assessment rate of $0.02 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1993. Unexpended funds may be carried over as a reserve.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-14457 Filed 6-18-92; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 953
(Docket No. FV-92-064)
Southeastern Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 953 for the 1992-93 fiscal period (June 1, 1992, through May 31, 1993). Authorization of this budget would permit the Southeastern Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by June 29, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20009-6456, telephone 202-720-9918.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 104 and Order No. 953, both as amended (7 CFR part 953), regulating the handling of Irish potatoes grown in Southeastern States (Virginia and North Carolina). The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

This proposed rule has been reviewed under Executive Order 12278, Civil Justice Reform. Under the marketing order provisions now in effect, Irish potatoes are subject to assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable Irish potatoes handled during the 1992-93 fiscal year period, beginning June 1, 1992, through May 31, 1993. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 008c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition. There may be appeal from the district court to the United States Court of Appeals for the District of Columbia.

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

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

There are approximately 60 handlers of Southeastern potatoes under this marketing order, and approximately 150 producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Southeastern potato producers and handlers may be classified as small entities.

The budget of expenses for the 1992-93 fiscal period was prepared by the Southeastern Potato Committee, the agency responsible for local
Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 953
Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 953 be amended as follows:

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES
1. The authority citation for 7 CFR part 953 continues to read as follows:
2. A new § 953.249 is added to read as follows:
§ 953.249 Expenses and assessment rate.
Expenses of $11,000 by the Southeastern Potato Committee are authorized, and an assessment rate of $0.0050 per hundredweight of assessable potatoes is established for the fiscal period ending May 31, 1993.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition.

The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of...
milk in the Georgia marketing area is being considered for August 1992.

1. In § 1007.32, paragraph (a).
2. In § 1007.61(a) the words "of September through January".
3. In § 1007.61, paragraph (b).

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the Federal Register. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures by the August 1992 suspension period.

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

Statement of Consideration

The proposed suspension makes inoperative the requirement that producers be paid on the base and excess plan for the month of August 1992. The proposal was submitted by Dairymen, Inc. (DI), a cooperative association of producers having a substantial amount of milk pooled on the Georgia milk market. In support of its proposal, DI said the suspension is needed to remove a conflict which currently exists between the order provisions and the need for additional milk in this market for the month of August. DI said that the current order provisions provide that producers, for the months of February through August, be paid a base and excess price. The proponent cooperative said that this plan was designed to encourage milk production during the base-building months of September through January when a greater volume of milk is needed for fluid use, and to discourage additional production (excess milk) during the months of February through August when the additional milk production is not needed for fluid use.

DI said that marketing conditions have changed since those provisions were adopted in the Georgia order. In recent years, milk production during the month of August has been in short supply. DI believes that production should not be discouraged during the month of August.

Accordingly, it may be appropriate to suspend the aforesaid provisions for the month of August 1992.

List of Subjects in 7 CFR Part 1007
Milk marketing orders.

The authority citation for 7 CFR part 1007 continues to read as follows:


Daniel Haley, Administrator.

[FR Doc. 92-14455 Filed 6-18-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1098

[DA-92-13]

Milk in the Nashville, Tennessee Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal to suspend for the month of July 1992 certain provisions of the Nashville, Tennessee milk marketing order. The proposed suspension would make inoperative the requirement that producers be paid on the basis of a base and excess payment plan for the month of July 1992. A proprietary handler requested the suspension because the current provisions tend to discourage milk production at a time when milk production is declining.

DATES: Comments are due no later than June 26, 1992.

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

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202)-720-6274.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would tend to encourage milk production during the month of July which is a month of declining milk production.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed suspension has been reviewed under Executive Order 12779, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition.provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Nashville, Tennessee marketing area is being considered for July 1992.

1. In § 1098.61(a), the words "for each of the months of August through October".
2. In § 1098.61(a)(5), the words "in the months of August through February".
3. In § 1098.61, paragraph (b).

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USD/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the Federal Register. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures by the July 1992 suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).
The proposed suspension makes inoperative the requirement that producers be paid on the base or excess plan for the month of July 1992. The proposal was submitted by Malone & Hyde, Inc. (Malone), a proprietary handler operating a distributing plant that is regulated under the Nashville order.

In support of its proposal, Malone said the suspension is needed to remove a conflict which currently exists between the order provisions and the need for additional milk in this market for the month of July. Malone said that the current order provisions provide that producers, for the months of March through July, be paid a base and excess price. Malone said that this plan was designed to encourage milk production during the base-building months of September through January when a greater volume of milk is needed for fluid use, and to discourage additional production (excess milk) during the months of March through July when the additional milk production is not needed for fluid use.

Malone said that marketing conditions have changed since those provisions were adopted in the Nashville order. In recent years, milk production during the month of July has been in short supply. Malone believes that production should not be discouraged during the month of July. Carolina Virginia Milk Producers Association, and many non-member producers, stated that they support the request for the suspension.

Accordingly, it may be appropriate to suspend the aforesaid provisions for the month of July 1992.

List of Subjects in 7 CFR Part 1098
Milk marketing orders.

The authority citation for 7 CFR part 1098 continues to read as follows:

Kenneth C. Clayton, Acting Administrator.
[FR Doc. 92-14456 Filed 6-18-92; 8:45 am]
BILLING CODE 3410-02-M

Farmers Home Administration
7 CFR Parts 1924 and 1944
RIN 0575-AR08

Cost Containment and Vulnerability
AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations regarding the processing of preapplications for Rural Rental Housing (RRH) assistance. This action is necessary to decrease costs associated with the program and to reduce program vulnerability. The intended effect is to improve credit quality and to make our regulations more responsive to the prudent development of RRH complexes in rural America.

DATES: Comments must be submitted on or before August 18, 1992.

ADDRESSES: Submit written comments in duplicate to the Chief, Regulation Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 9337—South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this publication will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gail McCowan, Rural Rental Housing Branch, Multi-Family Housing Processing Division, Farmers Home Administration, USDA, room 9337—South Agriculture Building, Washington, DC 20250, telephone (202) 720-1623.

SUPPLEMENTARY INFORMATION:
Classification
This proposed rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States enterprises to compete with foreign based enterprises in domestic or import markets. This action is not expected to substantially affect budget outlay or affect more than one Agency or be controversial. The net result is to provide better service to rural communities.

Background/Discussion
FmHA is amending its regulations to help curtail fraud, waste and abuse in the Section 515 program. Primary proposed changes in subpart A of part 1924 are:
(1) Section 1924.10(c) requires the approval of line item changes in construction by the District Office.
(2) Section 1924.13(a) reduces the amount paid to architects when they are providing less than full architectural services.
(3) Section 1924.13(e)(1) requires a contractor's credit report to reflect financial strength sufficient to carry out construction; requires FmHA personnel to review estimates of construction costs contained on Form FmHA 1924-13; requires a CPA/LPA to review borrower’s accounting system; limits the amount for general requirements to those estimated prior to start of construction and that profit will be reduced to offset an increase in general requirements; requires the cost certification CPA/LPA to utilize the audit program specified by FmHA and requires the borrower to accept that audit program as part of the cost certification; contains the opinion letter to be used by the cost certification CPA/LPA; provides a sample of a CPA audit letter; states that cost certification will be obtained by FmHA through direct contract with a CPA/LPA; prohibits the same CPA/LPA who maintains borrower's books to also contract with the Agency to cost certify the construction costs; requires all applicants/borrowers to complete identity of interest forms; requires that the borrower identify kickbacks, rebates, etc., and that those amounts will be subtracted from the loan amount; prohibits the payment of profit and overhead for any contractors who are not performing actual construction work; requires that contracting entities certify as to their viability as an ongoing trade or business qualified and licensed to undertake the work; and requires State Offices to document review results pertaining to granting exceptions to competitive bidding.

(4) Section 1924.13(e)(2) requires a contractor's credit report to reflect financial strength sufficient to carry out construction; eliminates the reference to including cost certification fees into total development cost; requires a CPA/ LPA to verify accounting systems of owner-builders; requires State Offices to document review results pertaining to granting exceptions to competitive bidding; limits the amount for general requirements to those estimated prior to start of construction; states that cost certification will be obtained by FmHA through direct contract with CPA/LPA’s; requires the cost certification CPA/LPA to utilize the audit program specified by
FmHA and requires the borrower to accept the audit program as part of the cost certification; requires identification of kickbacks, rebates, etc., for cost certification and requires that those amounts will be subtracted from the loan amount; prohibits the payment of profit and overhead for contractors who are not performing actual construction work; and requires that contracting entities certify as to their viability as an ongoing trade or business qualified and licensed to undertake the work.

Primary proposed changes in subpart E of part 1944 are:

1. Section 1944.211(a) limits the number of preapplications and requires the initial operations and maintenance (O&M) expenses to be provided in cash.
2. Section 1944.212(b) limits the amount of the loan to be used to rehabilitate existing buildings.
3. Section 1944.212(c) is changed to eliminate reference to land owned by an applicant or member of the applicant organization which is already included in § 1944.213(c), and specifies that site density requirements of § 1944.215 be used when considering excess land.
4. Section 1944.212(d) establishes cost ranges within States for offsite development costs.
5. Section 1944.212(g) includes the purchase of blinds.
6. Section 1944.213(j) removes fees for market studies, tax credit fees, legal fees including closing costs, environmental, and other appropriate technical and professional fees as eligible loan purposes when the applicant will be receiving low income housing tax credits.
7. Section 1944.213(j) corrects any existing typographical error.
8. Section 1944.213(b) contains examples of how loan amounts should be calculated.
9. Section 1944.213(c) prohibits the financing of facilities contrary to cost containment measures and prohibits payment of commission fees in connection with land sales in certain circumstances.
10. Section 1944.213(d) requires that FmHA verify in writing debts of applicants incurred prior to loan closing.
11. Section 1944.213(e) requires that increases in per unit cost be approved by FmHA in writing before the expense is incurred.
12. Section 1944.213(a) specifies cost containment measures and prohibits the financing of certain amenities and features. The absence of those particular features and amenities will not detract from the aesthetic value or functional use of the buildings. The Agency feels it necessary to contain costs wherever it will not reduce the overall quality.

However, we specifically request comments on this section and other methods to reduce and/or contain costs.

13. Section 1944.215(b) mandates unit dimension sizes.
14. Section 1944.215(e) requires the execution of a loan resolution or loan agreement prior to loan approval.
15. Section 1944.215(w) requires a more in-depth examination of feasibility for projects where tax credits will be utilized.

Implementation Proposal

The subject rule proposes changes to certain structural features and related amenities and costs. When published as a final rule, FmHA intends for all preapplications and applications on hand to be subject to the contents of the final rule with the exception of applications whose plans and specifications have been finalized. The State Director may waive this requirement if the applicant can prove changes to an application to accommodate the provisions of the final rule will pose a financial hardship. We do not intend to "grandfather" existing preapplications or have a "phase-in" period. FmHA recognizes this action will have an impact on preapplications which are in process. However, as previously mentioned, FmHA has a large backlog of preapplications. A survey of demand completed last year indicated that FmHA had in excess of $1.8 billion in preapplications on hand—over three times our current annual allocation of funds. The changes addressed in this proposed rule reflect current Agency policy, complement rural development initiatives, prudent loan underwriting and are consistent with the intent of the Housing Act of 1949, as amended. FmHA recommends that any potential applicant be cognizant of the changes in this proposed rule before developing a preapplication.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans and 10.427, Rural Rental Assistance Payments.

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 2015, subpart V, programs 10.415 Rural Rental Housing Loans and 10.427—Rural Rental Assistance Payments are subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–609, an Environmental Impact Statement is not required.
Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

Certification of Compliance With Executive Order No. 12778

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and (2)(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900 subpart B must be exhausted prior to filing suit.

Paperwork Reduction Act

The collection of information requirements contained in this regulation has been submitted to the Office of Management and Budget for review under section 3504(b) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 40 hours per response, with an average of 8.3 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20203.

List of Subjects
7 CFR Part 1924—Construction and Other Development

7 CFR Part 1944—Construction and Other Development

Accordingly, FmHA proposes to amend chapter XVIII, title 7, Code of Federal Regulations as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for part 1924 continues to read as follows:


Subpart A—Planning and Performing Construction and Other Development

2. In § 1924.10 paragraph (c)(2)(i) is revised to read as follows:

§ 1924.10 Making changes in the planned development.

(c) * * * *(i) Contract method. Changes shall be numbered in sequence as they occur using Form FmHA 1924–7 with necessary attachments. All transfers of funds between line item costs in contracts involving identity of interest entities will be approved by the servicing office using Form FmHA 1924–7.

3. In § 1924.13, paragraphs (a)(3), (e)(1)(iii)(B)(3), (e)(1)(iv), (e)(1)(v), (e)(1)(vi)(B)(2), (e)(2)(i)(D), (e)(2)(i)(G), (e)(2)(i)(H), (e)(2)(iii)(A), (e)(2)(iv), (e)(2)(v), and (e)(2)(viii) are revised to read as follows:

§ 1924.13 Supplemental requirements for more complex construction.

(a) * * *

(3) Architectural fees. Fees for architectural services shall not exceed the fee ordinarily charged by the profession for similar work when FmHA financing is not involved. The fee should cover only the architectural services rendered by the architect. The reduction of elimination of any services described in paragraph (a)(6) of this section shall be directly reflected in the fee. Fees for special services rendered by architects, such as the packaging of the loan application or additional nonarchitectural services, will not be authorized to be paid with loan funds.

(b) * * *

(e) * * *

(1) * * *

(III) * * *

(B) * * *

(3) A credit report (obtained at no expense to FmHA) attesting to the contractor’s credit standing. The credit report must demonstrate a positive credit history and a financial strength sufficient to carry out all phases of construction, culminating in full completion of the project.

(iv) Contract cost breakdown. In any case where the loan approval official feels it appropriate, and prior to the award or approval of any contract in which there is an identity of interest as defined in § 1924.4(i) of this subpart, the contractor and any subcontractor, material supplier, or equipment lessor sharing an identity of interest must provide the applicant and FmHA with a trade-item cost breakdown of the proposed contract amount for evaluation. The cost of any surety as required by § 1944.222(h) and (i) of subpart E of part 1944 of this chapter and § 1924.6(a)(3) of this subpart will be included in the proposed contract amount and shown under Other Fees on Form FmHA 1924–13, which is available in all FmHA offices. FmHA personnel will be responsible for reviewing the estimates on Form FmHA 1924–13 to determine if the dollar amounts are total correctly, to assure that costs are categorized under their appropriate columns, and to confirm that the estimated costs for all line items are reasonable and customary for the State.

(v) Cost certification. Whenever the State Director determines it appropriate, and in all situations where there is an identity of interest as defined in § 1924.4(i) of this subpart, the borrower, contractor, subcontractor, material supplier, or equipment lessor having an identity of interest must each provide documentation necessary to have the costs of construction certified by FmHA that those costs were the actual costs of the work performed as reported on the Form FmHA 1924–13. FmHA will contract directly with a CPA or LPA for the cost certification.

(A) Prior to the start of construction, the borrower, contractor and any subcontractor, material supplier, or equipment lessor sharing an identity of interest must submit to the CPA or LPA, the accounting system that the borrower, contractor, subcontractor, material supplier or equipment lessor and/or the CPA or LPA proposes to set up and use in maintaining a running record of the actual cost. In order to be acceptable the CPA or LPA must verify that the accounting system allows for a trade-item basis comparison of the actual cost as compared to the estimated cost submitted on Form FmHA 1924–13. Verification of the accounting systems by the CPA or LPA will be provided to FmHA by the borrower.

(B) Prior to final payment to anyone required to cost certify, a trade-item
breakdown showing the actual cost compared to the estimated cost must be provided to the owner and FmHA. Form FmHA 1924-13 is the form of comparative breakdown that should be used, and contains the certification required of the applicant and contractor prior to final payment. The amount for the general overhead of the builder, profit, and general requirements, respectively, shall not exceed the amounts represented on the estimate of cost breakdown provided in accordance with paragraph (e)(1)(iv) of this section for any contractor, subcontractor, material supplier, or equipment lessor having or sharing an identity of interest with the applicant. The amounts for general overhead, profit, and general requirements must be established prior to FmHA approving the construction contract and will not be changed during the course of construction. This applies to all contractors, subcontractors, material suppliers, or equipment lessors having or sharing an identity of interest with the applicant. Contract change orders will be processed to adjust the contract amount downward prior to the receipt of the certified Form FmHA 1924-13 and the auditor’s report, in conformity with eligible construction costs.

Cost certification will be obtained by FmHA through direct contract with the CPA or LPA. The borrower and his/ her CPA or LPA will cooperate fully with the contract CPA or LPA by providing all documentation necessary to conduct the certification. FmHA reserves the right to determine, upon receipt of the certified Form FmHA 1924-13 and the auditor’s report, whether they are satisfactory to FmHA. If not satisfactory to FmHA, the borrower will be responsible for providing additional information.

The CPA or LPA who initially reviews the borrowers accounting system and then maintains the accounts during construction will not be the same CPA or LPA who cost certifies the project. Costs as prescribed in FmHA regulations. If the CPA or LPA is able to express an unqualified opinion, the following format is suggested for the certification:

“We have examined the books and records of owner-builder, contractor, subcontractor, material supplier, equipment lessor related to the development of the project name and case number.

Our examination was made in accordance with generally accepted Government auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. Tests were also made based on specific requirements stipulated by the Farmers Home Administration.

In our opinion, the accompanying documentation, including Form FmHA 1924-13, "Estimate and Certificate of Actual Cost," presents fairly the actual cost in the amount of $_______, in conformity with generally accepted accounting principles and the instructions issued by FmHA for the recognition of such costs.

Amounts paid and to be paid are shown as of the close of business _—, 19___.

We certify that we have no financial interest in or with applicant/owner-builder, architect, engineer, attorney, contractor, subcontractors, material suppliers or equipment lessors, other than in the practice of our profession.

Cost certification will be obtained by FmHA through direct contract with the CPA or LPA. The borrower and his/ her CPA or LPA will cooperate fully with the contract CPA or LPA by providing all documentation necessary to conduct the certification. FmHA reserves the right to determine, upon receipt of the certified Form FmHA 1924-13 and the auditor’s report, whether they are satisfactory to FmHA. If not satisfactory to FmHA, the borrower will be responsible for providing additional information.

The CPA or LPA who initially reviews the borrowers accounting system and then maintains the accounts during construction will not be the same CPA or LPA who cost certifies the project.

Forms FmHA 1944-30 and FmHA 1944-31, "Identity of Interest (IOI) Disclosure Certificate" and "Identity of Interest (IOI) Qualification Form," provide written notification to the borrower that willful and intentional falsification of cost certification documents will result in debarment of all violators in accordance with the provisions of FmHA Instruction 1940-M (available in any FmHA office). These forms require the disclosure of all identities of interest associated with project construction, certify the entity’s ability to provide the contracted service, and cite the penalties for failure to disclose or falsify such certification. Each applicant/borrower will be required to complete and sign the forms (available in any FmHA office).

Under no circumstances will loan funds be used to pay the applicant or its stockholders, members, directors or officers, directly or indirectly, any profits from the construction of the project except a typical builder’s fee for performing the services that would normally be performed by a general contractor under the contract method of construction. Where an identity of interest exists between the borrower and the contractor, discounts and rebates given the borrower or contractor in advance must be deducted before the invoices are paid. The amount of the rebate or discount may be used to cover cost increases in other line items but may not be used to increase builder’s profit. If discounts or rebates are given after the invoices are paid, the funds must be returned to the supervised bank account or applied on the interim construction loan, as appropriate. Under no circumstances will the dollar amount of rebates and discounts be placed in the reserve account.

The CPA or LPA will be allowed to obtain a profit and overhead unless they are performing actual construction.

Language similar to that currently being used by the Department of Housing and Urban Development which prohibits payment of contractor’s fee (general overhead and profit) is hereby implemented when:

1. More than 50 percent of the contract sum in the construction contract is subcontracted to one subcontractor, material supplier, or equipment lessor.

2. Seventy-five percent or more with three or less subcontractors, material suppliers and equipment lessors.

Note: If two or more subcontractors have common ownership, they are considered as one subcontractor.

How to apply rule:

1. The 50 percent rule will apply when division of the amount of the largest subcontract by the contract sum of the construction contract results in more than 50 percent.

2. The 75 percent rule will apply when division of the amount of the three largest subcontracts by the contract sum of the construction contract results in 75 percent or more.

These provisions will apply regardless of whether or not an identity of interest exists.

1. Contractors, subcontractors, material suppliers, and any other
individual or organization sharing an identity of interest and providing materials or services for the project must certify that it is a viable, ongoing trade or business qualified and properly licensed to undertake the work for which it intends to contract. Forms FmHA 1944–30 and FmHA 1944–31 will be prepared and executed by the contracting entities. The forms provide notification to the entities of the penalty, under law, for erroneously certifying to the statements contained therein. Debarment actions will be instituted against entities who fail to disclose an identity of interest in accordance with the provisions of FmHA Instruction 1940–M (available in any FmHA office).

(vii) * * *
(B) * * *

(i) * * *

(ii) * * *

(I) If, after a full review of the case documents by the appropriate members of the State Office staff, the State Director determines that the requirements have been met and the costs are reasonable, an exception to competitive bidding will be granted. Written documentation of the State Office review results will be placed in the preapplication file.

* * *

(ii) * * *

(2) * * *

(D) A credit report (obtained at no expense to FmHA) attesting to the owner-builder’s credit standing. The credit report must demonstrate a positive credit history and a financial strength sufficient to carry out all phases of construction, culminating in a full completion of the project.

* * *

(G) A current, dated and signed trade-item cost breakdown of the estimated total development cost of the project which has been prepared by the applicant/owner-builder. Form FmHA 1924–13 will be used for this purpose. If cost estimation services are required by FmHA, the cost of such services may be included in the total development cost of the project. Any subcontractor, material supplier or equipment lessor sharing an identity of interest with the applicant/owner-builder as defined in § 1924.4(i) of this subpart must also provide a trade-item cost breakdown of the proposed amount.

(H) The CPA or LPA must verify that the ledger-type accounting system that the applicant/owner-builder proposes to set up and use in maintaining a running record of the actual cost of the project provides for a trade item basis comparison of the actual cost as compared to the estimated cost submitted in accordance with paragraph (e)(2)(i)(G) of this section.

* * *

(iii) * * *

(A) If, after a full review of the case documents by the appropriate members of the State Office staff, the State Director determines that the requirements have been met and the construction cost is reasonable, an exception to competitive bidding will be granted. Written documentation of the State Office review results will be placed in the preapplication file.

* * *

(iv) The development cost of the project may include a typical allowance for general overhead, general requirements, and a builder’s profit. These amounts may be determined by local investigation and also from HUD data for the area. The applicant/owner-builder and any subcontractors, material suppliers and equipment lessors having or sharing an identity of interest with the applicant/owner-builder may not be permitted a builder’s profit, general overhead, and general requirements which exceed the amounts represented on their cost breakdown.

* * *

(v) Under no circumstances will loan funds be used to pay the applicant or its stockholders, members, directors or officers, directly or indirectly, any profits from the construction of the project except a typical builder’s fee for performing the services that would normally be performed by a general contractor under the contract method of construction. Discounts and rebates given the owner-builder in advance must be deducted before the invoices are paid. The amount of the rebate or discount may be used to cover cost increases in other line items but may not be used to increase builder’s profit. If discounts or rebates are given after the invoices are paid, the funds must be returned to the supervised bank account or applied on the interim construction loan, as appropriate. Under no circumstances will the dollar amount of rebates and discounts be placed in the reserve account.

(viii) The applicant/owner-builder and any subcontractor, material supplier, or equipment lessor sharing an identity of interest as defined in § 1924.4(i) of this subpart must provide documentation necessary to have the costs of construction certified by FmHA that those costs were the actual costs of the work performed as reported on the FmHA Form 1924–13. FmHA will contract directly with a CPA or LPA for the cost certification. All projects involving a total development cost of more than $350,000, and any other project where the State Director determines it appropriate, will have its construction costs audited by FmHA.

(A) The CPA or LPA’s audit will follow the audit requirements specified by FmHA and such other auditing procedures of the applicant/owner-builder (and any subcontractor, material supplier, or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in connection with construction of the project he/she considers necessary to express an opinion on the construction costs as reported on Form FmHA 1924–13. The borrower must agree “that tests conducted on costs associated with...” will be sufficient to include those requirements specified by FmHA which may be separate and apart from normal auditing procedures.

(B) Prior to final payment to anyone required to cost certify, FmHA must be provided with a trade-item breakdown showing the actual cost compared to the estimated cost furnished in accordance with paragraph (e)(2)(i)(G) of this section. Form FmHA 1924–13 is the form of comparative breakdown that must be used, and contains the certification required of the applicant/owner-builder prior to final payment. The amount for builder’s general overhead, general requirements, and builder’s profit shall not exceed the amounts represented on the estimate of cost breakdown provided in accordance with paragraph (e)(2)(i)(G) of this section for the owner-builder or any contractor, subcontractor, material supplier, or equipment lessor having or sharing an identity of interest with the applicant/owner-builder. Final payment to the owner/builder will be adjusted, if necessary, to assure that the amounts shown on the certificate of actual cost do not exceed the amounts represented on the cost breakdown.

(C) All discounts and rebates which were not previously disclosed to FmHA and deducted from the amount of the loan must be identified by the borrower for cost certification. The amount of undisclosed discounts and rebates are to be subtracted from the total construction price and the dollar amounts returned on the loan or be put into additional eligible project improvements. If the dollar amounts are to be returned on the loan, the builder’s profit must be decreased accordingly. Under no circumstances will the dollar amount be placed in the reserve account.

(D) Owner-builders will not be allowed to obtain a profit and overhead
unless they are performing actual construction.

(1) Language similar to that currently being used by HUD which prohibits payment of contractor's fee (general overhead and profit) is hereby implemented when:

(i) More than 50 percent of the total cost of the building construction is subcontracted to one subcontractor, material supplier or equipment lessor, or
(ii) Seventy-five percent or more with three or less subcontractors, material suppliers, and equipment lessors.

Note: If two or more subcontractors have common ownership, they are considered as one subcontractor.

(ii) How to apply rule:

(i) The 50 percent rule will apply when division of the amount of the largest subcontract by the total amount of the building cost results in more than 50 percent.

(ii) The 75 percent rule will apply when division of the sum of the amounts of the three largest subcontracts by the total building cost results in 75 percent or more.

These provisions will apply regardless of whether or not an identity of interest exists.

(C) Contractors, subcontractors, material suppliers, and any other individual or organization sharing an identity of interest and providing materials or services for the project must certify that it is a viable, ongoing trade or business qualified and properly licensed to undertake the work for which it intends to contract. Forms FmHA 1944-30 and 1944-31 will be prepared and executed by the contracting entities. The forms provide notification to the entities of the penalty, under law, for erroneously certifying to identity of interest in accordance with the provisions of FmHA Instruction 1940-M (available in any FmHA office).

PART 1944—HOUSING

8. The authority citation for part 1944 continues to read as follows:


Subpart E—Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

7. In §1944.211, paragraphs (a)(3) through (a)(13) are redesignated as (a)(4) through (a)(15); new paragraph (a)(3) is added; newly redesignated paragraphs (a)(5), (a)(7)(i), and (a)(7)(ii) are revised to read as follows:

§1944.211 Eligibility requirements.

(a) * * *

(3) Have no more than five preapplications on hand nationwide with FmHA. When any member of the applicant entity is a member of another applicant entity, this will count as a separate preapplication toward the limit of five.

(7) * * *

(5) With the exception of a nonprofit organization, consumer cooperative or public body, have or be able to obtain the 3 percent borrower contribution required by §1944.213(b)(2) of this subpart. This contribution must be in the form of cash, land, or a combination thereof.

(7) * * *

(i) The applicant will provide a detailed list of all materials and equipment needed to be funded by the initial operating capital including, but not limited to, property and liability insurance premiums, fidelity bond premiums when the applicant is an organization, utility hook-up charges and deposits, maintenance and other equipment, lease forms, furnishings, loan payments that may become due during construction, purchase of office equipment and furniture, community room furnishings, congregate items referenced in §1944.224 of this subpart, advertising expenses, management fees, etc. The list will be approved by the servicing office based upon similar projects in the State. The initial 2 percent O&M expenses, plus any amounts needed for these items above the 2 percent, must be provided in cash.

(ii) The O&M cash will be deposited into the general operating account in accordance with the provisions of the loan agreement or loan resolution. FmHA will be provided with documentation of the deposit prior to the start of construction or loan closing (whichever is first) and such funds will be used for authorized purposes only.

(iii) * * *

8. In §1944.212, paragraph (c)(3)(iii) is added, and the introductory text of paragraph (b), paragraphs (c)(1), (c)(2), (c)(3)(ii), the introductory text of paragraph (d), paragraphs (g), (i), and the introductory text of paragraph (j) are revised to read as follows:

§1944.212 Loan purposes.

(b) Purchase and rehabilitate existing buildings only when the loan for such rehabilitation does not exceed by 5 percent the loan for new construction in the same area and when moderate or substantial modifications, repairs or improvements to the structures are necessary to meet the requirements of decent, safe, and sanitary living units.

* * *

(1) Loan funds used to purchase land may not exceed the estimated market value of the site in its present condition as shown by a current appraisal in accordance with FmHA Instruction 1922-B (available in any FmHA office). Purchase price will not be used in determining the applicant's initial investment.

(2) With prior written approval of the State Director, loan funds may be used to buy land from a member of a broadly-based nonprofit applicant/organization.

(3) * * *

(1) The cost of the excess land is a reasonable portion of the loan: and

(iii) The site density requirements of §1944.215(a)(6) of this subpart are met.

(d) Develop and install streets, a water supply, sewage disposal, heating, cooling, and light systems necessary in connection with the housing. States will establish and maintain cost ranges of those offsite facilities previously funded. Offsite facility costs in future loans will not exceed the established ranges, taking into consideration current inflation. If the facilities are located offsite, the following requirements must be met:

* * *

(g) Purchase and install ranges, refrigerators, drapes or blinds, drapery rods, and clothes washers and dryers. Laundry facilities are required in all projects and clothes washers and dryers should be provided in a central laundry room. Normally, a minimum of one washer and dryer should be provided for every 8 to 12 units in a project. Clothes washers and dryers may not be installed in individual units if the installation is not customary in the area for the size of project and type of housing involved. In any case, both central and individual laundry facilities will not be provided in a single project.

* * *

(i) Pay related costs such as fees and charges for archeological, architectural, engineering, when the applicant will be receiving Low Income Housing Tax Credits. When the applicant is not receiving Low Income Housing Tax Credits, pay related costs such as fees and charges for market studies, legal fees which are directly related to loan closing only, archeological, architectural, and engineering. The fees
and charges may be paid to an applicant or officer, director, trustee, stockholder, member or agent of the applicant provided those fees and charges are reasonable and typical for the area and are earned and the identity of interest is disclosed. Legal, technical, and professional fees do not include the costs incurred in the formation or incorporation of the limited profit applicant, costs of syndication, or the payment of a loan packaging or development fee.

(1) Provide loan funds to enable a nonprofit group or public body to pay fees for technical assistance received from a nonprofit organization, with housing or community development experience, to assist it in the formation or incorporation and development and packaging of the loan docket and project, as well as legal, technical and professional fees incurred in the formation or incorporation of the applicant entity.

9. In § 1944.213, paragraphs (b)(1), (b)(2), (c)(6), (c)(10), and the introductory text of paragraphs (d) and (e)(1) are revised to read as follows:

§ 1944.213 Limitations.
(b) * * *
(1) For nonprofit corporations, consumer cooperatives, and State or local public agencies, the amount of the loan(s) will be limited to the development cost or the security value of each project, whichever is less, plus the 2 percent initial operating capital and/or the relocation costs incurred as indicated in § 1944.215(v) of this subpart.

9. In § 1944.213, paragraphs (b)(1), (b)(2), (c)(6), (c)(10), and the introductory text of paragraphs (d) and (e)(1) are revised to read as follows:

§ 1944.213 Limitations.
(b) * * *
(1) For nonprofit corporations, consumer cooperatives, and State or local public agencies, the amount of the loan(s) will be limited to the development cost or the security value of each project, whichever is less, plus the 2 percent initial operating capital and/or the relocation costs incurred as indicated in § 1944.215(v) of this subpart.

(2) For all other applicants, the amount of the RRH loan(s) will be limited to no more than 97 percent of the development cost or 97 percent of the security value of each project, whichever is less. The following examples show two ways in which loans should be calculated in order to avoid obligating excess loan amounts.

(i) If the appraised value of land exceeds the 3 percent contribution requirement and the land is to be used as the applicant's initial contribution, then the excess over and above the 3 percent will reduce the loan amount accordingly. For example:

$1,500,000 total development cost.
45,000 3 percent requirement.
$1,455,000 typical loan amount.

If the appraised value of land exceeds the 3 percent, then the loan amount is computed as:

$1,500,000 total development cost.
75,000 appraised land value.
$1,425,000 loan.

In this case, the applicant is contributing $30,000 over and above the normal 3 percent amount, resulting in a 95 percent loan.

(ii) If the cost of the land exceeds its appraised value, the amount used to determine the loan is the appraised value.

$900,000 total development cost without land.
100,000 cost of land.
$1,000,000 total development cost. .97
$970,000 incorrect loan amount.

The loan should have been calculated as:

$1,000,000 total development cost as appraised.
50,000 value of land.
950,000 basis for establishing loan. .97
$921,500 correct loan amount.

For purposes of this paragraph, the total development cost includes the appraised value of the land (not to exceed the purchase price) and not the cost of the land.

(c) * * *
(6) Facilities contrary to cost containment measures defined in § 1944.215(a) of this subpart.

* * *

(10) Land which the applicant or a member of an applicant/organization owns or land which is owned by any other organization in which any member of the applicant/organization has an interest, including any commission due on the sale thereof, except as authorized in § 1944.212(c)(2) of this subpart.

(d) Obligations incurred before loan closing. When an applicant files a preapplication for a loan, he/she will not start construction or incur any indebtedness until the loan is closed, except for those cases involving interim financing; the guidelines outlined in § 1944.235(c)(1) of this subpart will then apply. During the period of preapplication review and processing, applicants will not take any actions with respect to their applications. This requirement does not preclude the applicant from developing preliminary plans or designs or performing other work necessary to support an application for Federal, State, or local permits or assistance. If the applicant incurs debts for work, materials, land purchase, or other authorized fees and charges before the loan is closed, the State Director may authorize the use of loan funds to pay the debts when all of the following conditions exist and are verified in writing by FmHA:

* * *

(e) * * *

(1) No increase in per unit development cost will be approved, whether the circumstances causing the cost increase occurs before, during, or after the construction period, unless these conditions were unforeseen factors beyond the owner's control and the increase in cost was approved by FmHA in writing before the expense was incurred, such as:

* * *

10. In § 1944.215, paragraph (w)(3) is added; and paragraph (a), the introductory text of paragraph (b), the introductory text of paragraph (b)(1), paragraphs (b)(1)(i), (b)(2), and the introductory text of paragraph (e) are revised to read as follows:

§ 1944.215 Special conditions.
(a) Cost containment. To achieve affordable rents and occupancy rates (not considering rental assistance or similar subsidies) all development costs will be economical in nature and not include costs for unnecessary or elaborate design features. Cost containment is not to be interpreted as accepting poor design or cheap construction. Project must provide the features and amenities necessary for the lifestyles of the tenants and members. Consideration must be given to the cost/benefit ratio when evaluating, recommending or requiring specific design features or construction techniques. Life cycle cost analysis will be employed to determine the types of materials which will reduce operation/maintenance costs even though their initial costs are higher. Operation and maintenance costs factored into proposed operating budgets will be adjusted accordingly. The following guidelines are to be followed when developing projects:

(1) Each State architect/engineer (A/E) will compile and maintain data on costs of all projects. Total project estimates will be compared with estimates available through the Marshall & Swift computer program to establish a benchmark for future project...
The borrower will be responsible for evaluated for possible cost reductions. Any proposal that exceeds these costs. Any proposal that exceeds these cost estimate must be carefully evaluated for possible cost reductions. The borrower will be responsible for resolving the differences in cost to bring the project into line with the lesser of the cost tracking system or Marshall & Swift estimates. Final determinations must be realistic, interrelated to maintenance and operation costs, and based upon local conditions and common sense. The State will consider circumstances such as high land costs, remote rural areas, etc., which could present a problem in achieving such an alignment of costs. The cost tracking system available in the AMAS system will be used to record both estimates and actual construction costs.

(2) The elimination or reduction of unnecessary delays in application processing can contribute to cost containment through lower interest and other business expenses on land, inventory, tests, design studies, etc. When reasonable processing timeframes are established, known and followed, appropriate time can be planned for preparing quality application and construction documents. This can result in better instructions to the builder, fewer errors and lower construction costs.

(3) Most materials and systems are available in a range of qualities and prices. The construction documents will be carefully reviewed for specifications that require qualities or grades higher than necessary. These specifications will be accepted only if fully justified and no reasonable alternatives are available.

(4) Designs which employ standard building material dimensions and reduce waste will be used.

(5) Sites will require a minimum amount of site development work. Each State will develop an average site development cost based on State-wide or servicing office-wide part statistics. The State Director may authorize a site requiring higher than average site development costs only if:

(i) The proposed site and site development costs are less than the cost of the average site and site development costs;

(ii) There are no other sites available in the market area with a lower combined cost.

All project site densities (units per acre) will be within the following ranges, regardless of site conditions unless local zoning requirements dictate otherwise. Ranges for projects with a mixture of building heights can be extrapolated.

<table>
<thead>
<tr>
<th></th>
<th>Min.</th>
<th>Max.</th>
</tr>
</thead>
<tbody>
<tr>
<td>One story building</td>
<td>10</td>
<td>14</td>
</tr>
<tr>
<td>Two story buildings</td>
<td>14</td>
<td>18</td>
</tr>
<tr>
<td>Three or more story buildings</td>
<td>18</td>
<td>22</td>
</tr>
</tbody>
</table>

For example: a 24-unit project composed of two story buildings must have a site of at least 1.3 acres. FmHA will finance the purchase and development of larger sites, but not more than 1.7 acres.

(6) Sound judgment and common sense must also be used in construction inspections and final acceptance of projects. Field staff involved in these activities must be careful not to impose additional or unreasonable requirements on the builder that will increase construction costs. States should consider hiring enough construction inspectors to provide more than the required inspections and to allow multiple unscheduled and unannounced visits. The State Office may also, with National Office authorization, contract for inspection services to deter deviations from the FmHA-accepted construction documents. Prefinal and final inspections must be conducted by qualified FmHA personnel.

(7) Buildings will not include numerous wall and roof breaks, unusual designs requiring excessive corners and foundation off-sets, or that require more exterior entrances than absolutely necessary. Designs will not be considered acceptable that place community rooms or dining facilities in structures attached to the main building when these amenities can be less expensively included within the main structure.

(8) Buildings will not include roof slopes less than 3/12 nor greater than 5/12.

(9) The use of repeat designs will be required from applicants whose architects have designed projects previously approved by FmHA. This does not mean "cloned" projects are required throughout the state and/or region. When a repeat design is being used in the same community, the exterior facade (such as color, siding material, etc.) must be noticeably changed except in the case of subsequent phases. The State Office Architect will ensure the sufficient differences are included in the proposed plans which will preclude the appearance of "cloned" designs. "Predesigned" buildings must fit the basic exterior contours of the proposed site.

(10) The following facilities are considered nonessential and will not be included in the loan unless required by local codes or ordinances:

(i) Garages/covered parking
(ii) Bay/box/picture or similar type windows
(iii) Fireplaces
(iv) Community Room furniture
(v) Sliding Glass/atrium or similar type doors
(vi) Materials atypical for the area
(vii) Atriums/solariums
(viii) Saunas
(ix) Whirlpools
(x) Gyms (facilities to accommodate physical exercises may be included in elderly projects without regard to this restriction)
(xi) Swimming pools.

(11) Other design features which will only be accepted if determined customary for the area are:

(i) Patios/balconies (minimum size which will accommodate handicapped accessibility)
(ii) Washer and dryer hookups in individual units
(iii) Washers and dryers in individual units

(12) The following is a list of allowable amenities according to the type of units:

<table>
<thead>
<tr>
<th>Family</th>
<th>Elderly</th>
<th>Congregate</th>
<th>Group home</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>Yes</td>
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<td>Yes</td>
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<tr>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

| Active outdoor recreation | Yes | No | No | Yes |
| Carpet | Yes | Yes | Yes | Yes |
| Central laundry facilities | Yes | Yes | Yes | Yes |
| Community rooms | Yes | Yes | Yes | Yes |
| Dishwashers | No | No | No | Yes |
| Drapes or blinds | Yes | Yes | Yes | Yes |
| Elevators for 2-story elderly | Yes | Yes | Yes | Yes |
| Garbage disposals | No | No | No | Yes |

Lawn sprinklers—financing will depend on geographic area.

1 In central kitchens only.
(13) Total on-site parking spaces per living unit (including spaces for tenants) and visitors, and staff will be within the following ranges unless otherwise required by local authorities:

<table>
<thead>
<tr>
<th>Family</th>
<th>Min</th>
<th>Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elderly</td>
<td>Min</td>
<td>Max</td>
</tr>
<tr>
<td>Congregate</td>
<td>Min</td>
<td>Max</td>
</tr>
<tr>
<td>Group</td>
<td>Min</td>
<td>Max</td>
</tr>
</tbody>
</table>

(14) A range of acceptable allowances for landscaping and for earth work (cut and fill) based on a percentage of total construction cost or on a cost per unit basis will be developed by each State.

(15) Management, maintenance, and community rooms should not exceed the limitations described in the FmHA Manual of Acceptable Practices (available in any FmHA office). Laundry rooms should be no larger than necessary to accommodate equipment, circulation (including handicapped accessibility) and areas for sorting and folding clothes.

(16) Type of housing. All housing will be designed to:

(i) Be economically constructed and not of elaborate design or materials. All new construction will conform with the applicable development standards of § 1024.5(d)(1) of part 1024 of this chapter. The gross square foot living area of new units and related facilities will be within the ranges listed below. Living area is defined as: All enclosed space for the unit (except unfinished storage space for outdoor items and space needed for heating and/or cooling equipment) and measured from the exterior surface of the framing of exterior walls and the center line of interior party or corridor walls. States should establish ranges within these dimensions to be commensurate with unit sizes in the local market. For example, when conventional units in the market are at the low end of FmHA's range scale, FmHA will also build a comparably smaller unit.

<table>
<thead>
<tr>
<th>Type of unit</th>
<th>Minimum/maximum living area (square feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-Bedroom Unit</td>
<td>350-500</td>
</tr>
<tr>
<td>1-Bedroom Unit</td>
<td>500-650</td>
</tr>
<tr>
<td>2-Bedroom Unit</td>
<td>650-800</td>
</tr>
<tr>
<td>3-Bedroom Unit</td>
<td>800-950</td>
</tr>
<tr>
<td>4-Bedroom Unit</td>
<td>950-1100</td>
</tr>
</tbody>
</table>

(17) Community rooms should not exceed the limitations described in the FmHA Manual of Acceptable Practices (available in any FmHA office). Laundry rooms should be no larger than necessary to accommodate equipment, circulation (including handicapped accessibility) and areas for sorting and folding clothes.

(18) Type of housing. All housing will be designed to:

(i) Be economically constructed and not of elaborate design or materials. All new construction will conform with the applicable development standards of § 1024.5(d)(1) of part 1024 of this chapter. The gross square foot living area of new units and related facilities will be within the ranges listed below. Living area is defined as: All enclosed space for the unit (except unfinished storage space for outdoor items and space needed for heating and/or cooling equipment) and measured from the exterior surface of the framing of exterior walls and the center line of interior party or corridor walls. States should establish ranges within these dimensions to be commensurate with unit sizes in the local market. For example, when conventional units in the market are at the low end of FmHA's range scale, FmHA will also build a comparably smaller unit.
2. Ensure that the servicing office has on file evidence that a deposit has been made to the general operating account of an amount of initial operating capital sufficient to cover the expected start-up costs.

(b) * * *

(3) Monetary default by original applicant/entity. An obligation may be transferred to any person or applicant eligible to receive an RRH loan when the original applicant/entity is in monetary default which has or may result in foreclosure by the interim lender, and

(i) The applicant/entity assuming the obligation, or the interim lender, removes any liens filed against the property;

(ii) There have been no deviations from the FmHA approved plans and specifications;

(iii) The transferee will not be composed of any principals of the transferor;

(iv) The transfer will be in the best interest of the FmHA and prospective tenants;

(v) The applicant/entity and all members thereof whose obligations are transferred will not be considered eligible for further participation in the RRH program for at least 5 years from the date of the transfer of the FmHA loan obligation;

(vi) Prior approval is obtained from the National Office.

(c) * * *(1) Interim financing. When the amount of the loan exceeds $50,000, the applicant shall obtain interim financing from commercial or public sources for the construction period if it can be obtained at reasonable interest rates, fees, and terms. Interim financing will be obtained to preclude the necessity for multiple advances of FmHA funds. The interim lender must be licensed to operate in the State in which the project will be located and must have an established record of providing financing to entities other than FmHA-financed projects. Since the interim lender is responsible for inspecting construction along with FmHA, the borrowing entity (including any of its identity of interest entities) cannot provide interim financing to its own project. This will preclude the possibility of the borrower inspecting its own construction. Interim financing will be used subject to the following:

13. In §1944.236, paragraph (a) is revised to read as follows:

§1944.236 Loan closing.

(a) Applicable regulations. RRH and RCH loans will be closed in accordance with subpart B of part 1927 of this chapter and any State supplements. Loan dockets for organizations and, in special cases, dockets for individuals will be sent through the State Office to OGC for closing instructions. A profit or limited profit organization or individual applicant may use any title insurance company or attorney who has been approved by the State Director in accordance with the requirements of Subpart B of Part 1927 of this chapter to close the loan if the attorney or title insurance company and its principals or employees are not members, officers, directors, trustees, stockholders, or partners of the applicant entity. Nonprofit organizations may use an approved attorney who is a member of their organization if the cost is in accordance with §1944.212(i) of this subpart.

14. In §1944.237, paragraph (a) is revised to read as follows:

§1944.237 Subsequent loans.

(a) A subsequent loan is made to an applicant/borrower to complete, improve, repair, make modifications and/or expand the project initially financed by FmHA, or for equity and/or other purposes when authorized by the provisions of subpart B of part 1965 of this chapter to avert prepayment. A subsequent loan to develop additional units must be rated and ranked in accordance with the priority point system contained in §1944.231 of this subpart. Other subsequent loan requests do not have to compete for funding under the priority point system. All subsequent loans made pursuant to a contract entered into on or after December 15, 1988, cannot be prepaid.

15. In §1944.239, paragraph (c) is revised to read as follows:

§1944.239 Complaints regarding discrimination in use and occupancy of RRH and RCH.

(c) Participants in FmHA's housing program failing to comply with the requirements of title VIII, as amended by the Civil Rights Act of 1968 and by the Fair Housing Act Amendments of 1988, and the respective Affirmative Fair Housing Marketing Plan will make themselves liable to sanction authorized by law, regulations, agreements, rules and/or policies governing the program pursuant to which the application was made.

16. In exhibit A of subpart E, paragraph IV.B.6.a. is revised to read as follows:

Exhibit A—How to Bring Rental and Cooperative Housing to Your Town

IV. * * *

B. * * *

6. Analysis of market to determine demand for rental housing.

a. Applicants will discuss with the servicing official the type of market analysis that will be needed. Applicants must comply with paragraph II of Exhibit A-7 when preparing market information. FmHA may, at its own discretion, contract with a market analyst to verify that a need does exist for the proposed number of units.

17. In exhibit A-7 of subpart E, paragraphs II, C, D, and E are removed; paragraphs II, G. through I. are redesignated as II, C. through E.; paragraphs I. A. and H., II. A., B., and F., and IV.F. are revised to read as follows:

Exhibit A-7—Information To Be Submitted With Preapplication for a Rural Rental House (RRH) and Rural Cooperative Housing (RCH) Loan

1. * * *

A. Financial statements for Rental Projects—Each applicant must submit a current, signed, dated, and audited financial statement and a copy of the prior year's income tax return. The financial statement must reflect sufficient financial capacity to meet the applicant's equity capital and initial operating capital requirements. Applicants may contribute cash, free and clear title to the building site or a combination of both as an equity contribution. The initial operating capital requirement must be fulfilled by contributing cash.

H. FmHA requires that applicants disclose identities of interest that will exist related to the development of the proposed housing. Forms FmHA 1944-30, “Identity of Interest (IOI) Disclosure Certificate,” and 1944-31, “Identity of Interest (IOI) Qualification Form,” (available in any FmHA office) will be completed and submitted as part of the preapplication package.

II. Need and Demand

A. Economic justification and project size will be based on the housing need and demand from eligible prospective tenants or members who are permanent residents of the community and its surrounding trade area. Since the intent of the program is to provide adequate housing for the eligible permanent residents of the community, temporary residents of a community (such as college students in a college town, military personnel stationed at a military installation within the trade area, or others not claiming their current residence as their legal domicile) will be discounted in determining the need and project size. The need will not be based on
persons who own their homes but will be derived from:
(1) Persons migrating into the market area;
(2) Persons sharing dwelling units who desire to move into their own units; and
(3) Conservative estimate (not to exceed 20 percent of those living in substandard units, not including persons who have reached the age of eligibility since the last census report.

B. A detailed study based upon data obtained from census reports, state or county data centers, individual employers, industrial directories, or chambers of commerce is required. FmHA personnel will utilize the market study checklist found at Exhibit A-11 (available in any FmHA office) as a means for measuring and evaluating market credibility.

IV. F.
F. The estimated total development cost, the estimated loan amount. All applicants must submit Form FmHA 1924–13: “Estimate and Certificate of Actual Cost,” containing preliminary cost estimates for the construction.

18. Exhibit A–8 is revised to read as follows:

Outline of Professional Market Study
The following information is to be used by analysts in the preparation of market studies for the 515 housing program. It generally contains the type and depth of information which FmHA requires for evaluating the feasibility of prospective housing developments. The analyst will be expected to provide sufficient quantitative data (such as census tables), primary data (such as survey of existing comparables), and qualitative data (such as local contacts in the community) to support the conclusions reached. The analyst may present any other discussions and/or data which will help support the complete analysis of the market.

The outline provides for the demonstration of historical trends and allows the analyst to project into the two years beyond the last actual year of record. Additional guidance is offered in individual segments of the outline. You will need to provide a statement of your experience and why you think you are qualified to prepare such a study.

Determination of need and demand will be derived for prospective rental tenants only from:
(1) Persons migrating into the market area;
(2) Persons sharing dwelling units who desire to move into their own units; and
(3) Conservative estimate (not to exceed 20 percent of those living in substandard housing, and
(4) Allowance for a 5 percent vacancy rate. The analyst may discuss the possibility of persons living in substandard units moving into the project; however, only a conservative number will be accepted in the need and demand calculations.

For proposed congregate projects, the analyst will be responsible for researching the current need for, and usage of, services in the market area. The types of services being used, the provider of the services, and their location will be entered.

Homeowners will not be included in the determination of need and demand for rental units. The analyst will discuss the current market for single family homes and how sales, or the lack of, will affect the demand for elderly rental units. If the economic conditions reflect a trend toward normal selling times for houses in the market area, then the data should be pointed to point to how elderly homeowners may reduce the need, but only as a secondary market and not as the primary market.

A statement, with signature, certifying that the amount of any individual under contract to the analyst’s company actually traveled to and physically surveyed the community where the proposed project will be located is also required.

Market studies by FmHA do not address all of the outlined work will not be considered acceptable and will be returned to the applicant.

I. Market Area—General.

The market area will be the community where project will be located and only those outlying rural areas which will be impacted by the project (excluding all other established communities). Any deviation from this definition must be coordinated with the district office. The market area must be realistic. The criteria for selection should be described by the analyst. A map showing the market area will be required. The following is an example of a market area description:
A. Based on analysis of population and housing development patterns, major employers and commuting patterns, the effective market area for the subject proposal is defined to include all of [Name], 25 percent of (Name) and 25 percent of (Name) census divisions. This area is shown on Map 2 following Table 4 (page 11) in Section II of this report. In 1970, this geographic market area contained an estimated 6,360 persons (6.1 percent of the county total of 103,829 persons). During the 1970’s decade, the overall market area experienced growth of 1,253 persons (representing 13.5 percent of total gains in the county). In 1986, the [Name] market area population of 7,603 represented 6.7 percent of the county population of 113,086. (See Table 4 and Map 2 in Section II for details.)
B. The effective market area for the subject proposal includes the town of [Name] and a portion of the incorporated areas to the east and south. The [Name] River forms a natural barrier restricting development to the west. Housing development and population growth have occurred along major transportation corridors, particularly Interstate 81 and U.S. 11 between [Name] and [Name]. Secondary growth has occurred along State Roads 63 and 68 to the northwest and southeast of [Name]. The Interstate Industrial Park, with 16 employers providing 990 jobs, is centrally located within the market area.

II. Site.

This section will contain a full description of the site, its position in the community and location with respect to residential support services.
2. Employment data. In order to determine how employment affects the market area, it will be necessary to show the number of employed persons for a 10 year period up to the current year, the increase and/or decrease and the percentage of unemployed at the county level. The employment figures can be obtained from the State Employment Commission.

Example:

<table>
<thead>
<tr>
<th>Year</th>
<th>County</th>
<th>Number</th>
<th>Change</th>
<th>Unemployment (Percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990-1992</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: 

3. Major employers. This section will contain information pertinent to an analysis of the economic stability of the town. The major employers within the town and market area, the product or service offered by each employer, number of employees at each employer, salary range of each employer, location of employer, and year each employer was established are types of data FmHA will need to evaluate. It is also important to know if the larger employers intend to increase or decrease number of employees in the immediate future or if there have been any significant recent changes in number of employees.

Example:

<table>
<thead>
<tr>
<th>Product/service</th>
<th>Location</th>
<th>Year established</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crop dusting</td>
<td>Town</td>
<td>1967</td>
</tr>
</tbody>
</table>

Source: 

4. The analyst will give the percentage of persons employed inside the county and driving times, if appropriate.

B. Demographic Profile.

1. Population. The analyst will need to show population changes between 1980 and 1990, the reasons for the changes, the current year estimate and projected change. This information will be provided for the town, the market area, and the county. A discussion of how births/deaths (natural increase), and migration impact the population will be included, as well as changes due to annexation. Any change in the County subdivisions (CCD, Township, Election District, etc.) between census years will have to be explained. These are to be shown in numeric characters as well as percentages.

Example:

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>Annual</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990-1992</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. Age Characteristics.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 18</td>
<td>1990</td>
<td>1990</td>
</tr>
<tr>
<td>18-24</td>
<td>Change</td>
<td>Change</td>
</tr>
<tr>
<td>25-44</td>
<td>1990</td>
<td>1990</td>
</tr>
<tr>
<td>45-54</td>
<td>Change</td>
<td>Change</td>
</tr>
<tr>
<td>55-61</td>
<td>1990</td>
<td>1990</td>
</tr>
<tr>
<td>62+</td>
<td>Change</td>
<td>Change</td>
</tr>
<tr>
<td>65-74</td>
<td>1990</td>
<td>1990</td>
</tr>
<tr>
<td>75-85</td>
<td>Change</td>
<td>Change</td>
</tr>
<tr>
<td>85+</td>
<td>1990</td>
<td>1990</td>
</tr>
</tbody>
</table>

3. Households. A breakdown by town, market area, and county for last 2 census years, a current year estimate and a projection to the year the housing would be built (24 months) will have to be illustrated so that household formations can be tracked.

This data will tell us what portion of a housing demand is being created by an increase in numbers of new households.
### 4. Households by Size/Type/Age of Members (elderly and congregate projects).

<table>
<thead>
<tr>
<th>City</th>
<th>Market area</th>
<th>County</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Households with:</th>
<th>City</th>
<th>Market area</th>
<th>County</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 or more age 60 years and over</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 person household</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 or more persons (family)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 or more persons (nonfamily)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 or more age 65 and over</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 person household</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 or more persons (family)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 or more persons (nonfamily)</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

### 5. Household Type and Relationship—Persons 65+ (elderly and congregate projects).

<table>
<thead>
<tr>
<th>Total—</th>
<th>City</th>
<th>Market area</th>
<th>County</th>
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<thead>
<tr>
<th>In Households</th>
<th>City</th>
<th>Market area</th>
<th>County</th>
</tr>
</thead>
<tbody>
<tr>
<td>In Family Households</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Householder</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spouse</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nonrelatives</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In Nonfamily Households</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male Households</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Living Alone</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not Living Alone</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female Householder</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Living Alone</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not Living Alone</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nonrelatives</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In Group Quarters</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Institution (persons)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Persons in Group Quarters</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 6. Households by Tenure. This section is one of the more important aspects of the market analysis. This information will enable us to more closely pinpoint the number of households which would comprise the target group of our evaluation. If the projected percentage of renters exceeds the historic percentage of renters, the analyst will have to explain why there is an increase. The information will be provided for town, market area, and county.

<table>
<thead>
<tr>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
</tr>
<tr>
<td>1980</td>
</tr>
<tr>
<td>1990</td>
</tr>
<tr>
<td>Estimate: 19</td>
</tr>
<tr>
<td>Projected: 19 (2 years)</td>
</tr>
</tbody>
</table>

### 7. The study will provide number of households by household size for the town, market area, and county.

### 8. Tenure by Age of Householder for town, market area, and county (elderly and congregate projects)

<table>
<thead>
<tr>
<th>Total</th>
<th>Owner</th>
<th>Renter</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Renter</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>55-64</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>65-74</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
9. Households by Income Group. This section is also vital to the evaluation of the market because of the low income ranges which exist in the rural areas and the lack of deep subsidy. For this reason, close attention must be paid to the number of persons whose incomes will allow them to pay the rent plus utilities and still remain within the 30 percent criterion. In some cases, persons with incomes in the upper range of the eligible income group have displayed a lack of interest since they would be required to pay the full market rent. Also, persons with lower incomes will move into projects even though they will pay more than 30 percent of their incomes. Irrespective of these considerations, the study will need to show the entire scale of incomes from lowest to highest. The number of renters who fall within the feasibility range will then be estimated by the analyst. Feasibility for projects expecting to receive tax credits will be based on the incomes required to support the tax credits. In some cases, this will mean a level of income slightly higher than FmHA very-low income. The applicant will be responsible for notifying FmHA and the market analyst of the percentage of tax credits being requested. Income data should be shown for total and renter households.

a. Rent for a 1-bedroom apartment is $250 with a $30 utility allowance (which can include electric or gas heat, air conditioning, lighting, cooking, water heating and trash collection, water, sewer). The amount of income needed to pay the total bill and stay within 30 percent of income would be:

Example: $280 divided by .30 \times 12 = $11,088 income.

Household Income Profile.

<table>
<thead>
<tr>
<th>All households</th>
<th>Renter households</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number</td>
<td>Percent</td>
</tr>
<tr>
<td>---------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>Household Income Groups:</td>
<td></td>
</tr>
<tr>
<td>Less than $000</td>
<td></td>
</tr>
<tr>
<td>$000-$000</td>
<td></td>
</tr>
<tr>
<td>$000-$000</td>
<td></td>
</tr>
<tr>
<td>$000-$000</td>
<td></td>
</tr>
<tr>
<td>Total median</td>
<td></td>
</tr>
<tr>
<td>Incomes of those eligible to live in the proposed project, considering tax credits and availability of RA:</td>
<td></td>
</tr>
<tr>
<td>$000-$000</td>
<td></td>
</tr>
<tr>
<td>Source:</td>
<td></td>
</tr>
</tbody>
</table>

b. It is recommended that decile distribution of incomes be obtained from HUD.

C. Housing supply profile.

1. Building permits issued for the last 10 years The Housing Units Authorized by Building Permits and Public Contracts (C-40 Construction Report), furnished by the Bureau of the Census, provides a list of permits issued in all reporting jurisdictions. This publication is printed monthly and annually.

2. Housing stock. The study must include the number of units within the town and county (where available), both single family and multi-family, the number of mobile homes by tenure, along with the number of substandard units by type, based on the most recent census data. Occasionally, a situation will exist within a community where a number of detached single family homes are standing vacant. How this condition may affect the rental market must be evaluated and discussed.

Example

Inventory Change Profile:

1990 Stock

Annual | Percent |
---------|---------|
Change in Number of Units: | | | | |
Number of Replacements Over 5 Year Period

<table>
<thead>
<tr>
<th>Num. of units</th>
<th>Single family</th>
<th>Multi-family</th>
<th>Mobile home</th>
</tr>
</thead>
<tbody>
<tr>
<td>Substandard Units:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>By Plumbing Facilities:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Complete—Exclusive Use</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lacking Complete Facilities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>By Overcrowding</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. Existing rental housing. The analyst must determine where the proposed project will fit into the present housing stock. To accomplish this, the analyst will survey and existing units and will discuss how they (a) would be comparable with the proposed project in overall appeal; (b) are less than desirable because of the age factor or upkeep; (c) are inconveniently located; (d) do not provide the appropriate bedroom mix for the community need, etc.

4. a. Additional narrative which describes the rental stock and provides tenant characteristics may be included. The survey will include both subsidized and nonsubsidized rentals. In those communities containing too many rental properties to list, all subsidized and a representative number of conventional projects will be included. Those conventional projects which have rent levels comparable to the proposed project will be listed. Photographs of the comparables are required.

b. The analyst will explore the availability of individual Section 8 certificates with the local housing authority since they can be used on any project to bring the existing rents into an affordable range. For instance, 10-15 available Section 8 certificates in a community will have a definite influence on the determination for new units and the number should be reduced to correspond to this availability. (The bedroom sizes which the certificates cover must match the prospective bedroom sizes in the proposed project in determining the number of units to reduce.)

c. The information needed in the survey must include the characteristics shown below. In conjunction with the survey, the analyst is expected to discuss the reasons for extended vacancies, either in individual developments or in the community in general.

Name of Project
No. of Units

Sources of Demand

<table>
<thead>
<tr>
<th>Town</th>
<th>County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner</td>
<td>Renter</td>
</tr>
</tbody>
</table>

New Households
Substandards Units
Plus Replacements (95%)
Plus Vacancy (of 5.0%)

Total Demand
Number of Total Demand determined income eligible
Less number of units in planning stage (FmHA and HUD)
Net Demand

If a penetration percentage is used in the study analysis, explain how that particular percentage was chosen.

Recommended Number By Unit Size

<table>
<thead>
<tr>
<th>One</th>
<th>Two</th>
<th>Three</th>
<th>Four</th>
</tr>
</thead>
</table>

Names and positions of individuals in the community who provided information for the study:

19. In Exhibit A-9 paragraphs 2 and 5 are revised to read as follows:

Exhibit A-9—Information to Be Submitted With Application For Rural Rental Housing (RRH) And Rural Cooperative Housing (RCH) Loans

2. A detailed cost breakdown of the project for such items as land and rights-of-way, building construction, equipment, utility connections, architectural/engineering and legal fees, and on- and off-site improvements. The cost breakdown also must show separately the items not included in the loan, such as furnishings and equipment. A Form FmHA 1924-13, “Estimate and Certificate of Actual Cost,” will be used for this purpose by
all applicants. This trade-item cost breakdown must be updated just prior to loan approval.

5. If more than 12 months have transpired since the applicant submitted the market analysis, the State Director may require a new one if he/she determines it necessary.

LaVerne Ausman,
Administrator, Farmers Home Administration.


[FR Doc. 92-14277 Filed 6-18-92; 8:45 am]

BILLING CODE 3410-57-M

NUCLEAR REGULATORY COMMISSION
10 CFR Chapter I

Review of Reactor Licensee Reporting Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff is seeking public comment in connection with a review of the reporting requirements for power reactor licensees appearing in Title 10 of the Code of Federal Regulations (10 CFR), Chapter I—Nuclear Regulatory Commission, NRC guidance documents (NUREGS, Regulatory Guides, or generic letters) that interpret the reporting requirements contained in the regulations, and reporting requirements for power reactor licensees contained in license documents such as Technical Specifications. This review is being conducted in response to a request from the Chairman that was forwarded to the NRC staff on January 16, 1992. The NRC staff is reviewing these requirements and associated guidance to determine if some reporting requirements can be reduced or eliminated to relieve unnecessary burdens placed on power reactor licensees without reducing the protection for public health and safety. The NRC staff expects to complete its review and issue a report containing recommendations on the need to modify ongoing activities related to reporting requirements, initiate additional rulemaking, or prepare or revise guidance documents by December 1, 1992.

This request is similar to an earlier request for comments published in the Federal Register on February 24, 1992 (57 FR 6299). The earlier request pertained to a special, high priority review of three parts of Chapter I to determine whether regulatory burdens can be reduced. This request focuses more narrowly on the reporting requirements of power reactor licensees.

DATES: Comment period expires August 18, 1992.

ADDRESSES: Mail comments to: David L. Meyer, Chief, Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may be hand delivered to room P-223, 7920 Norfolk Avenue, Bethesda, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays.

FOR FURTHER INFORMATION CONTACT: James Shapaker, Division of Operational Events Assessment, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 404-1151.

SUPPLEMENTARY INFORMATION:

The NRC has recently revised or initially promulgated a number of the regulations that contain reporting requirements for power reactor licensees. In the process of conducting these rulemaking activities, the regulations were published in the Federal Register for public comment and reviewed by the Committee to Review Generic Requirements (CRGR). Specifically, the NRC recently completed the following rulemaking activities:

1. Revised 10 CFR part 20, "Standards for Protection Against Radiation," (56 FR 23360; May 21, 1991). Shortly thereafter, the NRC revised 10 CFR part 20, in part, to delete certain event reporting requirements dealing with the loss of facility operation and the cost of incurred damage for events involving byproduct, source, or special nuclear material (56 FR 40757; August 16, 1991).


Two rules which contain significant reporting requirements for reactor licensees were issued earlier but were reviewed by the CRFR. They are 10 CFR 50.73, "Licensee Event Report System," which was issued in 1983 (48 FR 33850; July 26, 1983), and 10 CFR 50.72, "Immediate Notification Requirements for Operating Nuclear Power Reactors," which was revised in 1983 (48 FR 39039; August 29, 1983). The NRC issued 10 CFR 50.73 to standardize written reporting requirements, eliminate requirements to report events of low individual significance, and require more thorough documentation and analysis of reported events. The NRC also promulgated revisions to 10 CFR 50.72 to clarify the criteria of NRC System reporting only those matters that are relevant to the exercise of the Commission’s responsibilities. The revision to 10 CFR 50.72 also made it consistent with 10 CFR 50.73, and, therefore, most events promptly reported under 10 CFR 50.72 also require a detailed followup report under 10 CFR 50.73.

The following activities of the NRC also pertain to reporting requirements in the rules or to the interpretation of these rules:

In the fall of 1989, the NRC staff surveyed personnel from 13 nuclear power utilities to obtain their views on the effect of NRC regulatory activities on the safe operation of nuclear plants. The staff documented this survey in NUREG–1395, “Industry Perceptions of the Impact of the U.S. Nuclear Regulatory Commission on Nuclear Power Plant Activities,” issued in draft in March 1990. Section 8, “Reporting Events,” of draft NUREG–1395 included the industry’s comments on reporting required by 10 CFR 50.72 and 10 CFR 50.73.

In 1990, the NRC sponsored four regional workshops to discuss the industry’s concerns on the reporting of events. The NRC staff determined that it should clarify 10 CFR 50.72 and 10 CFR 50.73 to further improve their usefulness and quality, and to improve the threshold of reporting. On October 7, 1991, the NRC staff issued a Federal Register notice (56 FR 50598) requesting public comments on a draft of Revision 1 to NUREG–1022, “Event Reporting Systems (10 CFR 50.72 and 50.73),” “Clarification of NUREG–1022, Guidelines for Reporting.” The proposed revision to NUREG–1022 is intended to clarify and consolidate in one document existing guidance on the reporting of events and conditions that could be safety significant pursuant to 10 CFR 50.72 and 10 CFR 50.73, without changing the reporting requirements of the regulations. On May 7, 1992, the NRC staff held a public meeting to discuss the comments that have been received, and expects to complete its effort on NUREG–1022 in 1992.

The NRC staff is also promulgating revisions to 10 CFR 50.72 and 10 CFR 50.73 to delete the reporting requirements for invalid actuations of certain engineered safety features, which it has found to be of no safety significance. The staff has found that reports of these events do not improve the staff’s understanding of operating reactor safety. The rule changes are expected to reduce by about 5-10
percent the number of licensee event reports (LERs), that is, to eliminate about 150 LERs each year. A similar reduction is expected in the number of immediate event notifications pursuant to 10 CFR 50.72. This will reduce the industry’s reporting burden and the NRC’s burden in processing, reviewing, and assessing events. The staff currently expects to publish the proposed rule that would remove the unnecessary reporting requirements. In the Federal Register in June 1992.

On March 6, 1991, the NRC issued Generic Letter (GL) 91-03, “Reporting of Safeguards Events,” to provide immediate relief from certain aspects of the NRC’s policy for promptly reporting safeguards events under 10 CFR 73.71. The staff issued GL 91-03 as an interim measure pending the revision of Regulatory Guide (RG) 5.62, “Reporting of Safeguards Events.” In RG 5.62 the staff clarifies and describes the process for reporting safeguards events under 10 CFR 73.71. The staff issued Revision 1 of RG 5.62 in 1987 following CRGR review and anticipates issuing the next revision of RG 5.62 for comment in 1993.

In 1984, the NRC staff reviewed existing requirements applicable to power reactors in order to find and eliminate any regulatory requirements that provide only a marginal contribution to safety while imposing a substantial burden. On February 4, 1992, the NRC issued a Federal Register notice (57 FR 4186) requesting public comment on the need for revisions to the regulations, including a move toward less prescriptive and more performance-oriented regulations. The comment period for this request closed on May 4, 1992. The staff is analyzing the public comments and will take appropriate action.

The NRC staff is developing new Standard Technical Specifications (STS) in accordance with the 1987 Commission Policy Statement on Technical Specification Improvements. In the past several years, the industry has contributed significantly to this effort. The staff is modifying the reporting requirements in the STS in response to the industry’s comments. Where appropriate, changes to reporting requirements in the new STS will be offered as line-item technical specification improvements, making them available to each licensee through a license amendment, independent of whether a licensee plans to adopt the new STS.

On February 24, 1992, the NRC issued a Federal Register notice (57 FR 6299) to solicit public comments in connection with a special review of NRC regulations being conducted by the CRGR, to determine whether or not regulatory burdens can be reduced without in any way reducing the protection for public health and safety and the common defense and security. On March 27, 1992, the NRC held a public meeting to discuss the comments received and to allow additional comments from the public. The CRGR issued its report on the special review of NRC regulations on April 13, 1992, and forwarded it to the Commission on April 17, 1992 (SECY-92-141). The CRGR recommended taking the following four rulemaking actions pertaining to reporting requirements that met the objectives of its review:

1. Change the frequency of safety analysis report updates from once each year to once each refueling cycle (10 CFR 50.71);
2. Change the frequency of reporting changes at power reactors from once each year to once each refueling cycle (10 CFR 50.59 (b));
3. Eliminate certain power reactor event reports (10 CFR 50.72 and 10 CFR 50.73) (See above discussion); and
4. Change the frequency of reports on power reactor radiological effluents from twice each year to once each year (10 CFR 50.36a).

Although the CRGR received comments concerning reporting requirements from several sources, the Nuclear Management and Resources Council (NUMARC) broadly commented that the NRC should review its system of reporting requirements in the aggregate (which includes the regulations, license documents such as the Technical Specifications, and guidance documents such as NUREG reports, generic letters and Regulatory Guides), and consider eliminating duplicate reports, reports do not contribute to safety, and reports that are not reviewed by the NRC. NUMARC identified over 100 reporting requirements, with an equal number being taken from 10 CFR Chapter I and the Standard Technical Specifications, to illustrate the magnitude of the reporting burden. NUMARC stated that many of the requirements are duplicates or do not contribute to safety. NUMARC did not discuss specific concerns regarding each reporting requirement. As previously discussed, many of the reporting requirements listed either have recently been, or are currently being, considered in a rulemaking action, and as noted above, several have been recommended for rulemaking action.

Many recently completed and ongoing NRC activities pertain to reporting requirements, including the guidance for reporting requirements in the regulations. Industry comments were or are being considered in all of these activities. However, to ensure that the potential for reducing reporting requirements is considered in an integrated manner, the NRC staff is soliciting the views of the nuclear power industry and other interested parties on reducing reporting requirements. Interested parties are asked to comment on specific reporting requirements that the NRC may not be considering in ongoing activities and that can be eliminated or reduced in scope. Comments are requested on power reactor licensee reporting requirements that are contained in the regulations, license documents (such as Technical Specifications), or guidance documents (NUREG documents, Regulatory Guides, or generic letters interpreting the regulations). Those submitting comments are asked to provide, for each item addressed, specific changes to the regulations, guidance, or Technical Specifications that will eliminate duplication, eliminate reporting perceived to be unnecessary for the NRC to perform its mission, or reduce the burden of reporting. Specific proposed changes may include eliminating a reporting requirement; revising its scope, frequency, or addressee list; or converting a reporting requirement to a recordkeeping requirement.

Dated at Rockville, Maryland, this 12th day of June 1992.

For the Nuclear Regulatory Commission.

Thomas E. Murley,
Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92-14467 Filed 6-18-92; 8:45 am]
BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY
Office of Fossil Energy
10 CFR Parts 220, 300 and 320

Existing Regulations and Programs; Regulatory Review

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: On March 2, 1992, the Department of Energy (DOE) issued a notice of inquiry (57 FR 7327) to request public comment on existing regulations and programs that DOE had identified as meriting consideration for revision or elimination in compliance with the President’s January 28, 1992, Memorandum for Certain Department and Agency Heads on the subject of
"Reducing the Burden of Government Regulation" ("President's Memorandum"). No comments were received on those existing regulations and programs identified in the notice of inquiry by the Office of Fossil Energy. The Office of Fossil Energy is now proposing to eliminate the regulations codified at 10 CFR part 220, entitled "Strategic Petroleum Reserve Crude Oil Allocation"; 10 CFR part 300, entitled "Coal Loan Guarantee Program"; and 10 CFR part 320, entitled "University Coal Research Laboratories Program," in compliance with the President's Memorandum. The Office of Fossil Energy invites members of the public to comment on the proposed removal of the regulations.

DATES: Written comments (10 copies) will be considered if received at the address provided below on or before July 20, 1992.

ADDRESSES: All written comments (10 copies) are to be submitted to: J.E. Walsh Jr., Deputy Assistant Secretary for Management, Fundamental Research and Cooperative Development (FE-10), United States Department of Energy, Washington, DC 20585.


SUPPLEMENTARY INFORMATION: The regulations codified at 10 CFR part 220, entitled "Strategic Petroleum Reserve Crude Oil Allocation," are proposed for elimination because they refer to options for allocating crude oil which are no longer available, due to the expiration of the Emergency Petroleum Allocation Act. Furthermore, in 1982, Strategic Petroleum Reserve Plan Amendment Number Four added a number of the terms and conditions that would apply to the use of a directed sales method to distribute SPR crude oil. Accordingly, the Department believes that if the directed sales method were to be employed, it would be appropriate to publish new regulations, rather than rely on 10 CFR part 220 as now written. The regulations codified at 10 CFR part 300, entitled "Coal Loan Guarantee Program," are proposed for elimination because the program applicable to these regulations was suspended effective August 8, 1986, due to lack of program loan budget authority and lack of public interest in the program (51 FR 24610, July 9, 1986). The regulations codified at 10 CFR part 320, entitled "University Coal Research Laboratories Program," are proposed for elimination since no budget authority was provided for the program and the regulations were never utilized. In lieu of it, budget authority was provided for the Office of Fossil Energy's Advanced Research and Technology Development Program, which provides competitive university research awards pursuant to general procurement regulations.

On January 28, 1992, the President issued the President's Memorandum which established a 90 day period for a moratorium, subject to certain exceptions, on issuance of proposed and final regulations and for a review of existing regulatory programs and pending regulatory initiatives with the objective of reducing the burdens of regulation to the extent that the law allows. The President's Memorandum directed that each regulation and regulatory initiative be reviewed, with public input, for compliance with the following standards:

(a) The expected benefits to society of any regulation should clearly outweigh the expected costs it imposed on society.
(b) Regulations should be fashioned to maximize net benefits to society.
(c) To the maximum extent possible, regulatory agencies should set performance standards instead of prescriptive command-and-control requirements, thereby allowing the regulated community to achieve regulatory goals at the lowest possible costs.
(d) Regulations should incorporate market mechanisms to the maximum extent possible.
(e) Regulations should provide clarity and certainty to the regulated community and should be designed to avoid needless litigation.

The President's Memorandum further directed that, to the maximum extent permitted by law, and as soon as possible, the agency should propose repeal or modifications in existing regulations to bring them into conformity with the foregoing standards.

Opportunity for Public Comment

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposals set forth in this notice. Comments should be submitted to the Office of Fossil Energy at the address set forth above. The envelope and written comments submitted should be identified with the designation, "Notice of Proposed Rulemaking." Ten (10) copies of the comments should be submitted.

All comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking final action. Comments received after that date will be considered to the extent that time allows.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy marked confidential, as well as ten (10) copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. This procedure is set forth in 10 CFR 1004.11.

B. Public Hearing

This notice of proposed rulemaking does not involve any significant issues of law or fact and the rule would be unlikely to have a substantial impact on the Nation's economy or large numbers of individuals of businesses. Accordingly, pursuant to 42 U.S.C. 7191(c) and 5 U.S.C. 553, DOE is not scheduling a public hearing.

Other Matters

A. Review Under Executive Order 12291

The proposed rule has been reviewed under Executive Order 12291. DOE has concluded that the rule would not be a "major rule" since it will not result in:
(1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete in domestic export markets.

In accordance with the requirements of the Executive Order, this notice has been reviewed by the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The proposed rule has been reviewed under the Regulatory Flexibility Act, Public Law 96-354 (42 U.S.C. 601-612) which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses and small government jurisdictions. This action would revoke certain regulations and thus would impose no economic burden upon small entities subject to those regulations.
DOE accordingly certifies that there will not be a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

C. Review Under the National Environmental Policy Act.

The proposed rule has been reviewed under the National Environmental Policy Act of 1969, Public Law 91-190 (42 U.S.C. 4321 et seq.), Council on Environmental Quality Regulations (40 CFR parts 1500-08), and the Department of Energy environmental regulations (10 CFR part 1021) and has been determined not to constitute a major Federal action significantly affecting the quality of the human environment. Accordingly, no environmental impact statement is required.

D. Review Under Executive Order 12612

Executive Order 12612 requires that regulations be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires the preparation of a Federalism assessment to be used in decisions by senior policymakers in promulgating or implementing the regulation. The proposed rule will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Preparation of a Federalism assessment is therefore unnecessary.

E. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards (whether they be engineering or performance standards), and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation:

- Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect;
- Describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms.

DOE certifies that today’s proposal meets the requirements of sections 2(a) and (b) of Executive Order 12778.

List of Subjects in 10 CFR Parts 220, 300, and 320

Fossil Energy.


James G. Randolph,
Assistant Secretary for Fossil Energy.

For the reasons set forth in the preamble, title 10, chapter II, of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 220—STRATEGIC PETROLEUM RESERVE CRUDE OIL ALLOCATION

1. Part 220 is removed.

PART 300—COAL LOAN GUARANTEE PROGRAM

2. Part 300 is removed.

PART 320—UNIVERSITY COAL RESEARCH LABORATORIES PROGRAM

3. Part 320 is removed.

[FR Doc. 92-14410 Filed 6-16-92; 10:03 am]
BILLING CODE 6450-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration
[Docket No. 91N-0487]

21 CFR Parts 860 and 890

Medical Devices; Protective Restraints; Revocation of Exemptions From 510(K) Premarket Notification Procedures and Current Good Manufacturing Practice Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise the protective restraint classification regulation, set forth in § 880.6760 (21 CFR §880.6760), by revoking exemptions from the premarket notification procedures and certain current good manufacturing practices (CGMP) requirements. The agency is also proposing to revise the final classification regulation for restraints as wheelchair accessories, set forth in § 880.3910 (21 CFR §880.3910). FDA is considering revision of the regulation in response to a number of recent reports of deaths or serious injuries that have been ascribed in the medical literature to improper supervision of restrained patients or to improper application of the protective restraint. FDA believes that these actions will have minimal economic effect and will not disrupt the supply of these devices.

DATES: Written comments by August 18, 1992.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 1220 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia Dubill, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5000 Fishers Lane, Rockville, MD 20857, 301-443-4074.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 21, 1980 (45 FR 69978 at 69979), FDA published a final rule, in accordance with the procedures contained in section 513 of the act (21 U.S.C. 360c), classifying a protective restraint as a device, usually a wristlet, anklelet, or a type of strap, that is intended for medical purposes and that limits a patient’s movement to the extent necessary for treatment, examination, or protection of the patient. Examples of protective restraint devices include safety vests, hand mitts, lap and wheelchair belts, body holders, straight jackets, and protection nets, as well as anklets and wristlets. FDA realizes that other items that are not intended or designed for use as medical devices useful for protective restraint have been adapted for such use. FDA has always strongly discouraged the use of any equipment for a medical or therapeutic purpose which has not been designed specifically and evaluated for that purpose.

In the current regulation, FDA had exempted manufacturers of the device from: (1) The premarket notification procedures in subpart E of part 807 (21 CFR part 807); and (2) the CGMP regulations in part 820 (21 CFR part 820), with the exception of §§ 820.180 and 820.198, relating to general requirements concerning records, and complaint files, respectively. FDA granted these exemptions because, at that time, FDA had no reason to suspect that there were any adverse experiences related to protective restraint devices.

The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) amended sections 1819 (Medicare) and 1919 (Medicaid) of the Social Security Act to address the use of restraints directly. The statute expressly requires Medicare skilled nursing facilities and Medicaid nursing facilities to protect and promote the residents’ freedom from restraints.

Sections 1819(c)(1)(A)(ii) and
1919(c)(1)(A)(ii) establish "[t]he right to be free from physical and mental abuse, corporal punishment, involuntary seclusion and any physical or chemical restraints * * * not required to treat the resident's medical symptoms." The statute permits imposition of restraints in those facilities only in restricted circumstances (see sections 1819(c)(1)(A)(I) and (II) and 1919(c)(1)(A)(ii) (I) and (II)). The Health Care Financing Administration (HCFA) has implemented these requirements in 42 CFR part 483, especially 42 CFR 483.13. The Medicare and Medicaid statutes also preclude the use of psychopharmacologic drugs except under authorized conditions (see sections 1819(c)(1)(D) and 1919(c)(1)(D)).

On February 5, 1992 (57 FR 4516), HCFA issued a proposed rule which would extensively expand existing Medicare and Medicaid requirements on long-term facilities to protect against inappropriate use of restraints, including psychopharmacologic drugs. Among other things, the proposed rules would specify when a facility may use restraints and how they are to be applied.

The HCFA regulations address issues related to the clinical indications that would prompt use of restraints in these facilities. The current FDA proposal addressees pressing public health concerns related to the application, handling, and operation of these medical devices. Training, education, and guidelines for use may be highly beneficial in promoting safe use of any medical device, including protective restraints. Thus, FDA proposes that principles of human factor control be incorporated into the product labeling and accompanying directions for the application and handling of protective restraints to minimize the potential for human error. FDA's proposed rule will complement the HCFA regulations and HCFA's February 5, 1992, notice of proposed rulemaking for restraint use by addressing directions for use issues that may improve patient safety by educating personnel or by facilitating proper application. In other words, when use of a restraint is permitted as clinically indicated in regulated facilities, FDA's proposed rule would permit FDA to require that all restraints will incorporate simple and easy to follow directions for application, handling, and supervision.

Protective restraints provide benefits to many patients when used for indicated circumstances, such as precluding patients with temporary or medically-related cognitive deficits from impairing the resolution of their physical problems by involuntarily discontinuing life-support or other needed medical interventions, temporarily reducing the mobility of agitated patients who may otherwise hurt themselves, or helping patients feel safer in a bed or wheelchair. However, since publication of the original final classification regulation for protective restraints, § 880.6760, FDA has become aware, through various sources, of numerous reports of complications, including permanent physical injuries, severe psychological disabilities, other serious injuries, and deaths (Refs. 1 through 34), that have been attributed to incorrect supervision, handling, or application of protective restraint devices by medical or paramedical personnel. Reports refer to emotional desolation, agitation, fractures, chafing, burns, nerve damage, circulatory impairment, decubitus ulcers, strangulation, and death.

FDA's medical device reporting database lists 41 deaths and 16 serious injuries associated with protective restraints. These reports encompass all restraint types, regardless of manufacturer or design; all patient populations, regardless of clinical indication for the placement of the restraint; and various types of health care facilities, including home use situations. These prevalence and incidence data have led FDA to believe that further investigation, through analysis of 510(k) applications and adherence to CGMP's, is warranted. FDA does not currently have any information that would lead FDA to conclude that device design is inherently flawed. Indeed, incidents involving patient deaths, which result primarily from misuse of the devices, are rare.

Thus, FDA recognizes the delicate balance between inherent risks and demonstrable medical benefits, but believes that gathering of further information about the potential usefulness of labeling and directions for use may ultimately limit untoward events.

Complications associated with protective restraints may result from a combination of misuse of the devices, inadequate supervision, and, possibly, the design of particular devices. To that end, FDA is aware of reports that injuries may have resulted from the simple error of applying the restraint backwards on the patient. This may be done accidentally because of the lack of clear labeling concerning the proper application of these devices and directions for use that educate users about the hazards associated with applying the device backwards. FDA believes that warning labels may be needed to ensure that personnel are aware of these hazards and to differentiate clearly the front from the back of the garment.

Restraints have also allegedly resulted in injuries from improperly securing ties to the bed. Injury may occur, for example, if ties are secured to the fixed parts of the bed, rather than the parts that move with the bed when it is raised or lowered, thereby causing injury by automatic and unintended tightening of the patient restraint.

As noted above, the complications associated with protective restraint devices frequently result from misuse of the devices. FDA believes that, to address potential misuse, it would be advisable for manufacturers to include specific directions for use, to the extent that such directions are not currently available or are not attached to, or kept with, the garment. To that end, FDA believes that such instructions could include: (1) Step-by-step instructions on how to apply protective restraint devices and where to secure the ties; (2) attached warning labels that identify clearly the front and back of the restraining device, and the dangers of reversal using pictorials; and (3) use of standards such as size-color coding. Such instructions, or suggested education for users, may be particularly appropriate when devices are applied or handled by personnel who may have insufficient training in handling such devices.

Furthermore, FDA has had reports of injuries to patients in protective restraints related to fires. FDA is soliciting comment as to whether all or some protective devices should be constructed of flame retardant or resistant materials.

Because of the exemption from premarket notification requirements, FDA has not collected information concerning the current availability and actual employment of directions for use, instructions, color coding or labeling for size or orientation, use of flame retardant material, and/or suggested user or purchaser educational programs, that might serve to reduce whatever patient risk may exist when the use of such devices is medically necessary or clinically indicated. Furthermore, FDA does not currently have clinical data on the impact on safety and effectiveness
that such programs or labeling might have for the susceptible patient population. FDA believes that revocation of the exemption from premarket notification requirements will enable the agency to acquire and act upon such information in order to fulfill its statutory mandate that protective restraints are as safe and as effective as is possible given the medical need for restraints in certain critical circumstances. Revocation of the exemption from the premarket notification procedures will permit FDA to monitor the introduction into commerce, by manufacturers and importers, of protective restraint devices. This will facilitate identification of the etiology and potential solutions to mishaps and allow for a labeling review prior to marketing.

In proposing to revoke the exemption from premarket notification, FDA is including persons presently marketing protective restraint devices among those who must file 510(k) notifications. The serious nature of the reported complications from marketed restraints creates a public health imperative that FDA has the means to evaluate the present and future safety and effectiveness of protective restraint devices.

Similarly, FDA believes that revocation of the exemption from most CGMP requirements will enable the agency to require such labeling and implementation of use and supervision that would ensure that protective devices can be used in a manner in accordance with suggested good medical and nursing practice. To that end, compliance with all of the CGMP requirements will help ensure that restraints conform to their specifications for design, materials, performance, and labeling. For example, labels should remain affixed and legible for the life of the device. Detachment or deterioration in the legibility of labels from repeated washing of restraints may impair the clinical usefulness of the label as a tool to ensure proper use. Further, compliance with CGMP requirements will ensure that manufacturers are investigating any failure of the device or its components that might be obviated by user instructions or changes in labeling.

FDA believes that any use of a protective restraint represents a potential hazard to the patient that must be weighed by the prescriber against known and well-identified medical benefits. Accordingly, FDA plans to continue to monitor reports of adverse events attributed to protective restraints and to correlate these data with the information received in 510(k) submissions to identify those features of specific devices or directions for use that provide the least potential hazard in order to ensure maximization of the patient benefit.

The revocation of the exemptions would provide FDA: (1) Notification by manufacturers and importers of the devices that are intended for commercial distribution; and (2) assurance that manufacturers will follow CGMP regulations.

FDA is also making minor changes in the identification paragraphs (§§ 880.6760(a) and 890.3910(a)) of the classification regulations for protective restraints and for wheelchair accessories. These changes are for purposes of clarification only.

FDA advises that, although wheelchair accessories are classified as class I devices (see 21 CFR 890.3910) and are currently granted an exemption from premarket notification and certain CGMP requirements, those wheelchair accessories that function as protective restraint devices, e.g., wheelchair belts, roller bars, lap bars and Y-straps, would be required to comply with premarket notification and all CGMP requirements.

FDA is providing 60 days for public comment on the proposed rule. FDA is proposing that any final rule based on this proposal will apply to any person that is required to register and list under § 807.20 because of the manufacture or importation of protective restraint devices.

I. Effective Dates

A premarket notification submission would be required for any protective restraint device intended to be introduced into commercial distribution within 90 days after publication of a final rule in the Federal Register, pursuant to section 510(k) of the act (1 U.S.C. 360(k)) and the procedures in subpart E of part 807.

A manufacturer or initial distributor of a protective restraint device that is already in commercial distribution under the existing exemption from premarket notification or that introduces this device into commercial distribution at any time prior to 90 days after publication of the final rule in the Federal Register would be required to submit to FDA a premarket notification within 90 days after publication of the final rule in the Federal Register.

All protective restraints, whether made in the United States or imported, that are introduced or delivered for introduction into commerce more than 90 days after date of publication of the final rule in the Federal Register, would be required to be manufactured in compliance with the CGMP regulations in part 820.

II. Environmental Impact

FDA has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96-395), the agency has examined the economic impact of this proposed rule and has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this proposed rule has been analyzed, and it has been determined that this proposed rule is not a major rule as defined in section 1(b) of the Executive Order. The proposed rule subjects manufacturers and initial distributors of protective restraint devices to the same requirements applicable to most other manufacturers of medical devices.

There are 31 registered establishments engaged in the manufacture of patient restraints. FDA estimates that the average cost of preparing a premarket notification would be $2,000. On the average, each firm manufactures five different restraints, requiring separate premarket notifications. Therefore, the average initial cost per manufacturer of complying with the premarket notification requirements would be $10,000 ($2,000 times 5). FDA also estimates that the average expense a manufacturer would incur in coming into compliance with the CGMP requirements would be $30,000. Therefore, the total first-year costs imposed by this regulation would be $930,000 ($30,000 per manufacturer times 31). FDA anticipates that the annual cost in subsequent years would be considerably reduced after initial compliance with CGMP requirements is reached and also because fewer premarket notifications would be required. There would also be savings to manufacturers in reduced product liability exposure as a result of compliance with this rule and the necessary compilation of information or clinical data that would result from the need to file a 510(k). Furthermore, implementation of simple and easy-to-understand directions for use and clear labeling has the important objective of
severely reducing the number of lives lost and the number of serious injuries sustained by patients who require such devices. However, the benefits are difficult to quantify either in terms of dollars or avoidance of injuries or deaths because the benefits depend on whether the proposed labeling will change the behavior of users.

IV. Comments

Interested persons may, on or before August 18, 1992, submit to the Dockets Management Branch (address above) written comments regarding this proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.


22. "Minneapolis Star Tribune," December 5, 1990, at section 1A.


28. Stewart, Mary C., letter to James Benson, Acting Commissioner, FDA, undated.


30. Lesseg, Mike, letter to Robert Mansell, Acting Commissioner, FDA, undated.


List of Subjects

21 CFR Part 880

Medical devices.

21 CFR Part 890

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 880 and 890 be amended as follows:

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

1. The authority citation for 21 CFR part 880 continues to read as follows:


2. Section 880.6760 is revised to read as follows:

§ 880.6760 Protective restraint.

(a) Identification. A protective restraint is a device, including but not limited to a wristlet, ankle, vest, mitt, straight jacket, body/limb holder, or other type of strap, that is intended for medical purposes and that limits the patient's movements to the extent necessary for treatment, examination, or protection of the patient or others.

(b) Classification. Class I (general controls).

PART 890—PHYSICAL MEDICINE DEVICES

3. The authority citation for 21 CFR part 890 continues to read as follows:


4. Section 890.3910 is revised to read as follows:

§ 890.3910 Wheelchair accessory.

(a) Identification. A wheelchair accessory is a device intended for medical purposes that is sold separately from a wheelchair and is intended to meet the specific needs of a patient who uses a wheelchair. Examples of wheelchair accessories include but are not limited to the following: armboard, lapboard, pusher cuff, crutch and cane holder, overhead suspension sling, head and trunk support, and blanket and leg rest strap.

(b) Classification. Class I (general controls). If the device is not labeled or otherwise represented as a protective restraint as defined in § 880.6760 of this chapter, it is exempt from the premarket notification procedures in subpart E of Part 807 of this chapter, and is also exempt from current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.
DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-53-89]

RIN 1545-AN80

Inclusions in Income of Lessees of Passenger Automobiles and Other Listed Property; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on supplemental proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on supplemental proposed regulations that relate to the treatment of lessees of luxury automobiles and other listed property.

DATES: The public hearing originally scheduled for Friday, June 26, 1992, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-260-8236 or 202-566-3635 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is supplemental proposed regulations under section 280F of the Internal Revenue Code. A notice of public hearing appearing in the Federal Register for Friday, January 24, 1992 (57 FR 2262), announced that the public hearing on the supplemental proposed regulations would be held on Friday, June 26, 1992, beginning at 10 a.m., in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Friday, June 26, 1992, has been cancelled.

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

[FR Doc. 92-14427 Filed 6-16-92; 11:25 am]

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4 and 9

[Notice No. 742]

RIN 1512-AA31

Wine Labeling Amendments (88F-221P)

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), is proposing to amend the wine labeling regulations in 27 CFR part 4 to: (1) Broaden the use of the “Estate bottled” designation, (2) Allow the use of a harvest year designation for fruit, berry and agricultural wines, (3) Expand the use of a viticultural area designation, (4) Allow the use of multicity or multistate appellations of origin for other than grape wine, (5) Allow the use of the designation “other than standard” on a wine label, (6) Allow the use of a vineyard, orchard, farm or ranch name on a wine label, (7) Allow the use of a brand name with a varietal (grape type) name, (8) Allow more than three grape varieties on a wine label, and (9) Address the use of a geographic brand name which has a viticultural area significance.

DATES: Written comments must be received by July 20, 1992.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, PO Box 50221, Washington, DC 20091-0221 [Notice No. 742).


SUPPLEMENTARY INFORMATION:

I. Background

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director of ATF, as a delegate of the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer, and to provide the consumer with adequate information as to the identity and quality of the product. Regulations which implement the provisions of section 105(e), as they relate to wine, are set forth in title 27, Code of Federal Regulations (CFR), part 4. The last multiple issue revision of the wine labeling regulations was Treasury Decision ATF–53, 43 FR 37672 (August 23, 1978), which was effective September 22, 1978. This notice of proposed rulemaking addresses several wine labeling issues which have been brought to our attention over a period of several years by industry members or other groups that we believe are of importance at this time.

II. Proposed Wine Labeling Amendments

1. Broadened Use of the “Estate bottled” Designation

The estate bottled regulation was a controversial area of the 1978 rulemaking process resulting in T.D. ATF–53. In Notice No. 290 leading to T.D. ATF–53, 41 FR 8188 (February 25, 1976), we first proposed an estate bottled regulation which required that the grapes be grown on land owned by and within five miles of the bottling winery. The proposal was revised in Notice No. 304, 41 FR 50004 (November 12, 1976), to cover wine produced by the bottling winery entirely from grapes grown within a single approved viticultural area or vineyard, on property owned and controlled by the bottling winery. In addition, the bottling winery had to be located within the State in which the viticultural area was located. Based on public comments, we then proposed in Notice No. 304, amended, 42 FR 30517 (June 15, 1977) to prohibit the use of the “Estate bottled” designation because the term had no real meaning to the consumer. However, during the public hearings on Notice No. 304, amended, another proposal was submitted which focused on grapes grown in vineyards owned by the winery in the viticultural area designated on the label. The testimony in support of that proposal indicated that wine producers considered the designation to convey the notion that the winery had control of the wine from the grape growing through the production process. As a result of the written comments and the testimony at the public hearings, we adopted the current regulation in 27 CFR 4.23. Under the regulation, in general terms, “Estate bottled” means that the bottling winery grew all the grapes used to make the wine on land which it owned or controlled within the viticultural area. In addition, the winery itself must be located within the viticultural area and must have crushed the grapes,
fermented the resulting must, and finished, aged, and bottled the wine in a continuous process (the wine at no time having left the premises of the bottling winery). Proposed are three revisions to allow additional uses of the "Estate bottled" designation. There are many small bonded wine premises proprietors in the United States who grow their basic winemaking material on land located contiguous to their bonded wine premises which would qualify for the use of "Estate bottled" on their grape wine labels if such premises were located in a viticultural area. These proprietors believe they should not have to establish a viticultural area only for the purpose of being allowed to use the "Estate bottled" designation. In their view, it is the control over the grape growing and wine production activity which imparts the personal characteristics to the wine that the consumer attaches to the "Estate bottled" designation. The first proposed revision of 27 CFR 4.26 would allow the proprietor of a bonded wine premises outside of a viticultural area to use the "Estate bottled" designation for wine derived from primary winemaking material produced on land owned or controlled by the proprietor which is located contiguous to the proprietor's bonded wine premises. This proposal has the specific restriction that the land be contiguous to the bonded wine premises. Existing regulations allow wine to be labeled "Estate bottled" if the grapes are grown on land anywhere in the viticultural area where the bonded wine premises is located and such land is owned or controlled by the proprietor producing the wine. ATF believes that the "Estate bottled" designation on wine produced from grapes grown anywhere in a viticultural area can be allowed because the wine has that viticultural area stated on the label. However, we are requesting comments on restricting grapes to land contiguous to the bonded wine premises for proprietors outside a viticultural area while allowing proprietors inside a viticultural area to produce "Estate bottled" wine from grapes grown anywhere in such an area. We are also requesting comments on whether there are characteristics or features unique to viticultural areas which would require continuing the restriction of the "Estate bottled" designation to wines from a viticultural area.

The second estate bottled proposal concerns proprietors producing wine from fruit and other agricultural products other than grapes who have asked to be allowed to use the "Estate bottled" designation on their wines also.

T.D. ATF-53 allowed the "Estate bottled" designation for grape wine only since that was the only type of wine for which the designation was requested. This notice proposes to allow the "Estate bottled" designation for such wines with the same restrictions proposed for proprietors producing grapes on land contiguous to their bonded wine premises but outside of a viticultural area. We are requesting comment on whether the use of the "Estate bottled" designation on a wine label should be restricted to only grape wine or should wine made from other than grapes also be allowed such use.

The third estate bottled proposal would apply to proprietors who have more than one bonded wine premises in the same viticultural area. We have received requests from proprietors to allow the use of the "Estate bottled" designation for wine which prior to bottling was transferred in bond between their bonded wine premises located in the same viticultural area. The primary reason for the requests from proprietors in a few major wine producing areas is the space limitation on storage at the producing and bottling bonded wine premises and a corresponding local restriction on adding storage capacity at such premises. We have previously denied these requests because 27 CFR 4.26(a)(1) very specifically states that the wine at no time may leave the premises of the bottling winery. The proposed revision would allow a proprietor to move wine between their bonded wine premises located in the same viticultural area and use the "Estate bottled" designation. It has been suggested that this revision is consistent with the meaning of the "Estate bottled" designation because the grapes are grown on land from anywhere in the viticultural area where the proprietor's bonded wine premises is located provided such grapes are grown on land owned or controlled by the bonded wine premises proprietor. We are seeking comment on whether a broadened use of the "Estate bottled" designation is a necessary outgrowth in recognizing needed flexibility for proprietors with multiple winery locations within a viticultural area. These comments should address whether such commonly-owned bonded wine premises in a viticultural area share sufficient common features in the production process resulting in the characteristics or features associated by the consumer with "Estate bottled" wines. Finally, since we are considering whether bonded wine premises located outside of a viticultural area should be allowed to use the "Estate bottled" designation, we are interested in comments concerning whether the bonded wine premises should also be allowed to move wine between commonly-owned premises, all of which are located outside a viticultural area. That is, do grounds exist for allowing such movement within a viticultural area which do not apply to such movement of wine between commonly-owned premises outside of a viticultural area.

2. Harvest Year Designations for Fruit, Berry and Agricultural Wines

ATF received two petitions to allow the use of harvest year designations on the labels of fruit, berry and agricultural wines. Currently, only grape wines may in accordance with the standards prescribed in classes 1, 2 or 3 of 27 CFR 4.21 are allowed to have the year of harvest, or vintage, under the provisions of § 4.27(a), on the brand label. Current regulations, 27 CFR 4.39(b) and 4.64(c), prohibit the use of any statement of age on wine, including harvest or vintage year, except as allowed in 27 CFR 4.27. Previously, ATF issued Notice No. 393, 46 FR 54963 (November 5, 1981), proposing to expand the term vintage, as defined in 27 CFR 4.27, to include fruit wines made in accordance with class 5 of 27 CFR 4.21. Notice No. 393 was subsequently withdrawn in September of 1982 by Notice No. 423, 47 FR 40451 (September 14, 1982). At that time, ATF agreed with the majority of the 14 commenters to Notice No. 393 who stated that consumers associate the term vintage only with grape wine products.

The petitions request a harvest year designation for fruit, berry and other agricultural wines in order to better inform the consumer as to the quality of the wine being purchased in a given year from a particular geographic area. The petitioners state that environmental factors such as heat, light and rain can influence the quality of the fermented products from year to year in the same way as grapes and with the same significant variations.

After consideration of the petitions received and of the notices previously issued concerning harvest or vintage year statements, we are proposing a new 27 CFR 4.28 to allow a harvest year designation for citrus fruit wines, other fruit and berry wines, and agricultural wines made in accordance with the standards prescribed in classes 4, 5 and 6 of 27 CFR 4.21.

4. Proposed Changes to "Estate Bottled" Designation

Berry and Agricultural Wines

After consideration of the petitions received and of the notices previously issued concerning harvest or vintage year statements, we are proposing a new 27 CFR 4.28 to allow a harvest year designation for citrus fruit wines, other fruit and berry wines, and agricultural wines made in accordance with the standards prescribed in classes 4, 5 and 6 of 27 CFR 4.21.
3. Expanded Use of a Viticultural Area Designation

Various wineries purchase grapes grown in another State for use in their wine production. In many situations, the wine produced can only be labeled with a country appellation of origin. The producers of such wine want to use a vintage date on their labels and have asked ATF to amend the wine regulations to allow use of a vintage date on a wine bearing the country appellation of origin of “American.” The rulemaking proceeding resulting in T.D. ATF-53 specifically prohibited the use of a vintage date on a wine label with the name of a country appellation of origin. A vintage date informs consumers that the grapes used to produce the wine may have influencing factors exerted on the grapes which are different from those factors of another year. ATF believes that the name of a country is too large an appellation of origin area for the consumer to consider the influences on the grapes of one year to be different than those of another year.

Alternatively, ATF believes that a different regulatory amendment would allow these wineries to use a vintage date in many situations. Wines having a viticultural area appellation of origin designation are eligible to bear a vintage date. Wineries are purchasing grapes grown in other States which would qualify for a viticultural area designation if the wine from such grapes was produced in the State where the viticultural area is located. However, the regulations do not allow the finished wine to bear a viticultural area appellation of origin where the wine is produced outside the State containing the viticultural area. If the finished wine did bear a viticultural area appellation of origin and such wine was purchased by a wine premises proprietor in another State, then the label could include the viticultural area appellation of origin and a vintage date. Since the name and address of the bottling winery must appear on the label, the consumer can determine that an appellation of origin designation refers to where the grapes were grown and that the winery name and address statement refers where wine operations occurred.

A viticultural area designates a specific geographical grape growing region. The factors considered in approving a viticultural area, such as temperature, rainfall, elevation, soil, etc., are factors directly influencing the grapes grown in the area. The viticultural area factors influencing the grapes do not change if these grapes are transported to another State for the production of wine. ATF is proposing to amend § 4.25a(e)(3)(iv), one of the viticultural area requirements, to allow wine fully finished outside a viticultural area from where the grapes were grown to be labeled with a viticultural area designation as long as such wine was finished within the United States. Such a wine would then be eligible to use a vintage date. The viticultural area appellation of origin designation on a label informs the consumer where the grapes which made the wine was grown. The required winery name and address on the label would inform the consumer if such wine was produced and bottled at a location other than the viticultural area appellation of origin.

At this time, ATF is not proposing similar changes with respect to appellations of origin other than viticultural areas, such as county or State, because these names refer to geopolitical areas and not designated grape growing areas. Therefore, the requirement that the wine labeled with a State appellation be finished within the labeled State or adjacent State and wine labeled with a county appellation be finished within the State in which the labeled county is located would remain unchanged. Although not proposed, ATF will consider comments on allowing a similar expanded use of a geopolitical appellation of origin on labels for wine produced outside such appellation from grapes grown in such appellation.

4. Multicounty or Multistate Appellations of Origin for Other Than Grape Wine

The regulations allow American wine derived from fruit or other agricultural products to be labeled with an American, State or county appellation of origin. However, only wine produced from grapes can be labeled with a multicounty or a multistate appellation of origin.

As originally issued, the appellation of origin provision of the wine labeling regulations applied to wine produced from any fruit or other agricultural product. As part of the proceedings resulting in T.D. ATF-53, the grape wine industry asked ATF to permit, for the first time, the use of multicounty or multistate appellations of origin. The industry suggested that multicounty appellations may be more meaningful to consumers than a State appellation and that multistate appellations were more meaningful than country appellations. In order to permit greater flexibility in appellation of origin labeling, these multicounty and multistate appellations were authorized for grape wine, provided the label disclosed the percentages of wine derived from grapes grown in the counties and States. Since producers of wine made from other than grapes and from other agricultural products desire to use multicounty and multistate appellations, ATF is proposing to revise 27 CFR 4.25a(c) and (d) to allow all fruit or other agricultural product wines to bear such appellations. ATF notes that such a revision is consistent with the original appellation of origin approach in the wine labeling regulations which included wine produced from any fruit or other agricultural products. However, ATF seeks comments on whether there are differences between grape wines and wines made from other fruits or other agricultural products which would compel restricting multicounty or multistate appellations of origin to grape wines.

5. Designation “Other Than Standard Wine” on a Wine Label

A petition was received to allow the designation “other than standard wine” on labels for certain wines (dried fruit, raspberry, wild plum) instead of the designation “substandard wine.” Since the designation “other than standard wine” may be used on wine labels where such wine is sold intrastate only. Due to a very high acid level in the winemaking material used to produce some wines, ameliorating material in excess of limitations allowed for natural wine is sometimes necessary. Such wines are permitted in the Internal Revenue Code to be produced as other than standard wine, but these wines are required to be labeled as substandard wine under 27 CFR part 4. We do not believe that allowing the use of “other than standard wine” on a wine label instead of “substandard” will result in a jeopardy to the revenue or cause consumer deception or consumer confusion. Therefore, 27 CFR 4.21 is proposed to be amended by allowing either the label designation “Other than Standard” or “Substandard” on a wine label for wines with that standard of identity. However, ATF requests comments on whether the consumer would be better informed in making decisions on purchasing these wines because the designation “other than standard” may not have the same consumer negative reaction as might the designation “substandard” when used on one or more of the wines currently designated as “substandard.” ATF also requests comments on whether the designation “substandard” should be retained. Finally, ATF requests comments on whether the regulation should impose any particular conditions on the use of the designation “other than...
standard wine" in lieu of the designation "substandard."

6. Use of a Vineyard, Orchard, Farm or Ranch Name on a Wine Label

Many proprietors are using wine labels which refer to the name of a vineyard, orchard, farm or ranch as the source of the primary winemaking material used to produce their wine. The use of such names is not provided for in 27 CFR Part 4 and approval has been granted as additional label information. The criteria for such approval has been that at least 95 percent of the primary winemaking material used to produce the wine came from the named vineyard, orchard, farm or ranch. We are proposing to add a paragraph to 27 CFR 4.30 to allow the use of a vineyard, orchard, farm or ranch name on a wine label if 95 percent of the primary winemaking material used to produce the wine came from such a named place. In addition, we are proposing that vineyard, orchard, farm or ranch names used on wine labels will be subject to the misleading brand name requirements of 27 CFR 4.33(b) and the geographic brand name requirements of 27 CFR 4.39(f).

7. Brand Names With a Varietal (Grape Type) Name

There is some interest by proprietors to use brand names which contain the name of a grape variety as part of that name. We believe that allowing the use of a grape variety name as part of a brand name would not mislead or confuse the consumer if such brand name and varietal wine name meet the same requirements. Therefore, we are proposing that a proprietor may use a grape variety name in a brand name if such wine meets the varietal (grape type) labeling requirements of 27 CFR 4.23a. Comments are requested on the impact such a change would have on existing or future brand names and whether exceptions should be allowed by an application to the Director where it is determined that the consumer is not likely to be misled about a wine bearing a varietal brand name where the wine is not a varietal wine of that type.

8. More Than Three Grape Varieties on a Wine Label

Regulations allow no more than three grape variety names to be used on a wine label. Notice Nos. 304 (41 FR 56004, November 12, 1976) and 304, amended (42 FR 30517, June 15, 1977), which resulted in T.D. ATF-53, did not restrict the number of grape variety names which could be used on a wine label. The limit of three grape variety names was taken from written and oral comments in response to Notice No. 304; however, the number was not a major point of issue and comments at that time could have been interpreted as merely examples. We are proposing that 27 CFR 4.23a be amended to allow for more than three grape variety names on a wine label. Comments are requested as to whether the use of more than three grape variety names on a wine label would be confusing.

9. Geographic Brand Names of Viticultural Area Significance

Present regulations provide that a brand name of viticultural area significance, which cannot meet the appellation of origin requirements for the geographic area named, may not be used unless it was previously used in a certificate of label approval issued prior to July 7, 1986. Therefore, a viticultural area approved on or after July 7, 1986, would effectively cancel any certificates of label approval issued after this date with a brand name containing the name of that approved viticultural area. A proprietor with a geographical brand name approved after July 7, 1986, should not be penalized for any viticultural area established after the geographical brand name approval date. The proposed revision of 27 CFR 4.39 would correct this regulatory oversight.

10. Changing the Address of Where to Obtain U.S.G.S. Maps for Viticultural Areas

U.S.G.S. maps for describing the boundaries of viticultural areas are now obtained only from the Denver, Colorado office of the U.S. Geological Survey. Sections in 27 CFR parts 4 and 9 are amended to reflect the change in where U.S.G.S. maps may be obtained.

Executive Order 12291

In compliance with Executive Order 12291 issued February 17, 1981, ATF has determined that any regulation resulting from this notice of proposed rulemaking would not constitute a "major rule" since it would not result in: (a) An annual effect on the economy of $100 million or more; (b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and, (c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this notice of proposed rulemaking because a final rule would not have a significant economic impact on a substantial number of small entities. Any final rule would not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980, (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1512-0422), Washington, DC 20503, with copies to the Chief, Information Programs Branch, room 3110, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20228.

The estimated average burden associated with this collection of information is 0 hours per respondent or recordkeeper because this requirement is usual and customary for wine producers.

Public Participation

ATF requests comments from all interested persons. Comments received no later than the closing date of the comment period will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action. ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is public information. During the comment period, any person may submit a request to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to
State may be used if all of the fruit or other agricultural products were grown in the counties indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each county is shown on the label with a tolerance of plus or minus two percent.

(d) Multicounty appellations. * * *
(1) All of the fruit or other agricultural products were grown in the States indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each State is shown on the label with a tolerance of plus or minus two percent;

(c) Viticultural area—(1) Definition.

(2) Establishment of American viticultural areas. * * *(v) a copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked. (For U.S.G.S. maps, write the U.S. Geological Survey, Branch of Distribution, Box 25286, Federal Center, Denver, Colorado 80222. If the map name is not known, request a map index by State.)

(3) Requirements for Use. A wine may be labeled with a viticultural area appellation if:

(i) * * *;

(ii) * * ;

(iii) * * , and

(iv) In the case of American wine, it has been fully finished within the United States.

* * * * *

Par. 5. Section 4.26 is revised to read as follows:

§ 4.26 Estate bottled.

(a) Conditions for use. The "Estate bottled" designation may be used by a bottling winery on a wine label if (1) the wine is produced from basic winemaking material grown on land contiguous (may only be separated by a road, highway, railway, waterway, or some similar separation) to the winery which is owned or controlled by the winery, or (2) the wine is labeled with a viticultural area appellation of origin and the bottling winery is located in the labeled viticultural area and grew all the grapes used to make the wine on land owned or controlled by the winery within the boundaries of the labeled viticultural area. The bottling winery, in paragraphs (a) (1) or (2) of this section, crushed the basic winemaking material, fermented the resulting must, and finished, aged, and bottled the wine in a continuous process (the wine at no time having left the viticultural area in the case of paragraph (a)(2) of this section).

(b) Special rule for cooperatives. Basic winemaking materials grown by members of a cooperative bottling winery are considered grown by the bottling winery.

(c) Definition of "Controlled by." For purposes of this section, "Controlled by" refers to property on which the bottling winery has the legal right to perform, and does perform, all of the acts common to viticulture (or similar practices if the basic winemaking material is other than grapes) under the terms of a lease or similar agreement of at least 3 years duration.

Par. 6. A new § 4.28 is added to read as follows:

§ 4.28 Harvest year wine.

(a) General. Harvest year wine is wine labeled with the year of harvest of the fruit or other agricultural product and made in accordance with the standards prescribed in classes 4, 5 and 6 of § 4.21 for citrus wines, other fruit and berry wines, and agricultural wines. At least 95 percent of the wine must have been derived from fruit or agricultural products harvested in the labeled calendar year, and the wine must be labeled with an appellation of origin other than a country (which does not qualify for harvest year labeling).

The appellation shall be shown in direct conjunction with the designation required by § 4.32(a)(2), in the same size of type, and in lettering as conspicuous as that designation. In no event may the quantity removed from the producing winery, under labels bearing a harvest date, exceed the volume of harvest year wine produced in that winery during the year indicated by the harvest date.

(b) American wine. A permittee who produced and bottled or packed the wine, or a person other than the producer who repackaged the wine in containers of 5 liters or less may show the year of harvest upon the label if the person possesses appropriate records from the producer substantiating the year of harvest and the appellation of origin and if the wine is made in compliance with the provisions of paragraph (a) of this section.

(c) Imported wine. Imported wine may bear a harvest year if: (1) It is made in compliance with the provisions of paragraph (a) of this section; (2) it is bottled in containers of 5 liters or less prior to importation, or bottled in the United States from the original container of the product (showing a harvest year); and (3) if the invoice is accompanied by,
or the American bottler possesses, a certificate issued by a duly authorized official of the country of origin, if the certificate of label origin of the wine is of the harvest year shown, that the laws of the country regulate the appearance of harvest dates upon the labels of wine produced for consumption within the country of origin, that the wine has been produced in conformity with those laws, and that the wine would be entitled to bear the harvest date if it had been sold within the country of origin.

Par. 7. Section 4.33 is amended by adding a second sentence to paragraph (b) to read as follows:

§ 4.33 Brand names.

(b) Misleading brand names. * * *. If a varietal (grape type) name is used in the brand name, the wine shall conform to the requirements of § 4.23a.

Par. 8. Section 4.34(b)(4) is revised to read as follows:

§ 4.34 Class and type.

(b) * * *

(c) Statements of age. * * *(1) for vintage or harvest year wines, in accordance with the provisions of § 4.27 or § 4.28; * * *

PART 9—[AMENDED]

Par. 11. Section 9.3(b)(5) is revised to read as follows:

§ 9.3 Relation to parts 4 and 71 of this chapter.

(b) * * *

(5) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked. [For U.S.G.S. maps, write to the U.S. Geological Survey, Branch of Distribution, Box 25266, Federal Center, Denver, Colorado 80225. If the map name is not known, request a map index by State.] Note: This document was received at Office of the Federal Register on June 15, 1992. Signed: December 6, 1991. Stephen E. Higgins, Director. Approved: January 17, 1992. John P. Simpson, Acting Assistant Secretary [Enforcement].

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7045]

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.


SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for each community listed, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 87.4(a).

These base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to
calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10. Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This proposed rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:


§ 67.4 [Amended]

2. Section 67.4 is proposed to be amended as follows:

<table>
<thead>
<tr>
<th>State</th>
<th>City/town/county</th>
<th>Source of flooding</th>
<th>Location</th>
<th>#Depth in feet above ground</th>
<th>*Elevation in feet (NGVD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>IOWA</td>
<td>Ely (city), Lincoln County</td>
<td>Hoover Creek</td>
<td>About 0.3 mile downstream of Vista Road</td>
<td>*720</td>
<td>*14</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>About 1.0 mile upstream of Vista Road</td>
<td>*731</td>
<td>*14</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Maps available for inspection at the City Hall, Community Center, 1570 Rowley Street, Ely, Iowa.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Send comments to The Honorable Thomas Tjelmeland, Mayor, City of Ely, P.O. Box 248, Ely, Iowa 52257.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MAINE</td>
<td>Cutler (town), Washington County</td>
<td>Atlantic Ocean</td>
<td>Little Machias Bay at confluence of Eastern Marsh Brook and Western Marsh Brook</td>
<td>*420</td>
<td>*41</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Gulf of Maine along southeastern shoreline at Spine Point</td>
<td>*420</td>
<td>*41</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Maps available for inspection at the Cutler Town Office, Route 191, Cutler, Maine</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Send comments to Ms. Cynthia Rowden, First Selectman for the Town of Cutler, Washington County, P.O. Box 236, Cutler, Maine 04626.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Maps available for inspection at the City Hall, 112 Main Street, Hanceville, Alabama. Send comments to The Honorable Steve Hettinger, Mayor, City of Huntsville, P.O. Box 308, Huntsville, Alabama 35804-0308.

Alabama.............................................. City of Huntsville, Madison County.

City of Hanceville, Unincorporated Areas.

City of Hanceville, City Hall, 112 Main Street, Hanceville, Alabama 35077.

City of Hanceville, Robbinston, Washington County, Box 320, Robbinston, Maine 04671.

Indian Creek: About 1.1 mile upstream of Mount Evergreen Road | *731 | *514 |

Tennessee River: About 3.5 miles downstream of confluence of Whetstone Branch | *420 | *420 |

Tennessee-Tombigbee Waterway: About 1.4 miles upstream of confluence of Indian Creek | *420 | *420 |

Tennessee River: North of Bay Springs Dam | *420 | *420 |

Maps available for inspection at the Chancy Creek’s Office, Tishomingo County Courthouse, 1008 Highway 25 South, Isom, Mississippi.

Send comments to The Honorable Ricky Cummings, President, Board of Supervisors, Tishomingo County, Tishomingo County Courthouse, 1008 Highway 25 South, Isom, Mississippi 38852.

Maps available for inspection at the Public Works Department, Huntsville, Alabama.

Send comments to The Honorable Bobby Jack Camp, Mayor, City of Hanceville, City Hall, 112 Main Street, Hanceville, Alabama 35077.

Maps available for inspection at the Public Works Department, Huntsville, Alabama.

Send comments to The Honorable Steve Hettinger, Mayor, City of Huntsville, P.O. Box 308, Huntsville, Alabama 35804-0308.

Arizona............................................. Coconino County Unincorporated Areas.

City of Hanceville, City Hall, 112 Main Street, Hanceville, Alabama 35077.

City of Hanceville, Robbinston, Washington County, Box 320, Robbinston, Maine 04671.

Indian Creek: About 1.1 mile upstream of Mount Evergreen Road | *731 | *514 |

Tennessee River: About 3.5 miles downstream of confluence of Whetstone Branch | *420 | *420 |

Tennessee-Tombigbee Waterway: About 1.4 miles upstream of confluence of Indian Creek | *420 | *420 |

Tennessee River: North of Bay Springs Dam | *420 | *420 |

Send comments to The Honorable Ricky Cummings, President, Board of Supervisors, Tishomingo County, Tishomingo County Courthouse, 1008 Highway 25 South, Isom, Mississippi 38852.

Maps available for inspection at the Public Works Department, Huntsville, Alabama.

Send comments to The Honorable Steve Hettinger, Mayor, City of Huntsville, P.O. Box 308, Huntsville, Alabama 35804-0308.

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<table>
<thead>
<tr>
<th>State</th>
<th>City/town/county</th>
<th>Source of flooding</th>
<th>Location</th>
<th>#Depth in feet above ground</th>
<th>Elevation in feet (NGVD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standing Boy Creek</td>
<td>About 900 feet downstream of confluence of Heiferhorn Creek.</td>
<td>At mouth.</td>
<td>None</td>
<td>*342</td>
<td></td>
</tr>
<tr>
<td>Standing Boy Creek Tributary No. 1.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Heiferhorn Creek</td>
<td>Just downstream of Interstate 185</td>
<td>At mouth.</td>
<td>None</td>
<td>*473</td>
<td></td>
</tr>
<tr>
<td>Heiferhorn Creek Tributary No. 1.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Roaring Branch</td>
<td>Just downstream of Norfolk Southern Railway</td>
<td>None</td>
<td>*463</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Roaring Branch Tributary No. 1.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Flatrock Creek Tributary No. 1.</td>
<td>Just upstream of Private Drive</td>
<td>About 1,100 feet upstream of Private Drive</td>
<td>None</td>
<td>*396</td>
<td></td>
</tr>
<tr>
<td>Upper Bull Creek</td>
<td>Just upstream of Warm Springs Road</td>
<td>At mouth.</td>
<td>None</td>
<td>*418</td>
<td></td>
</tr>
<tr>
<td>Lower Bull Creek Tributary No. 1.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lower Bull Creek Tributary No. 3.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cox Creek</td>
<td>Just downstream of Woodruff Farm Road</td>
<td></td>
<td>None</td>
<td>*339</td>
<td></td>
</tr>
<tr>
<td>Turkey Creek</td>
<td>At mouth.</td>
<td></td>
<td>None</td>
<td>*227</td>
<td></td>
</tr>
<tr>
<td>Tiger Creek</td>
<td>Just downstream of Norfolk Southern Railway</td>
<td>None</td>
<td>*27</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kendall Creek</td>
<td>Just upstream of Norfolk Southern Railway</td>
<td></td>
<td>None</td>
<td>*349</td>
<td></td>
</tr>
<tr>
<td>Randall Creek</td>
<td>At County Boundary</td>
<td></td>
<td>None</td>
<td>*388</td>
<td></td>
</tr>
</tbody>
</table>

Maps are available for review at the Coconino County Flood Control District, 219 East Cherry Street, Flagstaff, Arizona.

Send comments to The Honorable Paul J. Babbitt, Jr., Chairman, Coconino County Board of Supervisors, 219 East Cherry Street, Flagstaff, Arizona 86001.
<table>
<thead>
<tr>
<th>State</th>
<th>City/town/county</th>
<th>Source of flooding</th>
<th>Location</th>
<th>Depth in feet above ground (NGVD)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Just upstream of Norfolk Southern Railway</td>
<td>None</td>
<td>*355</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Just downstream of dam</td>
<td>None</td>
<td>*362</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Just upstream of dam</td>
<td>None</td>
<td>*374</td>
</tr>
<tr>
<td></td>
<td></td>
<td>At County Boundary</td>
<td>None</td>
<td>*407</td>
</tr>
<tr>
<td>Georgia</td>
<td>Town of Mineral Bluff, Fannin County.</td>
<td>Hempton Creek</td>
<td>About 2,400 feet upstream of Old Murphy Highway.</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>About 2,900 feet upstream of Old Murphy Highway.</td>
<td>*1,544</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Maps available for inspection at the Town Hall, Mineral Bluff, Georgia.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Maps available for inspection at the City of Columbus Engineer Department, Consolidated Government Center, 100 10th Street, Columbus, Georgia.</td>
<td></td>
</tr>
<tr>
<td>Illinois</td>
<td>Village of Bensenville, DuPage and Cook Counties.</td>
<td>South Unnamed Creek</td>
<td>About 1,500 feet upstream of Chicago and North Western railroad.</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td></td>
<td>North Unnamed Creek</td>
<td>About 600 feet upstream of Fairway Drive</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>About 1,500 feet upstream of Chicago and North Western railroad.</td>
<td>*669</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bensenville Ditch</td>
<td>About 9.0 miles downstream of Chicago and North Western railroad.</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>About 500 feet downstream of Orchard Avenue.</td>
<td>*661</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Just downstream of Chicago and North Western railroad.</td>
<td>*662</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Just upstream of Chicago and North Western railroad.</td>
<td>*664</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>About 650 feet upstream of Church Road.</td>
<td>*668</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Within community.</td>
<td>*668</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>About 0.7 mile upstream of York Road.</td>
<td>*668</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Just downstream of Church Road.</td>
<td>*666</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Maps available for inspection at the Village Hall, 700 West Irving Park Road, Bensenville, Illinois.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Unincorporated Areas of Will County.</td>
<td>Merley Creek.</td>
<td>*536</td>
</tr>
<tr>
<td>Illinois</td>
<td></td>
<td></td>
<td>At confluence of East Marley Creek.</td>
<td>*536</td>
</tr>
<tr>
<td></td>
<td></td>
<td>East Marley Creek</td>
<td>At mouth.</td>
<td>*536</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Just downstream of 104th Street.</td>
<td>*536</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hickory Creek</td>
<td>About 2,000 feet downstream of Wolf Road.</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Just downstream of Conrail.</td>
<td>*661</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Just upstream of Conrail.</td>
<td>*662</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hickory Creek Tributary A.</td>
<td>At confluence of Hickory Creek Tributary A.</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rock Run South</td>
<td>Just downstream of Sauk Trail Road.</td>
<td>*710</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Just upstream of U.S. Route B.</td>
<td>*516</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>About 2,800 feet upstream of Chicago and North Western railroad.</td>
<td>*517</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rock Run</td>
<td>At mouth.</td>
<td>*522</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>At confluence of East Marley Creek.</td>
<td>*522</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rock Run Tributary No. 1</td>
<td>About 1,700 feet upstream of Essington Road.</td>
<td>*529</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>About 600 feet downstream of Murphy Drive.</td>
<td>*529</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rock Run Tributary No. 2</td>
<td>About 700 feet upstream of Barber Lane.</td>
<td>*529</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rock Run Tributary No. 3</td>
<td>At mouth.</td>
<td>*529</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rock Run</td>
<td>Just downstream of Essington Road.</td>
<td>*575</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Just upstream of Essington Road.</td>
<td>*575</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Kankakee River</td>
<td>At downstream county boundary.</td>
<td>*575</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>About 2,000 feet upstream of confluence of Ryan Creek.</td>
<td>*575</td>
</tr>
<tr>
<td>Iowa</td>
<td>Unincorporated Areas of Scott County.</td>
<td>Mississippi River</td>
<td>About 2,4 miles downstream of Interstate 280.</td>
<td>*565</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>About 0.7 mile upstream of the confluence of Wapsipinin River.</td>
<td>*568</td>
</tr>
</tbody>
</table>

Maps available for inspection at the Will County Land Use Department, 501 Ella Avenue, Joliet, Illinois. Send comments to The Honorable Charles R. Adelman, County Executive, Will County, Will County Office Building, 302 North Chicago Street, Joliet, Illinois 60432.
<table>
<thead>
<tr>
<th>State</th>
<th>City/town/county</th>
<th>Source of flooding</th>
<th>Location</th>
<th>#Depth in feet above ground</th>
<th>Elevation in feet (NGVD)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Michigan</strong></td>
<td>Village of Ovid, Clinton and Shiawassee Counties.</td>
<td>Maple River</td>
<td>Just downstream of Front Street</td>
<td>720</td>
<td>721</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Overland Flow</td>
<td>About 1250 feet upstream of State Highway 21.</td>
<td>724</td>
<td>725</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>About 700 feet downstream of State Highway 21.</td>
<td>721</td>
<td>722</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>About 1000 feet upstream of Main Street.</td>
<td>724</td>
<td>725</td>
</tr>
<tr>
<td><strong>Mississippi</strong></td>
<td>Pearl River Valley Water Supply District, Hinds, Madison, Rankin, Leake, and Scott Counties.</td>
<td>Pearl River (Ross Barnett Reservoir)</td>
<td>Along shoreline downstream of State Highway 43</td>
<td>300</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Along shoreline upstream of State Highway 43</td>
<td>301</td>
<td>269</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>About 1.0 mile downstream of Ross Barnett Reservoir Dam.</td>
<td>263</td>
<td>267</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Just downstream of Ross Barnett Reservoir Dam.</td>
<td>283</td>
<td>286</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Brashear Creek</td>
<td>Just upstream of County Line Road</td>
<td>284</td>
<td>289</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Culley Creek</td>
<td>About 800 feet upstream of Rice Road.</td>
<td>294</td>
<td>297</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Haley Creek</td>
<td>About 1200 feet downstream of Old Rice Road.</td>
<td>None</td>
<td>300</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>About 1000 feet downstream of Old Rice Road.</td>
<td>None</td>
<td>308</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Stream “M”</td>
<td>About 0.5 mile downstream of mouth.</td>
<td>None</td>
<td>304</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>About 0.8 mile downstream of State Highway 471.</td>
<td>None</td>
<td>300</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Pelahatchie Creek</td>
<td>About 1300 feet downstream of State Highway 25.</td>
<td>None</td>
<td>307</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>At mouth</td>
<td>None</td>
<td>306</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Pelahatchie Creek Tributary</td>
<td>About 300 feet downstream of Old Rice Road.</td>
<td>None</td>
<td>307</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>About 800 feet downstream of State Highway 471.</td>
<td>None</td>
<td>303</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Plummer Slough</td>
<td>About 1200 feet downstream of State Highway 25.</td>
<td>None</td>
<td>307</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>About 0.8 mile downstream of North Shore Parkway.</td>
<td>None</td>
<td>300</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Spring Branch</td>
<td>About 0.6 mile downstream of North Shore Parkway.</td>
<td>None</td>
<td>306</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Just upstream of Spillway Road.</td>
<td>None</td>
<td>300</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mill Creek</td>
<td>About 1900 feet downstream of Spillway Road.</td>
<td>None</td>
<td>305</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Just downstream of Scenic Drive.</td>
<td>None</td>
<td>300</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Turtle Creek</td>
<td>About 1000 feet downstream of Spillway Road.</td>
<td>None</td>
<td>306</td>
</tr>
<tr>
<td><strong>Missouri</strong></td>
<td>City of Ballwin, St. Louis County.</td>
<td>Fishpot Creek</td>
<td>Approximately 3,800 feet downstream of Reis Road.</td>
<td>535</td>
<td>533</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Just downstream of Old Ballwin Road.</td>
<td>562</td>
<td>580</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Just upstream of Smith Drive.</td>
<td>None</td>
<td>607</td>
</tr>
<tr>
<td><strong>Missouri</strong></td>
<td>Village of Bel-Ridge, St. Louis County.</td>
<td>Maline Creek</td>
<td>About 1170 feet downstream of Natural Bridge Road.</td>
<td>528</td>
<td>527</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Just downstream of Natural Bridge Road.</td>
<td>529</td>
<td>531</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Just upstream of Natural Bridge Road.</td>
<td>531</td>
<td>531</td>
</tr>
<tr>
<td><strong>Missouri</strong></td>
<td>City of Ferguson, St. Louis County.</td>
<td>Maline Creek</td>
<td>About 1,000 feet downstream of Glen Owen Drive.</td>
<td>458</td>
<td>458</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>About 1.15 miles upstream of Florissant Boulevard.</td>
<td>507</td>
<td>506</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ferguson Branch</td>
<td>Just downstream of Hereford Avenue.</td>
<td>489</td>
<td>467</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Just upstream of Hereford Avenue.</td>
<td>514</td>
<td>507</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Just downstream of Scott Drive.</td>
<td>519</td>
<td>518</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Halls Ferry Creek</td>
<td>About 0.41 mile downstream of New Halls Ferry Road.</td>
<td>None</td>
<td>476</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>About 530 feet upstream of New Halls Ferry Road.</td>
<td>None</td>
<td>489</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ball Creek</td>
<td>At mouth</td>
<td>None</td>
<td>486</td>
</tr>
<tr>
<td>State</td>
<td>City/town/county</td>
<td>Source of flooding</td>
<td>Location</td>
<td>Depth in feet above ground</td>
<td>Elevation in feet (NGVD)</td>
</tr>
<tr>
<td>---------------</td>
<td>---------------------------------------</td>
<td>----------------------------------------</td>
<td>--------------------------------------------------------------------------</td>
<td>---------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td></td>
<td>Ferguson Park Branch</td>
<td>Just upstream of Woodstock Road</td>
<td>At mouth</td>
<td>500</td>
<td>499</td>
</tr>
<tr>
<td></td>
<td></td>
<td>About 940 feet upstream of mouth</td>
<td></td>
<td>475</td>
<td>474</td>
</tr>
<tr>
<td>Missouri</td>
<td>City of Gideon, New Madrid County</td>
<td>Shallow flooding from Ditch No. 2</td>
<td>About 4,000 feet north of intersection of Fourth Street and Lunbeck Avenue</td>
<td>270</td>
<td>271</td>
</tr>
<tr>
<td></td>
<td>City of Kinloch, St. Louis County.</td>
<td>Maline Creek</td>
<td>About 2,240 feet downstream of Martin Luther King Boulevard</td>
<td>506</td>
<td>502</td>
</tr>
<tr>
<td></td>
<td>City of Moline Acres, St. Louis County.</td>
<td>Maline Creek</td>
<td>Just downstream of North Hanley Road</td>
<td>516</td>
<td>514</td>
</tr>
<tr>
<td>Missouri</td>
<td>City of St. Louis Independent City.</td>
<td>Maline Creek</td>
<td>Within community</td>
<td>None</td>
<td>433</td>
</tr>
<tr>
<td>Missouri</td>
<td>Town of Kill Devil Hills, Dare County</td>
<td>Atlantic Ocean, Roanoke Sound</td>
<td>At intersection of State Route 1200 and Unnamed Court</td>
<td>None</td>
<td>#1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Atlantic Ocean, Pamlico Sound</td>
<td>At intersection of Duck Road and Ocean Bay Boulevard</td>
<td>None</td>
<td>#2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Atlantic Ocean, Currituck</td>
<td>Along Atlantic Ocean shoreline from county boundary south to about 700 feet north of the intersection of State Route 1200 and Martin Lane.</td>
<td>12</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Atlantic Ocean, Roanoke Sound</td>
<td>At State Road 1257 east of Coast Guard Station</td>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Unincorporated Areas of Dare County.</td>
<td>Shallow Flooding (from Atlantic Ocean).</td>
<td>Along shoreline 1500 feet east of intersection of State Route 1214 and National Park Service Road.</td>
<td>12</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Atlantic Ocean, Pamlico Sound</td>
<td>Along shoreline 1000 feet east of intersection of Hatteras Road and Oregon inlet camping area.</td>
<td>12</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Atlantic Ocean, Roanoke Sound</td>
<td>About 1000 feet southeast of Billy Mitchell Airport Airstrip.</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Atlantic Ocean, Pamlico Sound</td>
<td>Along shoreline 1200 feet southeast of Ferry Terminal.</td>
<td>7</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Atlantic Ocean, Pamlico Sound</td>
<td>Along shoreline from South Point on Pea Island to 800 feet north of Corbina Drive East.</td>
<td>11</td>
<td>20</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Town of Kill Devil Hills, Dare County</td>
<td>Atlantic Ocean, Roanoke Sound</td>
<td>At intersection of 5th Street and New Bern Street.</td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Atlantic Ocean, Roanoke Sound</td>
<td>Along Atlantic Ocean shoreline from just north of 2nd Street to about 700 feet north of Arch Street.</td>
<td>12</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Atlantic Ocean, Roanoke Sound</td>
<td>Along Atlantic Ocean shoreline from just south of 2nd Street to just north of 8th Street.</td>
<td>12</td>
<td>20</td>
</tr>
</tbody>
</table>
Maps available for inspection at Town Administration Building, Kill Devil Hills, North Carolina. Send comments to The Honorable Alden Hoggard, Town Manager, Town of Kill Devil Hills, Town Administration Building, P.O. Box 1719, Kill Devil Hills, North Carolina 27946.

North Carolina

Town of Kitty Hawk, Dare County. Shallow flooding (from Atlantic Ocean). About 350 feet east of intersection of Lillian Street and Lindberg Avenue. Just east of intersection of Starfish Lane and Virginia Dare Trail. Along Atlantic Ocean shoreline.

Maps available for inspection at the Municipal Building, Kitty Hawk, North Carolina. Send comments to The Honorable C.W. Nicholl, Town Manager, Town of Kitty Hawk, Municipal Building, P.O. Box 549, Kitty Hawk, North Carolina 27949.

North Carolina

Town of Nags Head, Dare County. Atlantic Ocean/Roanoke Sound. Just east of intersection of U.S. Highway 158 Bypass and Sound Side Road. Along shoreline from about 500 feet south of McColl Court to Gallery Row. Along shoreline from just north of Gallery Row to just south of 6th Street.

Maps available for inspection at the Building Inspector's Office, Nags Head, North Carolina. Send comments to The Honorable J. Webb Fuller, Town Manager, Town of Nags Head, P.O. Box 99, Nags Head, North Carolina 27959.

North Carolina


Maps available for inspection at the Town Hall, 6 Skyline Road, Kitty Hawk, North Carolina. Send comments to The Honorable J. Cobb Fuller, Town Manager, Town of Southern Shores, Town Hall, 6 Skyline Road, Kitty Hawk, North Carolina 27949.

Ohio

City of Montgomery, Hamilton County. North Branch Sycamore Creek. About 3,500 feet downstream of State Route 3. Just downstream of Deerefield Road. Just upstream of Deerefield Road. About 1,500 feet upstream of Pfeiffer Road. About 4,500 feet downstream of East Kemp Road. Just downstream of East Kemp Road. Just upstream of East Kemp Road. At confluence with Lake Chetac Creek. At confluence with Polk Run. At confluence with Polk Run. About 1,400 feet downstream of Pfeiffer Road.

Maps available for inspection at the City Hall, 10101 Montgomery Road, Montgomery, Ohio. Send comments to The Honorable Ivan Silverman, Mayor, City of Montgomery, City Hall, 10101 Montgomery Road, Montgomery, Ohio 45242.

Ohio


Maps available for inspection at the Building and Engineering, City Hall, 7700 Perry Street, Mt. Healthy, Ohio. Send comments to The Honorable Stephen Wolf, Mayor, City of Mt. Healthy, City Hall, 7700 Perry Street, Mt. Healthy, Ohio 45231.

Tennessee

City of Cleveland, Bradley County. Filtower Branch. At mouth. Just downstream of 12th Street. Just upstream of 12th Street.

Maps available for inspection at the Cleveland Inspections Department, 109 Church Street, Cleveland, Tennessee. Send comments to The Honorable Tom Rowland, Mayor, City of Cleveland, P.O. Box 1519, Cleveland, Tennessee 37364-1519.

Texas

Harris County Unincorporated Areas. Willow Creek. Approximately 2.57 miles above confluence with Spring Creek. Approximately 0.3 mile downstream of the confluence with Hughes Gulch. At the confluence with Willow Creek. Approximately 0.5 mile upstream of confluence with Willow Creek. Approximately 520 feet downstream of Malcolmson Road.

Tributary 2.44 to Willow Creek. Faulkner Gulley.
NVOCC’s liabilities in general methods of protection to cover appropriate amount and possible best method for developing procedures NVOCC’s financial responsibility, the to be used for each type of surety types of surety as evidence of an appropriateness of accepting certain amount for a bond previously specified financial responsibility. The also deleted the Common Carrier’s (“NVOCCs”) bonds—insurance or other surety as evidence of an Maritime Commission (“FMC” or Amendments’*) to permit the Federal Non-Vessel-Operating Common Carrier (“1991 Act”). The 1991 Act amended the Non-Vessel-Operating Common Carrier Act of 1991 (“1990 Amendments”) to permit the Federal Maritime Commission ("FMC" or "Commission") to accept—in addition to bonds—insurance or other surety as proof of a Non-Vessel-Operating Common Carrier’s ("NVOCCs") financial responsibility. The 1991 Act also deleted the $50,000 minimum amount for a bond previously specified by the 1990 Amendments. The Advance Notice requests comment on the appropriateness of accepting certain types of surety as evidence of an NVOCC’s financial responsibility, the best method for developing procedures to be used for each type of surety guidelines for evaluating the acceptability of the companies that might issue each type of surety, and the appropriate amount and possible methods of protection to cover NVOCC’s liabilities in general.

DATES: Comments (original and 15 copies) must be submitted by July 20, 1992.

ADDRESSES: Comments (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573-0001.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573-0001, (202) 523-5787.

SUPPLEMENTARY INFORMATION: Background

A. The 1990 Amendments

The 1990 Amendments amended the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1701 et seq., by adding a new section 23, 46 U.S.C. app. 1721, and by modifying section 10(b), 46 U.S.C. app. 1709(b). Section 23 of the 1984 Act permitted NVOCCs to obtain a bond to ensure their financial responsibility for damages, reparations or penalties; (2) specified the amount of the bond to be no less than $50,000; (3) required that any bond submitted be issued by a surety company found acceptable by the Secretary of the Treasury; (4) provided that any bond obtained be available to pay any judgement for damages against an NVOCC arising from its transportation-related activities, or order for reparations issued pursuant to section 11 of the 1984 Act, 46 U.S.C. app. 1710, or any penalty assessed pursuant to section 13 of the 1984 Act, 46 U.S.C. app. 1712; (5) required the designation of a resident agent for NVOCCs not domiciled in the United States; and (6) provided for the suspension or cancellation of any or all tariffs of an NVOCC for failure to maintain a bond, resident agent or for a violation of section 10(a)(1) of the 1984 Act, 46 U.S.C. app. 1709(a)(1).

Section 10(b) of the 1990 Act was amended to make it a prohibited act for (1) a common carrier or conference to knowingly and willfully accept cargo from, or transport cargo for, the account of an unbonded unaffiliated NVOCC, or (2) an ocean common carrier or conference to knowingly and willfully enter into a service contract with an unbonded or unaffiliated NVOCC.

The Commission's Interim Rule (56 FR 1493, January 15, 1991) and Final Rule (56 FR 51987, October 17, 1991) implementing the 1990 Amendments became effective April 15, and November 18, 1991, respectively.

B. The 1991 Act

On March 9, 1992, the President signed H.R. 3966, Public Law 102-251. Section 201 of this statute contains the Non-Vessel-Operating Common Carrier Act of 1991. The 1991 Act amended the 1990 Amendments (section 710 of Public Law 101-595) to permit the Commission to accept—in addition to bonds—insurance or other surety as proof of an NVOCC's financial responsibility. Additionally, the $50,000 minimum amount for a bond specified in the 1990 Amendments was deleted. The 1991 Act became effective June 7, 1992.

In remarks accompanying this legislation, Congressman Walter B. Jones stated that there is merit to giving the FMC more flexibility in the manner by which it assures that NVOCCs are financially responsible. 138 Cong. Rec. H70-H71 (daily ed. January 28, 1992) [statement of Rep. Jones]. He further noted that, although Congress is granting the Commission the authority to allow methods for financial security other than bonds, it is not necessarily requiring changes in the present regulatory structure. Mr. Jones stated that the current rules are an effective way of ensuring financial responsibility by NVOCCs. He also noted that, if the Commission chooses to allow alternative methods, it must ensure that shippers are afforded no less protection than provided by a bond. He added that any alternative method the Commission might accept should be no more
procedurally cumbersome for injured claimants than are bonds. Lastly, Mr. Jones referred to the Commission’s experience with overseeing financial responsibility requirements relating to passenger vessels, and suggested that the Commission take full advantage of this experience when implementing the new legislation.

Congressman Davis, the only other Congressman to comment on the legislation, stated that the current law was proven to be costly to small businesses in that it only allows the posting of a bond. He further indicated that the change in the law should not diminish NVOCO financial responsibility. 138 Cong. Rec. H71 (daily ed. January 28, 1992) (statement of Rep. Davis).

Discussion

Implementation of the 1991 Act will be more complex than was implementation of the 1990 Amendments because the former, in addition to bonds, permits "* * proof of insurance, or such other surety, as the Commission may require, in a form and amount determined by the Commission to be satisfactory to insure the financial responsibility of * * NVOCCs. (section 201(a)(2)) In comparison, the 1990 Amendments permitted only bonds of no less than $50,000 and required them to be issued by a surety company found acceptable by the Secretary of the Treasury. The 1991 Act, therefore, requires the Commission to make determinations on the acceptability of a potentially wide range of financial instruments issued by all types of parties in possibly varying amounts, and to consider the impact of each on NVOCCs, ocean common carriers, shippers and the Commission.

The Commission believes that it would be beneficial to seek preliminary comment from interested persons on certain issues before considering a proposed rule. Therefore, the Commission is seeking comment on possible types of surety, development of forms and procedures for certain sureties, guidelines for evaluating the acceptability of companies that issue sureties, as well as appropriate amounts of coverage to ensure an NVOCC’s financial responsibility.

A. Types of Coverage

1. Insurance

The Commission recognizes that insurance coverage can be obtained in different forms. It envisions that insurance able to satisfy the requirements of the 1991 Act could be either individual or group. In addition, it is possible that some NVOCCs could use current policies, while others may have to acquire some form of new coverage. Our primary concern is that all risks stated in the 1991 Act are covered. Any NVOCC using insurance must ensure that it is covered for all liabilities arising under the 1991 Act. In those instances where a particular risk, e.g., imposition of a civil penalty by the FMC, is not specifically covered by an insurance policy, a separate policy or some other acceptable form of surety could be obtained and used in conjunction with the existing insurance policy. The Commission contemplates drafting its implementing rule relative to insurance with the foregoing general considerations in mind, and solicits comments thereon, along with any other approaches that may be feasible.

One approach might be allowing a group or association of NVOCCs to provide the Commission with a certified list of its members that carry liability and/or errors and omissions insurance adequate to satisfy each NVOCC’s responsibility under the 1991 Act. Each NVOCC’s insurance policy would have to permit claims against the insurer for risks stated in the 1991 Act, and the group would require its members to provide it with a valid certificate of insurance on a periodic basis. The group would be required to advise the Commission of all members carrying the required insurance, and keep the Commission apprised of any changes to its list. The name of each insurer, along with a sample copy of each’s insurance policy, would be provided to the Commission by the group. Should some specific risk contained in the 1991 Act not be covered in the basic insurance policy, members would be required to obtain another form of coverage for such risk, either individually or with a group. The group or association would be responsible for apprising the Commission of any member in this category, along with the type of additional coverage obtained and verification or proof thereof. The Commission also would require some form of documentation, e.g., articles of incorporation, bylaws, etc., of any group or association using this procedure to ascertain its authenticity, and requiring the group to specify its membership. The Commission also may review the qualifications of the insurance companies to ensure their acceptability. Again, the foregoing is one possible approach under the 1991 Act.

An integral part of any rule will be the verification procedures the Commission will use to ascertain the acceptability of the underwriting entity. While the 1991 Act specifies that surety companies issuing NVOCC bonds must be those found acceptable by the Secretary of the Treasury, it does not specify a standard for evaluating companies which might issue insurance. The Commission, therefore, must develop standards and procedures to evaluate the acceptability of insurance companies.

The Commission anticipates that U.S.-based as well as foreign-based insurance companies will provide NVOCC’s with insurance to cover their financial responsibilities under the 1991 Act. The Commission, therefore, is seeking comments on whether that countries maintain assets in the U.S. and as well as in foreign countries. In this regard, the Commission recognizes that there are institutions that rate the financial stability and underwriting record of insurance companies. The Commission seeks comment on whether such rating institutions’ standards can be used to evaluate the financial status of insurance companies located in both the U.S. and foreign countries. Commenters are requested to provide information on the financial status of insurance companies located in foreign countries maintain assets in the U.S. or should be required to do so. Suggestions for other possible methods of evaluating the acceptability of insurance companies also are welcomed.

Additionally, the Commission is interested in comments on any perceived adverse effects on beneficiaries and the industry in general regarding the submission, processing and settlement of claims under insurance coverage.

2. Guaranty

A guaranty is defined as, “(a)n agreement in which the guarantor agrees to satisfy the debt of another (the debtor), only if and when the debtor fails to repay (secondarily liable).” 1 Although a guaranty and a surety bond are by definition similar financial instruments and have the same overall purposes, they appear to be different in practice, the primary difference being that a guarantor is secondarily liable for another’s debt, whereas a surety is primarily liable. The Commission contemplates considering a guaranty as an “other surety” acceptable for an NVOCC to evidence its financial responsibility under the 1991 Act.

Similar to insurance, the Commission assumes that guarantors could provide individual or group coverage, and that NVOCCs could negotiate with such entities to obtain the most favorable terms possible. The actual evidence of

an NVOCC's financial responsibility under this type of coverage would be by use of a standard guaranty form. The form could be patterned after the one currently used by the Commission for passenger vessel nonperformance coverage (Form PMC–153A, Title 36 Code of Federal Regulations 540.9, Miscellaneous), but tailored to the specific liability covered by the 1991 Act. The emphasis is that all risks arising under the 1991 Act must be covered by the guaranty, or, alternatively, by the guaranty in conjunction with any other type of coverage specified as acceptable by the Commission. Accordingly, the Commission seeks comment on the means to evidence an NVOCC's other sureties that would be acceptable and invites comment on whether there are appropriate. The Commission, therefore, is interested in information pertaining to the type of entities that might provide guarantees as a means to establish an NVOCC's financial responsibility under the 1991 Act, and any suggestions for appropriate standards or procedures to evaluate the acceptability of guarantors. The Commission, therefore, is interested in information pertaining to the type of entities that might provide guarantees as a means to establish an NVOCC's financial responsibility under the 1991 Act, and any suggestions for appropriate standards or procedures to evaluate the acceptability of guarantors. Such comments should focus on standards and procedures that would avoid costly financial reporting by guarantors and undue administrative review and surveillance burdens for the Commission, yet by meaningful for an adequate evaluation of guarantors. The Commission also requests comment on possibly requiring foreign-based entities that provide guaranties to NVOCCs, and whether other methods to determine the coverage amount are desirable or practical. For example, one possible approach is a "sliding scale" method of determining the amount of protection which recognizes increases in liability and financial exposure through phased increases in the amount of protection. A sliding scale approach could be based on carrier gross revenue, cargo volume or other criteria. The Commission is also interested in comment on whether the coverage level should vary depending on the type of surety used. Comment on possible methods to determine the coverage amount should address any potential financial reporting and/or surveillance burdens associated with the proposed alternative.

By the Commission.
Joseph C. Polking,
Secretary.

B. Level and Methods for Determining Surety Amount
Inasmuch as the $50,000 minimum bond amount was deleted by the 1991 Act, the Commission requests comment on whether the current bond amount is sufficient to cover NVOCC liabilities in general. Specifically, comment is requested on the level of coverage believed appropriate to protect the interests of shippers, ocean carriers and others who deal with NVOCCs, and whether other methods to determine the coverage amount are desirable or practical. For example, one possible approach is a "sliding scale" method of determining the amount of protection which recognizes increases in liability and financial exposure through phased increases in the amount of protection. A sliding scale approach could be based on carrier gross revenue, cargo volume or other criteria. The Commission is also interested in comment on whether the coverage level should vary depending on the type of surety used. Comment on possible methods to determine the coverage amount should address any potential financial reporting and/or surveillance burdens associated with the proposed alternative.

By the Commission.

Federal Communications Commission
47 CFR Part 73
[MM Docket No. 92–124, RM–8001]
Radio Broadcasting Services; Dunsrnu, CA
AGENCY: Federal Communications Commission.
ACTION: Proposed rule.
SUMMARY: This document requests comments on a petition for rulemaking filed by Fatima Response, Inc., permittee of Channel 261A, Dunsmuir, California (BPH–304008MA), seeking the substitution of Channel 261C3 for Channel 261A and modification of its permit accordingly to specify operation on the higher powered channel. Coordinates for this proposal are 41°17'20" and 122°14'25".

Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 261C3 at Dunsmuir, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before August 7, 1992, and reply comments on or before August 24, 1992.
ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Kimberly M. Thompson, Fatima Response, Inc., 2044 Beverly Plaza, suite 281, Long Beach, CA 90815.

FOR FURTHER INFORMATION CONTACT: Nancy Jynor, Mass Media Bureau, (202) 634-6530.
SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–124 adopted May 29, 1992, and released June 16, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 425–1422, 1714 21st St., NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73
Radio broadcasting.

Federal Communications Commission.
Beverly McKittrick.
Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–14502 Filed 6–18–92; 8:45 am]
BILLING CODE 6730–01–M

[FR Doc. 92–14506 Filed 6–18–02; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION
47 CFR Part 73
[MM Docket No. 92–124, RM–8001]
Radio Broadcasting Services; Dunsmuir, CA
AGENCY: Federal Communications Commission.
ACTION: Proposed rule.
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List of Subjects in 47 CFR Part 73
Radio broadcasting.

Federal Communications Commission.
Beverly McKittrick.
Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–14502 Filed 6–18–92; 8:45 am]
BILLING CODE 6730–01–M

[FR Doc. 92–14506 Filed 6–18–02; 8:45 am]
Federal Register / Vol. 57, No. 119 / Friday, June 19, 1992 / Proposed Rules

47 CFR Part 73

[MM Docket No. 92-123, RM-7992]

Radio Broadcasting Services; Mexico, New York

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Renard Communications Corp. seeking the allotment of Channel 280-A to Mexico in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 43°27'34" and West Longitude 76°13'45".  Channel 280-A can be allotted to Mexico in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 43°27’34" and West Longitude 76°13’45".  Canadian concurrence in the distance separation requirements is included a status review of the species prepared by NMFS.

DISTRIBUTION OF COMMERCE

50 CFR Parts 222 and 227

[Docket No. 920545-2145]

Endangered and Threatened Species; Endangered Status for Winter-Run Chinook Salmon

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

ACTION: Proposed rule.

SUMMARY: NMFS has determined that the winter-run chinook salmon in the Sacramento River, California, should be reclassified as an endangered species, rather than threatened, under the Endangered Species Act (ESA) of 1973, as amended, 16 U.S.C. 1531 et seq. Although conservation measures have been implemented since 1987 specifically to improve habitat conditions for Sacramento River winter-run chinook salmon, the population has continued to decline precipitously. Over a 25-year period, the population has declined almost 99 percent. The estimated 1991 run size of 191 fish was primarily the result of surviving progeny from the 1988 spawning population of 2,065 fish. The 1991 spawning escapement represents a 90 percent decline in a single generation and indicates that the 1988 year class was almost a total failure (USFWS 1991). Reclassifying this species as endangered will not result in additional prohibitions against taking because all the protection afforded an endangered species under section 9 of the ESA was applied to the winter-run chinook salmon through regulations when it was listed as threatened (55 FR 46523, Nov. 5, 1990). However, a determination that the species is endangered more accurately reflects the current status of its population. To make this determination, NMFS conducted a status review of the species which is available from (See ADDRESSES).

DATES: Comments on the proposed rule must be received August 18, 1992. Requests for public hearings must be received by August 3, 1992.

ADDRESSES: Comments should be sent to E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: James H. Lecky, NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802-4213, (310) 980-4015, or Margaret Lorenz, NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, (301) 713-2322.

SUPPLEMENTARY INFORMATION:

Background

Winter-run chinook salmon are a unique population of chinook salmon in the Sacramento River and are distinguishable from the other chinook runs based on the timing of their upstream migration and spawning season. Basic information on the species biology, life history, and habitat requirements is included a status review of the species prepared by NMFS (1992c).

The best data on long-term trends in abundance for winter-run chinook are the annual estimates of spawning run size made by the California Department of Fish and Game (CDFG) based on counts at Red Bluff Diversion Dam. These annual estimates show a dramatic decline in the average run size from 84,000 fish in the years 1967–1969 to about 2,000 for the years 1982–1984 (Table 1). After a further decline in the run size to less than 1,000 fish, NMFS listed the species as threatened under the ESA on November 5, 1990 (NMFS 1992c).

On June 5, 1991, NMFS received a petition from the American Fishery Society to reclassify the status of winter-run chinook salmon from threatened to endangered under the ESA. NMFS reviewed the petition and determined that it contained substantial information indicating such an action might be warranted. On November 7, 1991, NMFS announced (56 FR 59696) its intention to review the status of the species to determine whether reclassification was appropriate. NMFS solicited information on the status of the species and received information and data from the United States Fish and Wildlife Service (USFWS) and the Pacific Coast Federation of Fishermen’s
Associations. Then, NMFS conducted a status review to determine whether the species should be reclassified.

**TABLE 1. ANNUAL ESTIMATED RUN SIZE AT RED BLUFF DIVERSION DAM**

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of fish</th>
</tr>
</thead>
<tbody>
<tr>
<td>1967</td>
<td>57,306</td>
</tr>
<tr>
<td>1968</td>
<td>84,414</td>
</tr>
<tr>
<td>1969</td>
<td>117,608</td>
</tr>
<tr>
<td>1970</td>
<td>40,409</td>
</tr>
<tr>
<td>1971</td>
<td>53,089</td>
</tr>
<tr>
<td>1972</td>
<td>97,133</td>
</tr>
<tr>
<td>1973</td>
<td>24,079</td>
</tr>
<tr>
<td>1974</td>
<td>21,897</td>
</tr>
<tr>
<td>1975</td>
<td>23,330</td>
</tr>
<tr>
<td>1976</td>
<td>35,096</td>
</tr>
<tr>
<td>1977</td>
<td>17,214</td>
</tr>
<tr>
<td>1978</td>
<td>24,662</td>
</tr>
<tr>
<td>1979</td>
<td>2,364</td>
</tr>
<tr>
<td>1980</td>
<td>1,156</td>
</tr>
<tr>
<td>1981</td>
<td>20,041</td>
</tr>
<tr>
<td>1982</td>
<td>1,242</td>
</tr>
<tr>
<td>1983</td>
<td>1,831</td>
</tr>
<tr>
<td>1984</td>
<td>2,663</td>
</tr>
<tr>
<td>1985</td>
<td>3,962</td>
</tr>
<tr>
<td>1986</td>
<td>2,422</td>
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<tr>
<td>1987</td>
<td>2,355</td>
</tr>
<tr>
<td>1988</td>
<td>2,085</td>
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<tr>
<td>1989</td>
<td>547</td>
</tr>
<tr>
<td>1990</td>
<td>441</td>
</tr>
<tr>
<td>1991</td>
<td>191</td>
</tr>
</tbody>
</table>

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA specifies five criteria to be evaluated in reviewing the status of a species or population proposed for listing or reclassification. In addition to the evaluation of these factors in this proposed rulemaking, these criteria were reviewed in the first Notice of Determination published February 27, 1987 (52 FR 6041), in a subsequent Notice of Determination published December 9, 1987 (52 FR 49722), in two emergency rules published August 4, 1989 (54 FR 32088) and April 2, 1990 (55 FR 12193), in the proposed rule to list winter-run chinook salmon published March 20, 1990 (55 FR 10260), and in the final rule listing the species as threatened published November 5, 1990 (55 FR 46515).

1. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Modification and loss of spawning and rearing habitat have been major factors contributing to the decline of the winter-run chinook. Specific habitat and other biological requirements of the species are discussed in the current status review and the first Notice of Determination.

Shasta and Keswick Dams

The effects of Shasta and Keswick Dams operations on winter-run chinook salmon are documented in the final rule listing the species as threatened. Based on known effects of these and other Central Valley Project (CVP) facilities on winter-run chinook, NMFS and the Bureau of Reclamation (Bureau) entered into a formal section 7 consultation under the ESA on April 11, 1991, for the purpose of evaluating the effects of existing CVP facilities and operations on Sacramento winter-run chinook salmon. On February 14, 1992, NMFS issued a biological opinion to the Bureau and the California Department of Water Resources (DWR) addressing the effects of CVP and the State Water Project (SWP) operations in 1992 on the winter-run chinook based on the assumption of a critical water supply (NMFS 1992a). The biological opinion concluded that the proposed operation of the CVP and SWP in 1992 would likely jeopardize the continued existence of winter-run chinook. With respect to Shasta and Keswick dams, NMFS identified specific reasonable and prudent alternatives to avoid jeopardy to winter-run chinook salmon in 1992. These reasonable and prudent alternatives required the Bureau to maintain (1) a minimum flow of 3,000 cubic feet/second (cfs) from Keswick Dam into the Sacramento River to ensure safe rearing conditions in the upper river for juveniles produced in 1991 and (2) daily average water temperature in the Sacramento River between Keswick Dam and Ball’s Ferry (distance of 26 miles) of no more than 56 °F from April 15 through September 30, and of no more than 60 °F from October 1 through October 31 to ensure that safe temperature conditions were provided for developing eggs, pre-emergent fry and juveniles. The reasonable and prudent alternative also required the establishment of an oversight committee to monitor implementation of these and other measures. This committee has met several times since the opinion was issued to ensure that water allocation plans of the Bureau and operations of the Bureau and DWR were consistent with the reasonable and prudent alternatives. Since this consultation only addressed the 1992 operations of the CVP and the SWP, NMFS is consulting with the Bureau and DWR on the long-term operations of CVP and SWP facilities. NMFS has requested the Bureau to complete its portion of the consultation by September 1, 1992, in order for NMFS to issue an opinion covering future operations by December 31, 1992.

In July 1991, the Bureau issued a Record of Decision to construct a permanent temperature-control device at Shasta Dam that would allow water to be drawn into the power penstocks from varying levels in Shasta Lake. This device would allow the Bureau to improve control of river temperatures which would significantly benefit winter-run chinook without foreclosing the opportunity to generate power from the water released through the dam. As part of the long-term consultation on operations of the CVP, NMFS will address the need for a permanent temperature control device at Shasta Dam.

Spawning habitat in the Sacramento River has also been degraded by decreases in the rate of replenishing gravel suitable for spawning (NMFS 1992c). In 1990, 100,000 cubic yards (cy) of spawning gravel were placed in the upper Sacramento River between Salt Creek and Clear Creek by DWR to restore degraded spawning riffles in areas of the river used by winter-run chinook salmon (CFGC 1991). Additional gravel restoration is probably unnecessary until there is a significant increase in the winter-run chinook salmon spawning population since it is unlikely to be a factor in the species recovery (CFGC 1992).

Adult winter-run chinook can also be adversely impacted by operation of the spillway at Keaswick Dam. Overflow of water from the stilling basin due to the operation of the spillway attracts upstream migrating adult salmon into the basin at the base of the dam where they become trapped (NMFS 1992b). CDFG and USFWS have conducted fish rescue operations at the stilling basin and removed hundreds of trapped salmon. Until the facility is structurally modified to allow fish free passage back to the river or without a fish rescue operation, it is likely that some spawning winter-run chinook salmon will be lost. NMFS plans to address problems with the Keswick stilling basin as part of the consultation with the Bureau on long-term operations of the CVP.

Red Bluff Diversion Dam

Another serious habitat concern for winter-run chinook salmon is the impendiment to adult upstream migration by operation of the Bureau’s Red Bluff Diversion Dam (NMFS 1992c). Since 1988, the Bureau has agreed, under the terms of a Cooperative Agreement with NMFS, FWS, and CDFG, to leave the dam gates in the raised or open position from December 1 to April 1 each year to assist winter-run spawners in passing further up river where temperature conditions are more suitable for successful spawning and egg incubation. CDFG estimated that 98 and 93 percent

The Bureau was expected to have difficulty controlling temperatures in the upper Sacramento River during 1992 due to an anticipated critical water supply, therefore, NMFS addressed operation of the dam gates in the biological opinion issued to the Bureau. Specifically, NMFS identified a reasonable and prudent alternative that required the Bureau to maintain dam gates in the raised position an additional month, or until May 1, 1992 (NMFS 1992a). This alternative was designed to allow maximum passage of the 1992 winter-run spawning population past Red Bluff Diversion Dam and into the upper river where temperatures were most likely to be controlled by the Bureau.

Operation of the dam and its associated diversion facilities (Tehama-Colusa Canal) can have an adverse effect on juvenile winter-run salmon during their outmigration. To improve operations of the dam and the canal and to mitigate impacts to fish populations, the Bureau installed “state-of-the-art” drum screens and a bypass system at the canal headworks in 1990. Although initial studies have provided evidence that the entrainment problem has been greatly diminished by the new screens (Johnson 1981), a comprehensive evaluation of the bypass system effectiveness has not yet been conducted (CDFG 1992).

Because outmigrating winter-run juveniles can be adversely impacted by operation of the dam and the canal, NMFS addressed these impacts in the biological opinion issued to the Bureau. NMFS estimated that 45 to 60 percent of the juveniles produced by the 1992 spawning population could encounter Red Bluff Diversion Dam and be exposed to adverse survival conditions prior to December 1, 1992, when the gates would normally be raised under the existing Cooperative Agreement (NMFS 1992a). Therefore, the opinion identified a reasonable and prudent alternative that required the Bureau to raise the dam gates by November 1, 1992, to ensure survival of outmigrants was substantially increased (NMFS 1992a).

NMFS, FWS, and the Bureau are evaluating alternatives to the existing facilities at Red Bluff Diversion Dam (CFGC 1992). FWS found that a stand-alone screw pump would be the most efficient at passing fish downstream. The Bureau plans to complete an appraisal level study and begin public hearings to receive input from interested parties on a screw pump proposal.

Anderson Cottonwood Irrigation District Diversion Dam (ACID)

ACID operates a diversion dam and two diversion facilities on the upper Sacramento River at Redding, California. The adverse impacts of these facilities on winter-run chinook are well documented (NMFS 1992c).

ACID’s Bonneyview water diversion facility (85 cfs capacity) is located downstream from the ACID dam in an important winter-run chinook spawning area and is currently unscreened. During the irrigation season which coincides with juvenile winter-run emergence and early outmigration, juveniles are entrained by the facility and either directly killed by passage through pumps or are diverted into the associated irrigation canal from which they cannot escape.

In late 1990, CDFG obtained funds to install new screens on the Bonneyview pumps (CFGC 1991); however, the screens were never installed because of disagreements between ACID and CDFG. Based on a fyke net sampling and salvage operation conducted from August 15 to October 3, 1991, CDFG estimated that from 1.23 to 2.45 percent of the 1991 winter-run fry production had been taken by the unscreened Bonneyview diversion facility during this period. On September 27, 1991, the State of California filed suit against ACID seeking a temporary restraining order and permanent injunction to stop the district from taking winter-run salmon under the California Endangered Species Act. Although a temporary injunction was issued, the court refused to issue either a preliminary or permanent injunction citing stale endangered species act limitations on takings.

Based on the significant winter-run chinook take that was documented in 1991, NMFS issued a Notice of Violation and Assessment, including a penalty of $700,000, to ACID on December 19, 1991, for violating the ESA by unlawfully taking a threatened species. A hearing before an Administrative Law Judge is scheduled for June 1992. NMFS notified ACID that protective screening measures needed to be in place by early July 1992 to prevent further taking of juvenile winter-run chinook in 1992, and that permanent protective measures needed to be in place by July 1993. ACID has developed preliminary plans and applied for a Corps of Engineers permit to install an impervious barrier and screens at the facility by early July 1992. NMFS will consult with the Corps under section 7 of the ESA to evaluate the impact of installing and operating the ACID screening protective measures on winter-run chinook salmon.

Pollution

Pollution in the Sacramento River has also degraded winter-run chinook salmon spawning habitat. In particular, NMFS is concerned about heavy metal-contaminated runoff entering the upper Sacramento River. The Bureau has stopped all inpactive mining operations at Iron Mountain Mine (IMM). Heavy metal concentrations from this runoff can reach levels that are lethal to winter-run chinook eggs and juveniles (NMFS 1992c).

The Environmental Protection Agency (EPA) has placed IMM on the Superfund Priority List. The State of California and EPA are currently considering options for a long-term solution to control the potential release of toxic chemicals from IMM into the Sacramento River. The owner responsible for IMM is proposing to plug the mine and flood it with water to extinguish the chemical reaction that is creating the problem (CFGC 1992).

NMFS has reviewed and evaluated long­term remediation alternatives, and intends to consult with EPA, under section 7 of the ESA, on any specific remedial plans that may be needed to address pollution from IMM.

NMFS is also concerned that out­migrating juvenile winter-run chinook may be adversely impacted by the disposal of contaminated dredge sediments in San Francisco Bay. The residence time for out­migrating winter­run chinook salmon in the Bay is thought to range from 1 week to more than 2 months depending on the water year type (NMFS 1992b). Because winter­run chinook salmon can bioaccumulate and biomagnify contaminants originating from in­bay disposal of contaminated dredge sediments, outmigrating juvenile winter­run could also be exposed to these contaminants as they migrate and forage throughout the Bay. NMFS formally consulted with the Corps of Engineers under section 7 of the ESA concerning the effects of in­bay disposal of material dredged from Guadalupe Slough on winter-run chinook salmon in 1991. In a biological opinion issued February 12, 1992, NMFS concluded that disposal of dredged sediments from Guadalupe Slough into the waters of San Francisco Bay was not likely to jeopardize the continued existence of winter-run chinook because of the limited volume (100,000 cy/year for 3 years) of toxic chemical that would be discharged (NMFS 1992b). The incidental take statement issued with
the opinion required that no disposal of contaminated dredge materials occur in the Bay between January 1 and April 30, and that a monitoring program be established to assess the effects of dredged sediment disposal and contaminant exposure on juvenile winter-run chinook salmon in the Bay. The results of the monitoring program will be submitted to NMFS by January 1, 1992.

NMFS has successfully negotiated reductions in the size of several dredging projects and limits on when disposal of contaminated material in San Francisco Bay is allowed in order to avoid potential adverse effects to winter-run chinook salmon. However, NMFS continues to be concerned about the potential effects of dredging because a large number of dredging projects are anticipated in San Francisco Bay (NMFS 1992b). In 1991, for example, nearly 4 million cy of material were disposed of in San Francisco Bay, and some of the discharged material had higher contaminant concentrations that the material already at the Alcatraz disposal site located in the Bay. In 1992, the Corps is considering approval of dredging projects involving the disposal of another four million cy of material. NMFS has recommended the Corps enter into a comprehensive section 7 consultation that would address all anticipated dredging and in-bay disposal from 1992 through 1995 (NMFS 1992b).

Hydroelectric Projects

The Federal Energy Regulatory Commission (FERC) was considering licensing applications for the Lake Redding and Lake Red Bluff Projects that, if authorized, would have adversely affected winter-run chinook salmon. In 1991, FERC rejected the licensing applications or both projects since they did not have acceptable cost/benefit ratios after meeting environmental requirements.

The city of Redding, California, is currently pursuing a small scale pump-storage hydroelectric project that would increase water temperatures in the upper Sacramento River (NMFS 1992c). NMFS will continue to monitor planning for this project, and if necessary, request the appropriate Federal agency to consult with NMFS under section 7 of the ESA.

Bank Stabilization

Bank stabilization projects in the Sacramento River are believed to adversely affect winter-run chinook salmon rearing habitat (NMFS 1992c). The Corp of Engineers has initiated the Sacramento River Bank Protection Project as a long-range program for construction of bank erosion control works and setback levees (Ecois 1990). Since portions (phase II) of the project could adversely affect juvenile winter-run chinook, the Corps initiated formal section 7 consultation with NMFS in March 1991. On October 28, 1991, NMFS issued a biological opinion that concluded phase II of the project would not likely jeopardize the continued existence of winter-run chinook salmon (NMFS 1991a).

2. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Commercial and Recreational Fishing

NMFS consulted with the Pacific Fishery Management Council (PFMC) under section 7 of the ESA in 1991 to evaluate the potential effects of the Pacific Ocean Salmon Fishery Management Plan (FMP) on winter-run chinook salmon (NMFS 1991a). A biological opinion was issued to the PFMC on March 1, 1991, that concluded management of the salmon fishery under the Ocean Salmon FMP was not likely to jeopardize the continued existence of winter-run chinook (NMFS 1991b). NMFS also issued a biological opinion to the Council that concluded implementation of Amendment 4 to the Pacific Coast Groundfish FMP would not likely jeopardize the continued existence of winter-run chinook salmon as a result of incidental bycatch.

Since 1987, the CDFG has implemented seasonal fishing closures in the upper Sacramento River and monitored the recreational salmon catch (NMFS 1992c). In 1991, the Sacramento River was closed to salmon fishing from January 15-July 15 between Carquinez Strait and Bend Bridge, and until August 1 between Bend Bridge and DeSotoes Road Bridge (CPGC 1991). In the ocean adjacent to the Golden Gate, there is a “Sacramento River Winter-Run Chinook Conservation Closure” where fishing is prohibited from March 2 through March 31. CDFG is also assessing proposed changes to the trout fishery angling regulations for their potential effect on winter-run chinook salmon.

Scientific Studies

In 1991, NMFS issued a scientific research permit, under section 10 of the ESA, to the FWS to conduct scientific research on Sacramento River winter-run chinook salmon (NMFS 1992c). The permit authorized (1) A census of juvenile downstream migrants and habitat use; (2) radio-tracking of upstream migrating adults; (3) a captive propagation program at Coleman National Fish Hatchery; (4) an evaluation of juvenile entrainment into the Tehama-Colusa Canal; (5) temperature tolerance experiments with incubating eggs; and (6) studies on the differentiation of chinook salmon runs.

The FWS had initiated programs at the hatchery to hold, spawn, and rear winter-run chinook salmon prior to 1991 (Ecois 1990); however, they were not successful (NMFS 1992c). In 1991, despite the low numbers of fish available (only 22), the FWS was able to successfully hold and spawn six females. Nearly 29,000 eggs were spawned, and from these, 12,000 juveniles survived. On January 21, 1992, the FWS released about 11,000 coded-wire tagged juvenile winter-run chinook salmon into the Sacramento River near Redding, California. Because of concerns that these juveniles would be diverted from the Sacramento River into the Sacramento-San Joaquin Delta through the Bureau’s Delta Cross Channel during their outmigration, NMFS, FWS, and the Bureau agreed to a plan in late January 1992 that involved monitoring the winter-run chinook salmon outmigration and closure of the cross channel to protect juveniles from being diverted. As a result of these efforts, the Bureau closed the Delta Cross Channel on February 3, 1992, to protect outmigrating juvenile winter-run chinook salmon.

In April 1992, the FWS applied for a modification of its scientific research permit to initiate a captive breeding program using about 1,000 juveniles that remained from the hatchery propagation effort in 1991. The FWS is proposing to transfer these fish from the hatchery to the California Academy of Sciences-Steinhart Aquarium and the University of California’s Bodega Bay Marine Laboratory for extended captive rearing with subsequent transfer back to the hatchery for use as broodstock. A primary objective of the program is to provide insurance against extinction or loss of unique genetic variability until the wild stock can recover and sustain itself.

FWS annually conducts underwater counts of winter-run chinook salmon redds between ACID and the Redding water supply intakes. In July 1991, 23 redds were observed (CFGC 1991). This information, in conjunction with spawn counts at Red Bluff Diversion Dam and the results from CDFG’s annual aerial winter-run chinook salmon redd surveys, is used to estimate the winter-run chinook salmon spawning run size.
3. Disease or Predation

The magnitude and extent of predation on winter-run chinook salmon throughout the Sacramento River has not been determined. However, studies indicate that predation at Red Bluff Diversion Dam, primarily by squawfish, can significantly contribute to the mortality of downstream winter-run chinook salmon migrants (NMFS 1992c). The FWS has undertaken periodic electrofishing below the dam which may be useful in developing a relative squawfish abundance index (CFGC 1991). All of the fisheries agencies believe that before squawfish control is possible, more must be learned about their life history. In 1992, the FWS plans to study predation at the fish bypass outfall as part of its continuing impact evaluation at Red Bluff Diversion Dam.

The potential for high levels of predation also exists at the Glenn-Colusa Irrigation District (GCID) diversion facility and other manmade structures such as the DWR’s Suisun March Salinity Control Structure and Clifton Court Forebay. Squawfish and striped bass predation has also been observed on juvenile salmonids released back into the Sacramento River from salvage operations conducted at the CVP and SWP fish protection and export facilities in the lower Sacramento-San Joaquin Delta.

Several groups raised concerns in March 1992 about the possible effects of CDFG’s striped bass enhancement and management program on winter-run chinook salmon. CDFG’s striped bass stocking program has expanded in recent years as a result of mitigation agreements with the DWR and the Pacific Gas and Electric Company. NMFS reviewed CDFG’s proposed enhancement program for 1992 and recommended several changes, as well as the implementation of studies designed to assess the magnitude of striped bass predation on winter-run chinook salmon. NMFS will continue to monitor the CDFG program, and, if necessary, request CDFG to apply for an ESA section 10 incidental take permit.

4. The Inadequacy of Existing Regulatory Mechanisms

Relevant laws that constitute existing regulatory mechanisms were discussed in the final rule listing winter-run chinook salmon as threatened. These laws were described as providing inadequate mechanisms for restoring winter-run chinook salmon in the Sacramento River. Since the final listing of Sacramento winter-run chinook salmon as a threatened species under the ESA, the run has continued to decline. This may indicate that regulatory mechanisms currently in place were not applied effectively, or that they were insufficient.

5. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Juvenile winter-run chinook salmon are subject to entrainment by hundreds of unscreened or inadequately screened diversions during their outmigration to the Pacific Ocean. These diversions range from small siphons diverting 20 cfs to the large export facilities operated by the Bureau and DWR in the southern Delta that have the combined capacity of pumping approximately 12,000 cfs of water daily.

Glenn-Colusa Irrigation District (GCID)

The GCID diversion facility located near Hamilton City, California, is the single largest diverter of water on the Sacramento River with the capacity to take up to 3,000 cfs daily. Inadequate fish screens at the facility allow entrainment of juvenile salmon, including small winter-run juveniles that are dispersing in the river system during the peak of the irrigation season. In 1990, the Corps initiated a section 7 consultation with NMFS to assess the impacts of proposed maintenance dredging and other in-river construction at the GCID facility on winter-run chinook salmon. In May 1991, NMFS issued a biological opinion that concluded maintenance dredging and construction and removal of a seasonal earthfill weir were likely to jeopardize the continued existence of winter-run chinook salmon (NMFS 1991c). NMFS identified a reasonable and prudent alternative that included gradient restoration work in the main channel of the Sacramento River at the facility and construction of a new “state-of-the-art” fish screen facility by GCID at the head of intake channel leading to the pumping and diversion facility.

GCID failed to act on the Corps permit or acknowledge acceptance of NMFS’s reasonable and prudent alternative and also would not agree to apply to NMFS for a section 10 incidental take permit under the ESA that would authorize the taking of winter-run chinook salmon at the facility. Accordingly, NMFS requested the Department of Justice to seek injunctive relief in August 1991 to reduce the taking of juvenile winter-run chinook salmon at GCID’s pumping and diversion facility. On August 16, 1991, the U.S. District Court issued an temporary restraining order (TRO) requiring GCID not to exceed a pumping rate of 1,100 cfs from August 19 to August 29, 1991, and by mutual agreement, the conditions of the TRO were extended through December 31, 1991. On January 9, 1992, the court issued a permanent injunction against GCID that prohibited pumping at the facility from July 15 through November 30. On March 31, 1992, the Court modified the permanent injunction by incorporating the terms and conditions of a joint stipulation agreed to between GCID and the United States. Under these terms and conditions, GCID will be allowed to pump water on a restricted basis between August 1 and November 30, in exchange for the District’s commitment to implement a long-term solution to problems at the facility. GCID is currently revising a section 7 consultation with the Corps concerning the effects of permit issuance on winter-run chinook salmon.

Delta Export Facilities of the CVP and SWP

The Bureau and the DWR operate facilities in the Sacramento-San Joaquin Delta to convey Sacramento River water into and through the Delta (i.e., the Delta Cross Channel), and to export water out of the Delta (i.e. the Bureau’s Tracy Pumping Plant and the DWR’s Byron Pumping Plant). The operations of these and other CVP and SWP facilities, which are coordinated through the Coordinated Operations Agreement between the Bureau and DWR, have the potential to adversely impact winter-run chinook salmon.

Outmigrating juvenile winter-run chinook salmon are diverted from the Sacramento River into the central and southern Delta when the DCC is open (NMFS 1992a). The proportion of winter-run chinook salmon diverted through the DCC is thought to be directly related to the amount of water diverted from the Sacramento River through the Delta Cross Channel. The survival of juvenile winter-run chinook salmon diverted through the DCC is reduced due to factors such as higher predation levels, higher water temperatures, exposure to a larger number of unscreened diversions, decreased water quality, and a complicated channel system that makes it difficult to find passage to the ocean (NMFS 1992a). To address the potential adverse effects of operation of
the Delta Cross Channel gate on juvenile winter-run chinook salmon survival, especially during the extremely critical water supply that was anticipated in 1992. NMFS identified a reasonable and prudent alternative in the February 1992 biological opinion that required the Bureau to close the Delta Cross Channel gate from February 1 through May 1 in 1992.

In the incidental take statement that was attached to the biological opinion, NMFS stated that operation of the CVP and SWP in 1992 was expected to take incidentally only a small percentage of the total winter-run chinook salmon outmigrants produced in 1991. Based on winter-run chinook salmon loss monitoring at the CVP and SWP facilities in the Delta by CDFG in February and April 1992, NMFS determined that reinitiation of consultation was necessary. Following consultation with the Bureau and DWR, NMFS amended the incidental take statement with new terms and conditions that (1) restricted the combined daily water export rate from the CVP and SWP facilities in the Delta to 1,200 cfs between April 11 and April 30, 1992, (2) required the Bureau and DWR to reinitiate consultation with NMFS if take exceeded a specified level (400 fish) during this period or there was evidence to indicate that winter-run chinook salmon outmigration would substantially continue beyond April 30, 1992, and (3) required the Bureau and DWR to support efforts to develop a more refined and accurate method for determining the level of taking incidental to pumping operations at the CVP and SWP facilities.

Suisun Marsh

The operation of DWR's Suisun Marsh Salinity Control Gates on Montezuma Slough can adversely affect winter-run chinook salmon by diverting outmigrating juveniles from the Sacramento River into Montezuma Slough where conditions for survival are lower due to a longer migration route, increased water temperatures and levels of predation, and exposure to numerous unscreened water diversions (Brown and Greene 1992). Upstream migrating adults winter-run chinook salmon that enter Montezuma Slough may also be blocked or delayed by the operation of the gates. NMFS included a reasonable and prudent alternative in the February 1992 biological opinion that required the gates either to be closed from March 1 through April 15, or that DWR provided evidence that unscreened diversions in the Slough were not operated during this period. DWR and CDFG conducted monitoring during this period and provided documentation to NMFS that these diversions were not operated.

Proposed Delta Projects

Additional water management facilities have been proposed by DWR (i.e., North Delta Water Management Project, South Delta Water Management Project, and Los Banos Grandes Project) that would increase the capacity to convey water through the Delta, potentially increase delta exports, and increase water storage capability south of the Delta. NMFS is concerned that these and other projects in the Delta (e.g., Los Vaqueros project of the Contra Costa Water District, Delta Wetlands project, etc.) have the potential to adversely impact winter-run chinook salmon. Currently, NMFS is informally consulting with the Corps on some of these projects and expects to consult with the Bureau. However, because these are major construction projects with Federal involvement, formal section 7 consultation will be required before construction can begin.

Droughts/El Niño

Natural factors of greatest concern to NMFS are drought conditions and the oceanographic phenomenon known as El Niño (NMFS 1992c). The effects of the extended drought on California's water supply were partially mitigated by the Bureau in 1990 and 1991 through low-level releases from Shasta Dam. Measures identified by NMFS in the biological opinion on 1992 CVP operations are expected to address drought related temperature concerns. Also, NMFS expects the consultation with the Bureau and DWR on the long-term operations of existing CVP and SWP facilities will address the need for a permanent temperature control facility at Shasta Dam. The only measure to mitigate the impact of a strong El Niño may be hatchery rearing to supplement natural smolt production from returning spawners that survive the poor ocean conditions. If the hatchery program continues to be successful, it may provide the necessary smolt production to offset the adverse effects of El Niño events.

Conclusion

Although conservation measures have been implemented since 1987 specifically to improve habitat conditions for Sacramento River winter-run chinook salmon, the population has continued to decline precipitously. In 1989, 1990, and 1991, for example, the run size was estimated at only 547, 441, and 191, respectively. These levels represent a dramatic decline in the run size of nearly 90 percent over a 25-year period. The 1990 spawning population of 441 winter-run chinook salmon should have been primarily the result of surviving progeny from the 1987 spawning population of 2,530 fish. Even with the implementation of protective measures (e.g., the Red Bluff Diversion Dam gates were open between December 1, 1986 and April 1, 1987, and low-level releases from Shasta Dam occurred), the number of adults returning to spawn in 1990 represented a decline of 80 percent in one generation.

Similarly, the estimated 1991 run size of 191 fish was primarily the result of surviving progeny from the 1988 spawning population of 2,605 fish. The 1991 spawning escapement represents a dramatic decline of 90 percent in a single generation and indicates that the 1988 year class was nearly a total failure (USFWS 1991) in spite of measures that were implemented in 1987-1988.

Modification and loss of spawning and rearing habitat, impediment of adult upstream and juvenile downstream migration, predation, pollution, and entrapment in water diversions on the Sacramento River and in the Delta continue to affect adversely the recovery of winter-run chinook salmon. Further, it is likely that the ongoing drought (1987-1992) in California has exacerbated these impacts. The 1991-1992 El Niño that is in progress could also influence the number of winter-run chinook salmon that return to spawn in 1992 and 1993.

NMFS estimates that for a population with about a 3 to 5 year life cycle, such as winter-run chinook salmon, an annual run size of about 200 to 300 fish is sufficient to avoid any serious loss of genetic diversity. A somewhat larger population size (e.g., 500 spawners per year) is necessary to provide some buffer in the short term against natural fluctuations in demographic and environmental parameters. Because of the low levels of run size in 1990 and 1991, NMFS believes the population will begin losing genetic diversity through genetic drift and inbreeding. Also, such small population sizes are vulnerable to major losses from random environmental events such as droughts and El Niño.

Based on these low run sizes and the continuing threats to the population, NMFS believes that the winter run of chinook salmon in the Sacramento River is in danger of becoming extinct, and that a designation of endangered under the ESA more accurately reflects the current status of the population.
Available Conservation Measures

Conservation measures provided to species that are listed under the ESA include listing, recovery actions, implementation of certain protective measures, and designation and protection of critical habitat. Some of the most useful protective measures are contained in section 7 of the ESA. Pursuant to section 7, Federal agencies are required to conduct conservation programs for endangered species and to consult with NMFS regarding the potential effects of their actions on species under NMFS’ jurisdiction.

Since this species was listed as a threatened species on an emergency basis in August 1989, NMFS has conducted formal section 7 consultations with Federal agencies whose actions may affect the continued existence of the winter-run chinook salmon (NMFS 1991a, 1991b, 1991c, 1992a, 1992b). Currently, NMFS is consulting under section 7 with the Bureau and DWR concerning the long-term operation of the CVP and SWP facilities. Consultations are anticipated with the Corps on all future modifications or construction of siphons and pumps on the Sacramento River and in the Delta to ensure they are adequately screened, and on major DWR projects proposed for the Delta and elsewhere.

Section 10 of the ESA provides for addressing the effects of private (non-Federal) actions on endangered species. NMFS is currently working with CCID to address the impacts of their major diversion facility on winter-run chinook salmon through the section 10 process.

Also, NMFS will continue to participate in the State’s review of sport and commercial fishing regulations (NMFS 1992c). Due to the continued decline of the eastern North Pacific salmon stocks, the PFMC recently proposed to reduce the allowed catch of all salmon on the west coast of the U.S. in the attempt to rebuild these stocks. Winter-run chinook salmon may benefit from these actions. Through consultations under state and Federal laws, if is possible that a State/Federal regulatory regime will be developed to ensure that the winter-run chinook salmon population is not adversely affected by sport or commercial fishing.

NMFS recently reappointed a recovery team to develop a recovery plan for Sacramento River winter-run chinook salmon. The recovery team is comprised of fishery resource managers, experts on winter-run chinook salmon biology and other conservation specialists. Over the next year, the team will develop a comprehensive recovery plan for this species.

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the extent that it is prudent and determinable, critical habitat be designated concurrently with the listing of a species. However, unlike designating a species as threatened or endangered, economic impacts must be considered when designating critical habitat. When winter-run chinook salmon was listed as threatened, no critical habitat was designated because an economic impact analysis had not been conducted. However, this analysis has been completed, and NMFS is currently developing a proposal for designating critical habitat. NMFS believes that the delay in designating critical habitat has not been detrimental to the conservation of the winter-run chinook salmon since section 7 consultations address Federal actions that may adversely affect the species as well as its habitat. The prohibitions on taking the species continue to be in effect, and any action that is likely to adversely modify or destroy habitat is considered a take and will be addressed by NMFS.

Classification

The 1982 Amendments to the ESA (Pub. L. 97–304), in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on the limitation of criteria for a listing decision and the opinion in Pacific Legal Foundation v. Andrus, 675 F. 2d 820 (6th cir., 1981), NMFS has categorically excluded all endangered species listing from environmental assessment requirements of the National Environmental Policy Act (40 FR 4413, February 6, 1984).

As noted in the Conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act are not applicable to the listing process.

References


NMFS. 1991c. Endangered Species Act Section 7 Biological Opinion on U.S. Army Corps of Engineers granting a permit to Glenn-Colusa Irrigation District to conduct maintenance dredging and construct and remove a seasonal earthfill weir. Southwest Regional Office, National Marine Fisheries Service.


USFWS. 1991. Letter (12/9/91) to the National Marine Fisheries Service to provide comments on their proposal to reclassify the Sacramento winter-run chinook salmon from threatened to endangered status.

List of Subjects

50 CFR Part 222

Administrative practice and procedure. Endangered and threatened species, Exports, imports, Reporting and
Endangered and threatened species, Exports, Imports, Marine Mammals, Transportation.

Michael F. Tillman, Deputy Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR parts 222 and 227 are proposed to be amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation for part 222 continues to read as follows:


§ 222.23 [Amended]
2. In § 222.23, paragraph (a) is amended by adding the phrase “Sacramento River winter-run chinook salmon (Oncorhynchus tshawytscha),” immediately after the phrase “Snake River sockeye salmon (Oncorhynchus nerka)” in the second sentence.

PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 et seq.

§ 227.4 [Amended]
4. In § 227.4, paragraph (e) is removed and paragraphs (f) through (h) are redesignated paragraphs (e) through (g) respectively.

§ 227.21 [Amended]
5. In § 227.21, paragraphs (a) and (b)(1), the phrase “(e), (g) and (h) is removed, and the phrase “(f) and (g)” is added in its place; in paragraph (b)(2), the phrase “(g) and (h)” is removed and the phrase “(f) and (g)” is added in its place.

[FR Doc. 92–14399 Filed 6–18–92: 8:45 am]
BILLING CODE 3510–22–M
This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB-92-37]

Burley Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. app.) announcement is made of the following committee meeting:

Name: Burley Tobacco Advisory Committee.

Date: July 7, 1992.

Time: 10 a.m.

Place: Campbell House Inn, 1375 Harrodsburg Road, Lexington, Kentucky 40405.

Purpose: To select officers, discuss Committee requests from previous meeting, review regulations pursuant to the Tobacco Inspection Act, 7 U.S.C. 511 et seq., and other related issues.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, AMS, U.S. Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 205-0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.


Daniel Haley.

Administrator.

[FR Doc. 92-14459 Filed 6-18-92; 8:45 am]

BILLING CODE 3410-02-M

Economic Research Service

Cost of Production Review Board; Solicitation of Nominations

Under authority of section 1005 of the Agriculture and Food Act of 1981, the Secretary of Agriculture established the National Agricultural Cost of Production Standards Review Board (Advisory Committee). Public Law No. 101-624 extended the authority for the Advisory Committee through September 30, 1995. The Advisory Committee was renewed by the Secretary of Agriculture on April 8, 1991. The Advisory Committee reviews the adequacy of the parity formula; advises the Secretary as to whether the cost of production methodology used by the Department accurately and fairly represents the cost of production incurred by producers; makes such recommendations to the Secretary as the Committee deems appropriate, including ways of improving the cost of production methodology and the parity formulae; and reviews the adequacy, accuracy, and timeliness of the cost of production methodology used by the Department.

The Advisory Committee consists of 11 members appointed by the Secretary. Seven members of the Board are chosen from a pool of nominees who are, individually or as a group, engaged in the commercial production of each of the program crops (corn, barley, oats, grain sorghum, wheat, rice, and upland cotton) and in one or more of the various major agricultural commodities produced in the United States. Three members of the Board are chosen from a pool of nominees who are knowledgeable about cost of production by virtue of their education or experience and may be drawn from the fields of agricultural economics, banking, finance, accounting, or related areas. One member is an employee of the Department. Members of the Committee serve without compensation, except that members, while away from their homes or regular places of business in the performance of service, are reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of title 5, United States Code. Nominations are needed for one person to serve on the Advisory Committee. This member should have detailed knowledge of cultural practices and costs related to wheat and small grain production. The term of this member will be for four years or until the expiration of authority for the Committee, whichever comes earlier. Any person appointed to fill a vacancy on the Committee will be appointed only for the unexpired term of such person’s predecessor. It is the policy of the Department that membership on advisory committees should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Persons interested in serving in the Advisory Committee, or persons interested in nominating persons to serve, should contact John E. Lee, Jr., Administrator, ERS, Room 1226, 502 New York Avenue NW., Washington DC 20005-47888, in writing (please mark Attention: COP Review Board), and request a copy of Form AD-755, which must be completed and submitted to the Administrator at the above address not later than August 18, 1992.

The final selection of committee members will be made by the Secretary.

John E. Lee, Jr.,

Administrator.

[FR Doc. 92-14389 Filed 6-18-92; 8:45 am]

BILLING CODE 3410-18-M

Forest Service

Management Guidelines for the Northern Goshawk in the Southwestern Region

AGENCY: Forest Service, USDA.


SUMMARY: This current notice is being issued to replace an expired interim policy for goshawk management in the Southwestern Region of the Forest Service. This interim directive requires that Goshawk management units (nesting home ranges: Including nest areas, post-fledgling family areas, and foraging areas) be identified, established and managed whenever a northern goshawk reproductive site is located (both active and historical home ranges). The Southwestern Region will follow the Goshawk Scientific Committee Recommendations for management of goshawk habitat.

ADDRESSES: USDA Forest Service; Southwestern Region; 517 Cold Avenue, SW; Albuquerque, NM 87102; ATTN: Director of Wildlife.

FOR FURTHER INFORMATION CONTACT: Wildlife Staff Unit; (505) 842-3261.

SUPPLEMENTARY INFORMATION: On October 6, 1991, the last interim policy for management of the northern...
goshawk in the Southwestern Region was issued and then published on October 15, 1991, in the Federal Register. Specific direction was provided for the nest areas (totaling 180 acres) and the post fledging family area (420 acres). The nest area and PFA total 10 percent of a goshawk home range size (600 acres). No specific region-wide policy for management of the foraging areas (5,400 acres) was provided. The intent was to "manage aquires to provide quality habitat for 'northern' goshawk prey species". Incorporated in the new interim policy of June 8, 1992, is specific management direction for the foraging area. This represents a major change to the old interim policy because specific management direction is now provided for 100 percent of the home range.

The new interim policy listed below replaces that portion of the old policy for management of the northern goshawk and provides Regional Forest Service direction while the agency is preparing final agency action. The Forest Service will shortly publish, in the Federal Register, a notice of intent to prepare an Environmental Impact Statement (EIS) to amend Forest Plans to include goshawk management guidelines. The EIS is expected to be completed over the course of the next 1.5 to 2.0 years (1994). In addition, the Forest Service is establishing a scientific group to analyze the impacts of applying these guidelines on other species living in the same ecosystems as the goshawk.

The new interim policy applies only to historical and active goshawk breeding home ranges (territories) in the Southwestern Region. The management direction is a synthesis of information provided by the Goshawk Task Force and the Goshawk Scientific Committee. The new interim policy stems mainly from the 'Recommendations' developed by the Goshawk Scientific Committee (GSC).

The purpose of the interim management policy, and the spirit of the GSC Recommendations, is through time to attain the desired future conditions for goshawk habitat in the Southwestern Region. Therefore, all future Forest Service actions within goshawk home ranges will be designed to achieve and then maintain desired goshawk habitat. The Goshawk Scientific Committee (GSC) realized that their recommendations are a gentler management approach than previously taken and that growing trees to mature and old-growth status requires considerable time and cannot be achieved immediately. The GSC also recognized that there is wide variation in tree-growth potentials among sites. Forests in some areas currently conform to the desired future habitat conditions for goshawks while others are (will need decades, or even centuries, of management to reach the desired goshawk habitat conditions. The capability of the land combined with tree growth rates and current management knowledge will determine the pace at which the Forest Service can produce goshawk habitat across the goshawk home range.

Readers should be aware that attaining the desired future forest conditions for goshawk home ranges may require a long time. Also, because of the range of variation among sites, applying the recommendations in a uniform way on each area may be difficult. The intent, therefore, is to create a sustainable intermixture of all forest ages (dominated by mid-aged, mature, and old forests) with a well-developed herbaceous and shrubby layer understorey that will sustain a viable population of goshawks in the Southwestern Region. Because the interim policy contains specific direction for management, some might unrealistically expect immediate compliance everywhere regardless of site conditions. The desired future conditions are goals to manage towards not hard rules to be accountable for on the day this policy goes into effect.

Using these short-term interim guidelines, along with Forest Plans, and the Integrated Resource Management Process, resource specialists will use their professional judgment to adjust and interpret site-specific needs at the project level to attain long-term habitat management goals.

Background Information

This interim policy will remain in effect while the Southwestern Region prepares an Environmental Impact Statement, to amend Forest Plans, for the management of goshawk habitat.

The Southwestern Region will follow the Goshawk Scientific Committee's (GSC) Recommendations for Managing goshawk habitat. For a summary of the desired future conditions for the goshawk home range see Executive Summary below. Specific detail is found in the GSC Recommendations (see definitions section) on file at National Forest Supervisor Offices and District Ranger Stations throughout the Southwestern Region.

The Southwestern Region has been concerned with the viability of the northern goshawk for the last decade. A review of the concern is provided in the Federal Register on October 15, 1991 (Volume 56, Number 199, pages 51672-51677).
March until late September. Nest areas are the focus of all movements and behaviors associated with breeding. Most goshawks have two to four alternate nest areas within their home range; alternate nest areas are used in different years and some may be used for decades.

The post fledgling-family area (PFA) (approximately 420 acres) surrounds the nest areas (within a home range) and most often, because of its size, includes a variety of forest types and conditions. The PFA appears to correspond to the territory (defended area) of a goshawk pair and represents an area of concentrated use by the family after the young leave the nest and until they are no longer dependent on the adults for food (up to 2 months). These areas are important for fledglings; they provide high prey for developing hunting skills. PFAs have forests with patches of dense trees, developed understories, and habitat attributes (e.g., snags, downed logs, nest trees) that are critical in the life-histories of many goshawk prey.

Foraging areas are approximately 5,400 acres in size. Although little is known about how foraging goshawks use habitats, evidence suggests that they do so opportunistically. First, because most forests vary in composition and structure, foraging goshawks are more often than not confronted with a mosaic of forest types and conditions within their large home ranges. Second, many successful goshawk nests have been found in a variety of areas, each dominated by a large expanse of homogeneous forest of a single type and age (e.g., ponderosa pine, old-growth mixed-species); by default, these goshawks must have foraged in these stands. Third, observations of foraging goshawks show that, in fact, they hunt in many forest conditions. This opportunism suggests that the choice of foraging habitat by goshawks may be as closely tied to prey availability as to habitat structure and composition.

Furthermore, many raptor populations (e.g., hawks, falcons, owls) are often limited by availability and abundance of their prey. The recommendations were based on the available, but limited, information on how foraging goshawks use their habitat; this information was supplemented with information on the habitat of important goshawk prey.

A comparison of goshawk diets from disparate areas within North America showed that while as many as 50 species were eaten, about 20 were common in the diets; 14 of these common species occur in the diet of southwestern goshawks and were considered important. Information on the distribution, habitat, special habitat needs, home range size, and population density of these 14 prey were gleaned from the literature. A synthesis of this information provided a set of “desired forest conditions” that would result in abundant populations of each prey.

Could sufficient food resources be required to support goshawks in all seasons (especially in winter when few prey are available) and in years when prey populations may be low because of environmental variation (e.g., drought). Because so little prey species is likely to be abundant enough to support goshawks, especially during the winter, habitats and populations of all 14 prey are necessary.

Selected goshawk prey include squirrels, chipmunks, woodpeckers, jays, rabbits, and grouse. Specific habitat attributes used by these species include: snags, downed logs, wood debris, large trees, herbaceous and shrubby understories, and a mixture of various forest vegetative structural stages (VSS). Abundant prey populations within goshawk foraging areas will occur when (1) the specific habitat attributes are provided, (2) forests contain large trees and have relatively open understories, (3) forest openings are small-to-medium in size, (4) patches of dense, mid-aged forests are scattered throughout, and (5) the majority of forests are in the mid-aged, mature, and old age classes.

Present Forest Conditions

Southwestern forests occupied by goshawks (and many other plants and animals that have adapted to these forests) have been altered from pre-European settlement conditions by fire suppression, livestock grazing, mining, and recreational uses. Prior to fire suppression in the western United States, ponderosa pine forests were burned by low intensity surface fires at 2 to 15 year intervals. Fires burned at lesser frequencies in mixed-species forests (5-22 years). These fires maintained forests that were open and dominated by mature trees by regularly burning small trees. In spruce-fir forests, fire intervals were much longer (60-400 years) and were often catastrophic, stand-replacing fires. Habitat changes resulting from fire suppression in ponderosa pine and mixed-species, and to a lesser extent spruce-fir forests, are: (1) invasion of open, single-storied stands by dense regeneration, (2) loss of openings by invasion of trees, and (3) changes in the abundance and composition of plant species in both the understory and overstory due to the unnatural progression of plant succession. Accumulated fuels and dense forest conditions resulting from fire suppression have also increased the potential loss of goshawk habitat through catastrophic wildfire and epidemic infestations of insects and diseases. Increased shading from the dense regeneration has also resulted in a reduction of herbaceous and shrubby understories that provide important foods and cover for goshawk prey.

Management Recommendations

The present forest conditions in the southwestern United States reflect the extent of human interference with natural processes. Given the improbability of returning to the natural frequencies of natural disturbances, some active management (e.g., thinning, prescribed fire) is necessary to produce and maintain the desired conditions for sustaining goshawks and their prey. In some forests, natural processes are still functioning and little or no management is necessary to reach the desired conditions (e.g., some spruce-fir forest(s)).

Across the Southwestern Region there is considerable variation in site-specific growth potential. This variation is associated with elevation, slope, aspect, soil, available moisture and nutrients, and disturbance history. Therefore, sites have widely varying capabilities to produce the desired forest conditions; on certain sites desired conditions cannot be attained, while on others the conditions can be exceeded. Although high growth-potential sites have the greatest capabilities to produce quality goshawk habitat, low potential sites may still provide habitat given enough time.

Because trees and forests require many years to grow, it is prudent to minimize the possibility of immediate loss of goshawk habitat; these management recommendations, therefore, are conservative. The opportunities to produce, maintain and enhance goshawk habitat may not be equally applied on all forested lands because of "reserved forest land" designations (e.g., wilderness, research natural areas, National Parks) and area limitations (e.g., slope, soil, location).

Desired conditions might be achieved in...
Nest Areas (30 acres)

Three suitable nest areas (nest areas containing the necessary forest structure and therefore capable of containing a pair of nesting goshawks) should be maintained per nesting home range. In addition, three replacement areas should be developed and maintained per nesting home range (suitable areas may be lost because of insects or catastrophic fire). Nest areas are typified by one or more stands of mature or old trees and dense forest canopies. Desired forest conditions for the nest stands and management recommendations for maintaining and developing nest stands within nest areas are presented Table ES-1 and ES-2.

Post fledgling-family areas (PFA) (420 acres)

The PFA contains a variety of forest conditions and prey habitat attributes. Small openings, snags, downed logs, and woody debris are critical PFA attributes (Table ES-1). To sustain the desired canopy cover, size of trees, and the specified proportions of different forest ages within the PFA, forest regeneration in small patches is required every 20 to 30 years (not to exceed 10 percent of the PFA). Other management practices (e.g., prescribed fire, removing understory trees) are suggested for sustaining other critical elements of goshawk habitat (Table ES-1).

Small openings (less than 2 acres) in the forest are desired habitat for some prey species and are required for forest regeneration. If openings are greater than 0.5 acre in ponderosa pine and mixed-species forests, 0.3 acre in the spruce-fir forests, up to 6 large mature and/or old trees (reserve trees) in groups should be left in regenerated openings. Reserve trees are not necessary if openings are less than 0.5 acre in ponderosa pine and mixed-species forests, and 0.3 acre in spruce-fir forests; this component can be met in adjacent forested areas (Table ES-1). Planting of ponderosa pine and other conifers is desired and, depending on forest type, aspen and oak regeneration is encouraged. Snags, downed logs, and woody debris should be present throughout the PFA (Table ES-1).

All management activities in the PFA should be limited to the period between October and February. Prescribed burning is the preferred method for management of woody debris (Table ES-2). Thinning from below (removing understory trees) is preferred for maintaining desired forest structures, and a variable spacing of trees is preferred for developing groups of trees with interlocking crowns. Road densities should be minimized and permanent skid trails should be used in lieu of permanent roads. Forage utilization should be 20 percent or less to maintain grass, forb, and shrub layers.

Foraging Area (5,400 acres)

Desired conditions and management recommendations for the foraging areas are similar to the PFA. The distribution of vegetative structural stages and the requirements for habitat attributes such as reserve trees, snags, and downed logs are the same as the PFA. Because the foraging area need not provide hiding cover for fledgling goshawks, a more open canopy is preferred—40 percent in the mid-aged forests and 40 to 60 percent in the mature and old forests—depending on the forest type. Medium openings (less than 4 acres), for understory development and tree regeneration, are desired in ponderosa pine and mixed-species forests; smaller openings are desired in spruce-fir forests (Table ES-1). The specific management recommendations to obtain the desired conditions for the foraging area are the same as the PFA (Table ES-2).

Related Benefits of Achieving Desired Conditions

A large-scale geographic and multi-resource approach is necessary when managing for the goshawk home ranges. The approach used in these recommendations provides for many wildlife species, timber, and forage. For example, timber harvesting is not excluded by the recommendations. Rather, timber harvesting is encouraged—albeit in a manner that mimics the effects of natural forest disturbances—to aid in the development and maintenance of the desired forest conditions for goshawks.

Soil productivity, fire, woody debris, large diameter snags and downed logs, microorganisms, mammals and birds (some that use old-growth forests), and forest health and productivity—all elements of functioning forest ecosystems—are addressed in the recommendations. As a result, the management recommendations for the northern goshawk in the southwestern United States are not limited to any single species or element.
Table ES-1. Summary of desired forest conditions in three forest types for sustaining northern goshawk in the southwestern United States.

<table>
<thead>
<tr>
<th>Attribute</th>
<th>Suitable Nest Area</th>
<th>Post Family-fledgling Area</th>
<th>Foraging Area</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Ponderosa Pine</td>
<td>Mixed-Spruce-fir Species</td>
<td>Ponderosa Pine</td>
</tr>
<tr>
<td>VSS Distr.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VSS 1 grass/forb/shrub</td>
<td>0</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>VSS 2 seedling-sapling</td>
<td>0</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>VSS 3 young forest</td>
<td>0</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>VSS 4 mid-aged forest</td>
<td>0</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>VSS 5 mature forest</td>
<td>100</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>VSS 6 old forest</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Canopy Cover %</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VSS 4</td>
<td>NA</td>
<td>1/3 60+</td>
<td>60+</td>
</tr>
<tr>
<td>VSS 5</td>
<td>50+</td>
<td>50+</td>
<td>60+</td>
</tr>
<tr>
<td>VSS 6</td>
<td>50+</td>
<td>50+</td>
<td>60+</td>
</tr>
<tr>
<td>Years to reach VSS 6</td>
<td>200-300</td>
<td>200-250</td>
<td>200-300</td>
</tr>
<tr>
<td>Openings</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>W/Reserve Trees (Ac)</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>W/O Reserve Trees (Ac)</td>
<td>0</td>
<td>1/2</td>
<td>1/3</td>
</tr>
<tr>
<td>Width (ft)</td>
<td>NA</td>
<td>200</td>
<td>150</td>
</tr>
<tr>
<td>Reserve Trees</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number (per Group)</td>
<td>NA</td>
<td>3-5</td>
<td>6</td>
</tr>
<tr>
<td>Number of Groups</td>
<td>5</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Snags (Ac)</td>
<td>NR</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Downed Logs (Ac)</td>
<td>NR</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Woody Debris (Tons/Ac)</td>
<td>NR</td>
<td>5-7</td>
<td>10-15</td>
</tr>
</tbody>
</table>

1 Suitable nest area (capable of having nesting goshawks) attributes apply to all forest types.

2 VSS: Vegetative structural stages, a description of forests based on the location of the majority of the trees in the diameter distribution of a stand. For example, if the majority of the stems of a stand (based on basal area) were located in the 12-18 inch diameter class, the stand would be classified as a VSS 4. General diameter limits are: VSS 1 = 0-1" DBH, VSS 2 = 1-5" DBH, VSS 3 = 5-12" DBH, VSS 4 = 12-18" DBH, VSS 5 = 18-24" DBH, VSS 6 = 24+ DBH. DBH = Diameter at Breast Height (4.5 ft.).

3 NA: Not applicable

4 Reserve trees: Standing trees left after harvesting that will be allowed to become snags and downed logs.

5 A: Applicable, clumpiness or groups of large trees is also desirable.

6 NR: Not required, but presence of these features are not detrimental.

7 Proportion of home range component in VSS 4.
Table ES-2. Summary of management recommendations for producing and maintaining northern goshawk habitat in the southwestern United States.

<table>
<thead>
<tr>
<th>Attribute</th>
<th>Nest Area</th>
<th>PFA</th>
<th>Foraging Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number</td>
<td>6</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Suitable</td>
<td>3</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Replacement</td>
<td>3</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Size (Ac)</td>
<td>30</td>
<td>420</td>
<td>5,400</td>
</tr>
<tr>
<td>Management Season</td>
<td>Oct-Apr</td>
<td>Oct-Apr</td>
<td>Year-Long</td>
</tr>
<tr>
<td>Conifer</td>
<td>None</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Aspen &amp; Oak</td>
<td>None</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Planting</td>
<td>None</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Thinning From Below</td>
<td>Non-uniform Spacing</td>
<td>Non-uniform Spacing</td>
<td>Non-uniform Spacing</td>
</tr>
<tr>
<td>Roads</td>
<td>System</td>
<td>Minimum Density</td>
<td>Minimum Density</td>
</tr>
<tr>
<td></td>
<td>Skid</td>
<td>Permanent</td>
<td>Permanent</td>
</tr>
<tr>
<td>Forage Utilization (%)</td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Woody Debris Treatments</td>
<td>Prescribed Burning&lt;sup&gt;c&lt;/sup&gt;</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Lopping &amp; Scattering</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Hand Piling</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Machine Grapple Piling</td>
<td>None</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Dozer</td>
<td>None</td>
<td>4</td>
</tr>
</tbody>
</table>

a Nest areas may be made up of one or more forest stands.
b Oak not applicable in the spruce-fir forest type.
c Not applicable in spruce-fir forest type.

BILLING CODE 3410-11-C
27430 Federal Register / Vol. 57, No. 119 / Friday, June 19, 1992 / Notices

Interim Directive No. 2670—92—1
Effective Date: June 8, 1992
Expiration Date: December 8, 1993
Chapter 2670—Threatened, Endangered, and Sensitive Plants and Animals

Posting Notice: Last ID was No. 2670—91—2, dated October 6, 1991, to Chapter 2670—Threatened, Endangered, and Sensitive Plants and Animals.

Remove: ID 2670—91—2 dated October 6, 1991

This interim directive requires that Goshawk management units (nesting home ranges; including nest areas, post-fledging family areas, and foraging areas) be identified, established and managed whenever a northern goshawk reproductive site is located (both active and historical home ranges). The Southwestern Regional will follow the Goshawk Scientific Committee Recommendations for management of goshawk habitat.

Forrest Carpenter,
Deputy Regional Forester.

2678—Specific Direction on Individual Species.

2676.3—Northern Goshawk. Concern about the habitat needs and population viability of the northern goshawk (Accipiter gentilis) resulted in the species being identified as "sensitive" by the Regional Forester in 1982. For the purpose of this interim policy, the term "northern goshawk" is meant to include all goshawks on National Forest land in the Southwestern Region of the Forest Service.

1. Authority. This interim policy provides guidelines for carrying out active conservation programs to maintain viability of the northern goshawk, as directed in the implementing regulations for the National Forest Management Act and FSM 2670—1.

2. Objectives
a. Search for goshawk reproductive sites in suitable northern goshawk habitat prior to management activities.
b. Identify and map general areas where replacement and alternate nest areas, post-fledging family areas (PFA), and foraging areas will be placed.
c. Determine the composition and distribution of Vegetational Structural Stages for goshawk home ranges where projects are planned.
d. Provide for multiple use consistent with maintaining northern goshawk population viability.
e. Manage goshawk habitat, by applying the Goshawk Scientific Committee Recommendations, to ensure continued existence of a well distributed northern goshawk population within the Southwestern Region.

f. Specify guidelines for the management of desired habitat conditions to maintain reproductive pairs.

3. Policy
a. Conduct surveys of suitable habitat to locate northern goshawk reproductive sites. The location of nest tree(s) or fledgling goshawks are means of consistently identifying northern goshawk habitat.
b. Implement the Management Guidelines wherever northern goshawk habitat has been identified by the location of known goshawk nest trees or other evidence of reproduction.

4. Responsibility
a. Regional Northern Goshawk Program Coordinator. The Regional Forester shall appoint a Regional Northern Goshawk Program Coordinator who shall:
(1) Assist Forest, District and Zone Wildlife Biologists in locating reproductive sites, nest trees, PFA and foraging area boundaries.
(2) Provide assistance to Forest and District personnel on implementation of northern goshawk management guidelines.
(3) Coordinate northern goshawk studies within the Region.
(4) Serve as chairperson on the Northern Goshawk Scientific Committee and Northern Goshawk Task Force.
(5) Coordinate northern goshawk research efforts with appropriate State and Federal agencies.
(6) Manage the Regional Northern Goshawk Program, providing budget and staffing advice along with data management.
(7) Provide guidance and assistance to Forests to evaluate effects of activities on the northern goshawk in biological evaluations.

b. Forest Supervisor. In addition to responsibilities listed at FSM 2670.45, Forest Supervisors shall ensure timely implementation of Regional guidelines concerning northern goshawk through specific procedures and actions including northern goshawk survey, monitoring, reproductive site location, nest area, PFA and foraging area selection, and identification. Implement these guidelines using professional biological expertise.
(1) Review nest area, PFA and foraging area boundaries submitted by the District Ranger where appropriate.
(2) Consult with Regional Northern Goshawk Program Manager on the locations of any northern goshawk nest area, PFA and foraging area boundaries where there is uncertainty about where the boundary should be located.

(3) Coordinate the northern goshawk program at the Forest level with appropriate State and Federal agencies and research.
(4) Coordinate northern goshawk sites available for interpretive trips with Districts.
(5) Ensure that release of information conforms with Forest Service policy identified in FSM 2671.2.
(6) Coordinate with District Rangers on the selection of sites for monitoring.
(7) Manage personal and commercial fuelwood practices within northern goshawk nest areas, PFA’s, and foraging areas to maintain recommended levels of snags and downed logs.
(8) Provide guidance, assistance and quality control to ensure the biological evaluations adequately address potential adverse effects on goshawks from management activities.
(9) Review inventory and monitoring procedures used by Districts to ensure quality control and appropriateness.

c. District Ranger. In addition to responsibilities listed in FSM 2670.46, District Rangers shall:
(1) Ensure implementation of Forest Supervisor’s direction, including necessary survey and monitoring, concerning northern goshawk through specific actions and procedures.
(2) Ensure all multiple-use objectives proposed within northern goshawk nest areas, PFA and foraging area are consistent with northern goshawk habitat management through the Integrated Resource Management (IRM) process.
(3) Ensure that northern goshawk surveys and monitoring are conducted on their District using appropriate methodology.
(4) Locate nest areas, replacement nest areas, PFA and foraging area boundaries best meeting Regional requirements. Submit for review by the Forest Supervisor as appropriate.
(5) Locate, approve and document calling routes used during northern goshawk surveys.
(6) Identify District survey needs and assist Forest Supervisor in determining Forest priorities.
(7) Manage and conduct show-me trips as appropriate in coordination with the Forest Supervisor.
(8) Determine the number of acres in each Vegetative Structural Stage within the home range of each goshawk territory and document that process.

5. Definitions. Use this list of standard terms and definitions when referring to northern goshawk habitat management to reduce potential misunderstandings and provide greater consistency in the language used throughout the Region.
Definitions are taken from several sources.

a. **Active Nest.** A goshawk nest known to have contained an egg. A nest need not have successfully produced fledglings to be considered active.
b. **Adverse Management Activity.** Any activity that could adversely modify goshawk behavior, reproductive effort, or habitat.
c. **Alternate Nest Area.** Goshawk home ranges often contain two or more nest areas, only one of which will be active in a given year. All alternate nest areas are historical nest areas.
d. **Breeding Season.** The period from March 1 through September 30 which includes courtship, incubation, nesting, and fledgling-dependency periods.
e. **Clumpiness.** The occurrence of trees in groups.
f. **Cull Logs.** Harvested logs that have less than 50% sound (no decay or indications of insect and disease) wood.
g. **Deferred Habitat.** That portion of the nest area[s], PFA and foraging area where management activities will not occur for some designated period of time.
h. **Designated Nest Area.** An area suitable for nesting, without a history of use by goshawks, designated as an alternate nest area.
i. **Dominant Trees.** The tallest trees in a forest. Together with codominants, the dominant trees comprise the main canopy of the stand.
j. **Downed Log.** Fallen trees or portions of fallen trees.
k. **Fledgling.** A young bird that has left its nest but is unable to completely care for itself.

l. **Foraging Area.** Areas where prey are searched for, pursued by, and captured by goshawks.

n. **Historical Nest Area.** A nest area containing one or more historical nests. An alternate nest area is a historical nest area. Historical nest areas are important because they may contain the habitat elements that attracted the birds originally.
o. **Home Range.** The area that an animal habitually uses during nesting, foraging, and roosting. Adjacent pairs of goshawks may have overlapping home ranges; the extent of overlap is unknown. A nesting home range contains nest areas (active and historical), the post-fledgling family area, and the foraging area.
p. **Intermediate Treatment.** The treatment (cutting) of trees from a stand between the time of regeneration and final cut. Treatments include cleaning, thinning, liberation, improvement, salvage, and sanitation cuttings. Treatments other than removal are pruning, fertilization, and prescribed fire. Can also be called intermediate.

q. **Lopping and Scattering.** A method to disperse logging debris, and to reduce it to a specific height (usually 2-3 feet) above the ground.
r. **Management Unit.** A northern goshawk home range which is managed. The home range consists of nest areas, post-fledgling family area, and the foraging area.
s. **Multi-storied Stands.** A forest having more than one horizontal layer of vegetation.
t. **Nest.** A platform of sticks on which eggs are laid. Most goshawk nests are placed within the lower two-thirds of tree crowns, often against the trunk but occasionally on a limb up to 10 feet from the trunk.
u. **Nest Area.** The nest tree and stand(s) surrounding the nest that contain prey handling areas, perches, and roosts. Nest areas are often on mesic forested sites (northerly slopes, along streams).
w. **Nest Stand.** The stand of trees that contains the nest tree.
x. **Nest Tree.** The tree containing the nest.
y. **Opening.** A break in the forest canopy that may be covered by grasses, forbs, shrubs, tree seedlings; or areas with sapling-sized trees and larger that are stocked less than 10 percent.

z. **Nest Stand.** An area around the nest tree and stand(s) surrounding the nest that contain prey handling areas, perches, and roosts. Nest areas are often on mesic forested sites (northerly slopes, along streams).

aa. **Predator.** An animal that preys on another animal. Examples include birds of prey, mammals, and snakes.

bb. **Protocol.** A formalized methodology.

c. **Replacement Nest Area.** Forest areas with similar physiographic characteristics and size to suitable goshawk nest areas. Replacement nest areas can have young-to-mature forests that can be developed into suitable nest areas.

d. **Reserved Trees.** Old and mature trees retained in a management area forever. These trees are a recruitment source for snags and downed logs.
e. **Silvicultural System.** A planned program of treatments during the whole life of a stand. There are two silvicultural systems, even-aged and uneven-aged.

ff. **Single Storied Stands.** Stands of trees having a single canopy layer.
gg. **Snag.** A standing dead tree.

hh. **Stand.** An area of trees possessing sufficient uniformity (species composition, age, and physical features) to be distinguishable from trees on adjacent areas.
i. **Successful Nest.** A nest from which at least one young is fledged.
jj. **Suitable Habitat.** Habitat that is currently usable for nesting, roosting, and foraging. Habitat need not be occupied to be considered suitable.
k. **Survey Area.** Area around the proposed project where a northern goshawk survey or inventory will be conducted.
ll. **Viable Population.** A population that has the estimated numbers and distribution of reproductive individuals to ensure the continued existence of the species far into the future.

m. **Inventory.** Inventory suitable habitat for habitat modifying projects. Use the following approach:

a. **Each Forest will use Region 3’s 1992 inventory protocol, as appended to this notice, to get complete coverage of the project or use method (2) below.**

b. **Use aerial photographs to locate Vegetative Structural Stages 4-6 within the project area and inventory just those sites for goshawk nest areas using R3 1992 inventory protocol. All uninventoried areas (VSS 1-3) will be managed to PFA specifications while in that stage. If, while using this inventory option, evidence suggests goshawks are present (such as finding plucking perches or molted goshawk feathers) conduct a complete inventory as outlined above (#1).**

c. **If forests have goshawks nesting commonly in stands classified as VSS 1-3, then use the complete inventory method (#1 above) for those areas. There may be situations where an area is classified as a VSS 3, based on the predominant VSS class, but in actuality a combination of VSS class 4 & 5 predominate the area. For those situations, use the complete inventory method (#1 above).**

**dd. Use current survey data for all projects under contract and projects with signed decision notices on or before June 6, 1992.**
e. Complete at least 1 year of survey for projects with Decision Notices signed between June 7, 1992 and December 7, 1993.

f. Because goshawks change nest stand location frequently, two years of survey are strongly recommended. Whenever possible, conduct two years of survey for projects with Decision Notices signed after September 30, 1992.

1. If a goshawk nest area is found during the first year of inventory, establish a management unit. A second year of inventory is not needed.

2. If goshawks are not found during the first year of inventory, and suitable habitat exists, conduct an inventory the following year.

7. Establishing Goshawk Management Areas. The District wildlife biologist, or trained District personnel, will establish the nest areas, PFA and foraging area boundaries. If trained District personnel do not exist, a wildlife biologist must review and approve the design. Use the following information and refer to the definitions when establishing them.

a. Nest Areas. Suitable nest areas are critical in the reproductive biology of northern goshawks. They contain the nest tree and may contain alternate nest trees. Nest areas are occupied during the breeding season which generally begins in early May and ends by September. Nest areas are frequently used more than 1 year. Alternate nest areas are often used intermittently for decades.

Nest areas (30 acres in size) include one or more forest stands, nest(s), and nest stands. The nest stands are often characterized by a relatively high density of large trees and canopy closure, and a varying degree of slope (typically north-facing). See Executive Summary. The desired forest conditions for nest areas are older-aged stands that have a high density of large trees, high tree canopy cover, and high basal area.

The nest areas may take on several spatial distributions based on the current location of nests and topography with regards to suitable goshawk nesting habitat. The distribution of nest areas and replacement nest areas may all be centrally located within the PFA or take on a more linear distribution if sites are located within pine stringers or drainage/canyon situations.

There are three types of nests areas.

The first is a nest area currently occupied by goshawks which may have a history of use; second, a nest area documented to have been used in the past but is not occupied (historical nest area); and third, an area of suitable nesting habitat with no history of use by goshawks that is a designated alternate nest area.

A minimum of six nesting areas will be established within the PFA. Whenever possible position the nest areas toward the center of the PFA. Three areas must be suitable for nesting and three must be replacement nest areas. Each nest area must be at least 30 acres in size. A total of 180 acres of nest areas will be planned within each PFA. Nest areas will be established for occupied and all historical nest areas.

The suitable nest areas may include occupied, historical and designated nest areas. Professional judgment will be used when selecting a designated alternate nest area within suitable habitat. Nest area locations will be plotted on U.S.G.S. 2.65* Quad Maps. Nest area information will be kept confidential and maps kept in a secure location.

Professional judgment will be used to identify 3 replacement nest areas within a PFA. Estimate when suitable nest stands will decay so that replacement nest areas will be available on time. Design the boundaries and locations to ensure future nest area needs are met. Locate nest areas in moist areas or other areas that reflect the landform attributes of existing nest areas.

b. Post-fledging Family Area (PFA). The PFA is a 420 acre area of concentrated use by a goshawk family after the young leave the nest and until they are not longer dependent on the adults for food. The PFA provides young hawks with necessary hiding cover from both nocturnal and diurnal predators and sufficient prey populations to develop hunting skills.

The desired forest conditions for PFA's include moderately closed overstory and understory canopies for hiding cover and habitat elements critical in the life-histories of the prey species such as large snags, nest-trees, large downed logs, and food resources.

The intent is to develop a management prescription for each foraging area so there is sufficient habitat to support sustainable goshawk populations year round. See the Executive Summary. Because the foraging area is considerably larger (5400 acres in size) than the PFA, foraging areas include a mosaic of forest conditions. The foraging area surrounds the current location of nests and topography with regards to suitable goshawk nesting habitat.

The distribution of foraging areas will be established around PFAs. The intent is to establish one foraging area per breeding pair of goshawks for each historical and occupied site. Location and shape of the foraging area are at the discretion of the Forest Biologist but must be based on habitat conditions and professional judgment. Where possible foraging area boundaries will be consistent with stand boundaries. Prior
to establishing a foraging area around a historical site, surveys and inventories will be necessary to determine occupancy and habitat condition. Foraging areas will be managed to attain the desired future conditions in the GSC Recommendations.

Once the PFA had been established, the configuration of the 5400 acres in the foraging area should be considered. The foraging area need not necessarily be circular in its delineation. Observations or locations of goshawks from past years around an established PFA may aid in determining the foraging area configuration.

Do not include large permanent openings, such as meadows, as part of the goshawk foraging area or as part of the foraging area acreage calculations. When large permanent openings occur in the foraging area, expand the foraging area boundary by the amount of acres in permanent openings.

8. Monitoring. Use a systematic protocol to monitor northern goshawk activities.

9. Management Guidelines. Follow the Goshawk Scientific Committee Recommendations for Managing goshawk habitat on public lands. For a summary of the desired future conditions for the goshawk home range see Executive Summary. Specific detail is found in the GSC Recommendations (see definitions section) on file at National Forest Supervisor Offices and District Ranger Stations throughout the Southwestern Region. The following provides an overview of the management guidelines. Apply them to all management activities or projects proposed in northern goshawk management units (home ranges).

a. Nest area.

(1) Provide long-term nesting habitat for goshawks if possible.
(2) Size: Approximately 30 acres.
(3) Location: Most in mesic areas along drainages, base of slopes, and on northerly aspects.
(4) Stand Structure (See Executive Summary Tables)
(5) Maintain at least 3 suitable nest areas per home range, selection priority starts with (1) The active nest area; (2) the most recently used historical nest areas; and (3) designated alternate nest areas. A designated alternate nest area has no previous history of goshawk use. Designated alternate nest areas are needed when there are fewer than 3 historical nest areas known per home range. Designated alternate nest areas are to be located within suitable nesting habitat. Where possible, all historical nest areas should be maintained.
(6) Provide at least 3 replacement nest areas, in addition to the 3 suitable nest areas, per home range. Replacement nest areas should be available for goshawk use when the suitable nest areas are no longer useable. If no activities are scheduled to occur in the PFA this year, then it may not be necessary to delineate replacement nest areas.

(7) All nest areas are best located within an approximate 0.5 mile radius from one another. Cluster replacement nest areas in the center of the PFA when possible.
(8) No adverse management activities in nest areas at any time.
(9) Minimal human presence in active nest areas during the nesting season (March 1–September 30).

10. Preferred treatments for maintaining stand structure and endemic populations of insects and diseased in nest areas:
(a) In suitable nest areas: thin unwanted understory trees, using non-uniform spacing, by using prescribed fire (except for spruce-fir) and/or hand operated tools.
(b) In replacement nest areas: (1) thin from below (remove trees from the understory), using non-uniform spacing, in VSS 1, VSS 2, and VSS 3 to maintain low densities to promote faster tree growth and crown development, and (2) allow for stand density increases in VSS 4, VSS 5 and VSS 6 to develop interlocking crowns. Replacement nest areas should be selected from partially developed stands in the PFA.
(c) Treatments to decrease fire hazard fuels, in order of priority:
(A) Use periodic prescribed fires (except for spruce-fir).
(B) Lopping and scattering of thinning debris is preferred if prescribed fire cannot be used.
(C) Piling of debris should be limited. Where necessary, hand piling should be used to minimize compaction within piles and to minimize forest floor and herbaceous layer displacement and destruction.
(D) Grapple or dozer piling not recommended.
(d) Manage road densities at the lowest level possible to minimize disturbance in the near area. Where timber harvesting has been prescribed to achieve desired forest condition, use small, permanent skid trails in lieu of roads.

This specifically means that open road densities will not exceed that which is stated in the Forest Plan. Permanent (reusable) skid trails will be identified in order to minimize soil and vegetation disturbance with repeated harvest entries. The objective is to minimize reduction in the amount of native forage available for Goshawk prey species. A second objective is to minimize the disturbance of downed woody debris, which provides desirable habitat for prey species.

Logging systems analyses will aid in determining optimum road and skid trail spacing (considering economics and equipment commonly in use by the Timber Industry). These analyses will be a consideration in the location of an effective system of roads and permanent skid trails in a given area.
(e) Wildlife and livestock utilization of grasses and forbs should average 20% (by weight) and not exceed 40% in any area and shrub utilization should average 40% (by weight) and not exceed 60% in any area. These levels of utilization should maintain native food and cover for many of the prey species. b. Post-fledging family area.
(1) Establish a PFA for all locations where there are historical nest areas or occupied nest areas.
(2) Objectives: Provide hiding cover for goshawk fledglings, provide habitat for prey, and provide foraging opportunities for adults and young during the fledgling-dependency period.
(3) Desired Conditions: approximately 420 acres (not including the acres in suitable and replacement nest areas), approximately centered around suitable and replacement nest areas, containing a mosaic of vegetation structural stages (VSS) interspersed through the PFA in small patches, woody debris present throughout the PFA, and developed, intact forest soils with emphasis on organic surface layers (humus, litter and soil wood) within the natural turnover rates. These conditions should provide for the sustainability of mycorrhizae. Stand structure should be as follows:
(a) The majority (60%) of the PFA should be in the three older VSS (4, 5, 6), approximately 25% in the remaining 40%, 20% should be in young forest (VSS 3), and 10% each in the seedling/sapling (VSS 2), and grass/forb/shrub stages (VSS-1). These approximate proportions can be maintained in the different classes depending on: (1) The years required for tree establishment and development, (2) diameter growth rates, and (3) tree longevity. The number of years spent in each structural stage will depend on the intensity of management.
(b) A large-tree component throughout the PFA should include: snags, downed logs, and mature and old, live trees in clumps or strings with interlocking crowns.
(c) A developed herbaceous and/or shrub understory throughout the PFA should emphasize native species, especially grasses.
Follow "Additional desired conditions per forest type" (Ponderosa Pine, Mixed Species, Spruce-fir) section found in the GSC Recommendations (pages 27-28).

4. Place the PFA so known or replacement nest areas are generally centered in the PFA.

5. No adverse management activities in PFAs during the nesting season (March 1-September 30). Minimize human presence during nesting.

6. Preferred treatment for maintaining stand structure and endemic populations of insects and disease (considering crown classes in the PFA: thin from below. In VSS 1, VSS 2, and VSS 3, these treatments should result in lower stand densities (basal areas) to promote fast tree growth, crown development, herb and/or shrub development, and should allow for irregular spacing of trees; in VSS 4, VSS 5, and VSS 6, allow stand densities (basal areas) to increase.

7. Manage road densities at the lowest level possible to minimize disturbance in the nest area. Where timber harvesting has been prescribed to achieve desired forest condition, use small, permanent skid trails in lieu of roads.

This specifically means that open road densities will not exceed that which is stated in the Forest Plan. This also means that travel management decisions will be fully implemented to achieve the stated densities. Permanent (reusable) skid trails will be identified in order to minimize road and vegetation disturbances with repeated harvest entries. The objective is to minimize reduction in the amount of native forage available for Goshawk prey species. A second objective is to minimize the disturbance of downed woody debris which provides desirable habitat for prey species.

Logging systems analyses will aid in determining optimum road and skid trail spacing (considering economics and equipment commonly in use by the Timber Industry). These analyses will be a consideration in the location of an effective system of roads and permanent skid trails in a given area.

Wildlife and livestock utilization of grasses and forbs should average 20% (by weight) and not exceed 40% in any area and shrub utilization should average 40% (by weight) and not exceed 60% in any area. These levels of utilization should maintain native food and cover for many of the prey species. The need for herb and/or shrub development, and should allow for irregular spacing of trees; in VSS 4, VSS 5, and VSS 6, allow stand densities (basal areas) to increase. Provide for or preserve existing clumps of trees with interlocking crowns in VSS 4, VSS 5 and VSS 6 by avoiding uniform spacing of individual trees. Other treatments (e.g. sanitation, liberation, improvement) could be used when and where appropriate to create desired conditions.

5. Manage road densities at the lowest level possible to minimize disturbance in the nest area. Where timber harvesting has been prescribed to achieve desired forest condition, use small, permanent skid trails in lieu of roads.

These specifically means that open road densities will not exceed that which is stated in the Forest Plan. Permanent (reusable) skid trails will be identified in order to minimize soil and vegetation disturbances with repeated harvest entries. The objective is to minimize reduction in the amount of native forage available for Goshawk prey species. A second objective is to minimize the disturbance of downed woody debris which provides desirable habitat for prey species.

Logging systems analyses will aid in determining optimum road and skid trail spacing (considering economics and equipment commonly in use by the Timber Industry). These analyses will be a consideration in the location of an effective system of roads and permanent skid trails in a given area.

(8) Wildlife and livestock utilization of grasses and forbs should average 20% (by weight) and not exceed 40% in any area and shrub utilization should average 40% (by weight) and not exceed 60% in any area. These levels of utilization should maintain native food and cover for many of the prey species. The need for herb and/or shrub development, and should allow for irregular spacing of trees; in VSS 4, VSS 5, and VSS 6, allow stand densities (basal areas) to increase. Provide for or preserve existing clumps of trees with interlocking crowns in VSS 4, VSS 5 and VSS 6 by avoiding uniform spacing of individual trees. Other treatments (e.g. sanitation, liberation, improvement) could be used when and where appropriate to create desired conditions.

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strategy to maintain goshawk habitat on National Forest System lands.

b. If the nest area, PFA, or both (or portions of them) are located on private land not more than ½ mile from National Forest System lands, provide an equivalent amount of acres on National Forest System lands and manage them as nest areas or PFAs. Place them as close to the goshawks as possible. Should something happen to the habitat on private land—then the goshawks would have similar habitat available to use on National Forest System lands.

c. When portions of the foraging area are located on private land, provide an equivalent amount to National Forest System (FS) lands so that on NFS lands there will be 5,400 acres of foraging habitat available.

d. When the nest area and PFA are located further than a ½ mile from National Forest System lands, and when less than 40% of the foraging area occurs on National Forest System lands, do not provide for additional goshawk management acres on National Forest System lands to compensate for those on private lands.

11. Biological Evaluation. Use the biological evaluation process (FSM 2072.4) to evaluate and document the effects of Forest Service programs and activities on the northern goshawk and its habitat when they are planned to occur in suitable habitat. Evaluate existing information on northern goshawk occupancy and habitat condition. Include known past, current, and proposed activities when analyzing cumulative effects. Use the biological evaluation process to evaluate general effects on habitat quality of northern goshawk prey species in the PFA and foraging area. This process will also be used to determine possible needs for additional timing restraints or other mitigation measures not addressed by the interim directive. The determination of a “no effect” is contingent upon implementation of these guidelines and a site-specific analysis of habitat conditions.

12. Show-me Trips. Show-me trips are not recommended, however they may benefit northern goshawk management by increasing awareness of the species and its habitat. It is important to manage and coordinate show-me trips to minimize disturbance and avoid possible adverse impacts to goshawks. Consolidate show-me trips to minimize the number of trips taken and incorporate with other inventory or monitoring activities whenever possible. Encourage the media to utilize existing footage and/or photographs in order to reduce show-me trips. Other considerations for show-me trip management include the number of visits per site and other activities at/near the site.

Dated: June 8, 1992.
Forrest Carpenter,
Deputy Regional Forester.

Appendix

Southwestern Region Goshawk Inventory Protocol for 1992

Dr. Patricia Kennedy’s paper (Kennedy-Stalahlec-Rinker) forms the foundation for our inventory protocol. The enclosed tape will improve inventory consistency. One side of the tape has the “adult alarm” call and the other has the “female walli” call (female food begging call). Each tape is 45 minutes per side. Calls are 10 seconds long with a 30-second space between calls. The tapes were digitized to remove as much annoying background noise as possible.

Dr. Richard Reynolds (personal communication) deviated from the Kennedy-Stalahlec-Rinker method and used only one calling sequence at each station (step 9 below). He feels his results were comparable to Kennedy but he has not analyzed his data. We require two calling sequences per station so that our results will have a foundation in the literature.

Other Regions that may be limited by time and funding might want to consider one calling sequence per station (total time at station is 2.0 minutes) versus two calling sequences per station (total time at station is 4.0 minutes) used in Region 3.

The goshawk inventory protocol that we suggest forests use is:

1. Use broadcast calls during breading (nesting and fledgling stages).
2. Place stations 300 meters apart on transects.
3. Separate adjacent transects by 260 meters.
4. Stations on adjacent transects should be staggered by 150 meters.
5. Use alarm calls during nesting period.
6. Use wall calls during the fledgling dependency period.
7. The broadcast tape-playing equipment should produce 100–110 dB output at one meter from the source. Kennedy used equipment 80–85 dB.
8. Inventory can begin 1/2 hour before sunrise and can cease 1/2 hour before sunset.
9. At each calling station, broadcast at 60 degrees (turn left or right but once you turn continue in that same direction) from transect for 9 seconds, then listen and watch for 30 seconds (tapes are set up this way), turn 120 degrees and repeat the procedure, and then turn another 120 degrees. Repeat the procedure once again. Then move to the next station.
10. Callers should have at least 2 transects between them (not be on adjacent or same transects).
11. Move along the transect at an easy pace—watching and listening for goshawks.
12. Be careful not to be fooled by “mimic” calls of jays.
13. Do not inventory in high winds (15 mph or higher) or heavy rain.
14. Note the direction from which goshawk calls are detected. Attempt to determine sex. If a female responds and or fledgling—search the area for the nest. If a male responds you may be one or more miles from the nest site—perform a widening search, time permitting.
15. Pay attention to other cues—droppings, molted feathers, prey remains—when searching for nests. Visit downed logs and look under horizontal limbs that are about 10 feet off the ground for prey remains, molted feathers, and droppings.
16. Inventory ½ mile beyond the boundary of the proposed project area. This is desirable because the project boundary could be located on the edge of a PFA (½ mile is the radius of a PFA) and nesting goshawks might go undetected if inventories were confirmed to just the project area.
17. For habitat modifying projects scheduled for FY 1994, two seasons of consecutive inventory will be preferred prior to modifying the habitat.

DEPARTMENT OF COMMERCE
International Trade Administration
[C-514-503]
Lamb Meat From New Zealand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration—Department of Commerce.

ACTIONS: Notice of preliminary results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on lamb meat from New Zealand for the period April 1, 1990 through March 31, 1991. We preliminarily determine the total bounty
or grant to be 0.20 percent ad valorem for all firms for the period April 1, 1990 through March 31, 1991. In accordance with 19 CFR 355.7, any rate less than 0.50 percent ad valorem is de minimis. We invite interested parties to comment on these preliminary results.

**EFFECTIVE DATE:** June 19, 1992.

**FOR FURTHER INFORMATION CONTACT:** Gayle Longest or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20220; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 19, 1991, the Department of Commerce (the Department) published a notice of opportunity to request administrative review (56 FR 47450) for the countervailing duty order on lamb meat from New Zealand (50 FR 37708; September 17, 1985). We received requests for review form the New Zealand Meat Producers Board. We initiated the review, covering the period April 1, 1990 through March 31, 1991, on October 18, 1991 (56 FR 52254). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). The final results of the last administrative review of this order were published in the Federal Register on August 13, 1991 (56 FR 38424).

**Scope of Review**

Imports covered by this review are shipments of lamb meat, other than prepared, preserved or processed, from New Zealand. This merchandise is currently classifiable under item numbers 0204.10.0000, 0204.22.2000, 0204.23.2000, 0204.30.0000, 0204.42.2000 and 0204.43.2000 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review covers the period April 1, 1990 through March 31, 1991, and two programs.

**Analysis of Programs**

(1) Export Market Development Taxation Incentive (EMDTI)

Under the EMDTI, established in the 1979 Amendment to the Income Tax Act of 1976, exporters may receive tax credits for a certain percentage of their export market development expenditures. Qualifying expenditures include those incurred principally for seeking, developing new markets, retaining existing markets and obtaining market information. An exporter who takes advantage of this tax credit may not deduct the qualifying expenditures as ordinary business expenses in calculating taxable income. The tax credit for tax returns filed during the review period was 40 percent of the total qualifying expenditures, and the normal corporate tax rate in New Zealand was 33 percent. Because the program is contingent upon exportation, we preliminarily determine that it confers and export bounty or grant. Three exporters claimed EMDTI tax credits for lamb meat exports to the United States on their tax returns filed during the review period.

Since exporters may claim a tax credit equal to 40 percent of the qualifying expenditures but may not deduct these expenditures from income, which is taxable at 33 percent, the net benefit to the exporters is 7 percent of the qualifying expenditures. To calculate the country-wide benefit, we took 7 percent (the difference between the 40 percent tax credit and the 33 percent corporate tax rate) of each exporter’s qualifying expenditures relating to lamb meat exports to the United States, aggregated these companies’ net benefits and divided that amount by total sales of lamb meat exports to the United States during the review period. On this basis, we preliminarily determine the benefit from this program during the review period to be 0.03 percent ad valorem for all firms.

Effective with the government fiscal year beginning April 1, 1990, the Government of New Zealand eliminated the EMDTI tax credit, and all formerly eligible expenditures are subject to the rules for ordinary business expenses in calculating taxable income. However, because certain corporate fiscal years do not correspond with the Government of New Zealand’s fiscal year, some residual benefits were still evident during this review period.

For purposes of cash deposits of estimated countervailing duties, we preliminarily determine the benefit from this program to be zero for all firms.

(2) Livestock Incentive Scheme

The Livestock Incentive Scheme (LIS) was introduced in 1976 in order to encourage farmers to increase permanently their number of livestock. Under the scheme, a farmer engaged in a stock increase program, for a minimum of one and a maximum of three years, could opt for one of two incentives: (1) an interest-free suspensory loan of NZ$12 for each additional stock unit carried; or (2) a deduction of NZ$24 from taxable income for each additional stock unit carried. If the livestock increase was met, farmers who elected to take out loans wrote the loans off as tax-free grants. For farmers electing the tax option, the provisional tax deduction could be applied toward tax liability in any of the three years after completion of the development program.

Applications to participate in the LIS program were accepted until March 31, 1982. No new loans have been given under this program since 1983, and no tax credits have been authorized since the 1983/84 government fiscal year. During the 1990/91 government fiscal year (the review period), there were no outstanding loans that had not been converted to grants and no tax credits remaining to be claimed by lamb producers.

Because benefits under this program are available only to farmers with livestock herds, we preliminarily determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and, therefore, confers a countervailable bounty or grant.

To calculate the benefit, we treated the loan amounts forgiven in prior years as grants and allocated those amounts over five years, the average useful life of breeding stock. This methodology is described in 355.46(g) of Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments (51 FR 23366, 23385; May 31, 1986). The discount rate chosen was the average interest rate on overdrafts during the year in which the loans were forgiven. The methodology and discount rate are the same used in previous administrative reviews (see e.g., Lamb Meat from New Zealand; Preliminary Results of Countervailing Duty Administrative Review (56 FR 27243; June 13, 1991). We added the value of the benefits from the grants and multiplied the result by a factor determined to represent the value of lamb meat as a percentage of the total value of all livestock production. We then divided that result by the total value of lamb meat production during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.17 percent ad valorem for all firms.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine the total bounty or grant to be 0.20 percent ad valorem for all firms during the period April 1, 1990 through March 31, 1991. In accordance with 19 CFR 355.7, any rate less than 0.50 percent is de minimis.

Therefore, as provided for by section 751(a)(1) of the Act, the Department intends to instruct the Customs Service...
to liquidate, without regard to countervailing duties. All shipments of the subject merchandise from New Zealand exported on or after April 1, 1990 and on or before March 31, 1991. The termination of the EMDTI program reduces the total estimated bounty or grant to 0.17 percent ad valorem, a rate which is de minimis. Therefore, the Department intends to instruct the Customs Service not to collect cash deposits of estimated countervailing duties on any shipments of the subject merchandise from New Zealand entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodologies, and interested parties may request a hearing, not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication in accordance with 19 CFR 355.38(c). Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 48 hours after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 12, 1992.
Alan M. Dunn,
Assistant Secretary for Import Administration.

[FR Doc. 92-14430 Filed 6-18-92; 8:45 am]
BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-6131. This is a not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92-00008." A summary of the application follows.

Summary of the Application


Members (in addition to applicant): None.

Export Trade: 1. Products. All Products. 2. Services. All Services.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

International ExIm seeks to: 1. Export specific Products and/or Services in response to specific orders for Suppliers.

2. Exchange information only in one-on-one discussions with specific Suppliers on specific orders or market conditions.

3. Enter into exclusive distributorships agreements with Suppliers for the export of Products and Services to the Export Markets. International ExIm will agree not to deal in export trade in the products of that Supplier's competitors unless authorized by the Supplier.

4. Enter into exclusive agreements to grant distributorships to foreign entities and obligate such entities not to deal in goods competing with those supplied by International ExIm Corporation; and

5. Handle sensitive business information pertaining to export trade in a manner that would not promote any successful price or output coordination.

Definition

Supplier means a person who produces, provides, or sells Products and/or Services.

George Muller,
Director, Office of Export Trading Company Affairs.

[FR Doc. 92-14430 Filed 6-18-92; 8:45 am]
BILLING CODE 3510-DR-M

President's Export Council; Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of open meeting.

SUMMARY: The President's Export Council (PEC) is holding an open meeting to discuss current trade issues and future projects. The PEC, NAFTA, agricultural trade issues, commercial programs for the Newly Independent States, and the Trade Promotion Coordinating Committee will be covered. The National Association of Manufacturers will present its views on trade issues and discuss ways to coordinate efforts with the PEC. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1978, to advise the President on matters relating to U.S. export trade.
President's Export Council; Executive Committee Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of closed meeting.

SUMMARY: The President's Export Council PEC is holding a closed Executive Committee meeting to discuss organizational issues, plans for the June 24 full Council meeting, issues relating to export promotion, competitiveness, export controls, and foreign market development, and the status of ongoing multilateral trade negotiations, and other sensitive matters properly classified under Executive Order 12358. The President's Export Council was established on December 20, 1973 and reconstituted May 4, 1979, to advise the President on matters relating to U.S. export trade.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, 202-377-4217.

DATES: June 24, 1992, 11:30 a.m.–1 p.m.

ADDRESSES: The Holiday Inn Crowne Plaza Hotel, Tokyo Room, 775 12th Street, NW., Washington, DC, 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Lino Proskak, President's Export Council, room 3215, Washington, DC 20230.


Wendy H. Smith,
Director, President's Export Council.

[FR Doc. 92-14572 Filed 6-18-92; 8:45 am]
BILLING CODE 3510-DR-M

Minority Business Development Agency

[Project ID. No. 06-10-93001-01]

Business Development Center Applications; Oklahoma City MBDC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $185,000 in Federal funds. An audit fee of $4,125 has been added to the Federal amount. The total funding breakdown is as follows: $109,125 Federal and $27,875 non-Federal for a total of $137,000. The period of performance will be from November 1, 1992 to October 31, 1993. The MBDC will operate in the Oklahoma City, Oklahoma geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards. MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance, with OMB Circular A-129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of...
COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

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

June 15, 1992

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

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

EFFECTIVE DATE: June 22, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce. (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6490. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:


The current limits for certain categories are being reduced for carryforward use and special carryforward use.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 58369, published on November 19, 1991.

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

Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-14432 Filed 6-18-92; 8:45 am] BILLING CODE 3510-DR-F

EFFECTIVE DATE: Effective on June 22, 1992, you are directed to amend the directive dated November 13, 1991 to reduce the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Malaysia:

<table>
<thead>
<tr>
<th>Category</th>
<th>Adjusted twelve-month limit 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>338/339</td>
<td>663,445 dozen.</td>
</tr>
<tr>
<td>638/639</td>
<td>260,265 dozen.</td>
</tr>
</tbody>
</table>

1 The limits have not been adjusted to account for any imports exported after December 31, 1991.

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

Sincerely,

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-14432 Filed 6-18-92; 8:45 am] BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits and Amendment of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Manufactured or Produced in Malaysia; Correction

June 15, 1992

In the letter to the Commissioner of Customs published in the Federal Register on April 21, 1992 (57 FR 14563), third column, delete the following lines under the heading “Category”:

GROUP II: Sublevel in Group n.

[FR Doc. 92-14432 Filed 6-18-92; 8:45 am] BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

[FR Doc. 92-14431 Filed 6-18-92; 8:45 am] BILLING CODE 3510-DR-F
ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes commodities and services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 20, 1992.

ADDITIONS: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes commodities and services previously furnished by such agencies.

Deletions: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8410-01-224-6127

PROCUREMENT LIST:

A. Deletions from Procurement List.

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O’Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List:

Commodities:

- Compound, Corrosion Preventive
- Nonprofit Agency: The Lighthouse for the Blind, Inc., Berkeley, Missouri

Services:

- Grounds Maintenance
- Grounds Maintenance
- Nonprofit Agency: Centre County Memorial USARC, State College, Pennsylvania
- Grounds Maintenance
- Nonprofit Agency: Wichita Falls State Hospital, Wichita Falls, Texas

It is proposed to delete the following commodities and services from the Procurement List:

Commodities:

- Coat, Woman’s Pajama
- Trousers, Woman’s Pajama

Deletions:

- Shirt, Woman’s
- 8410-01-224-6094 8410-01-224-6110
- 8410-01-224-6093 8410-01-224-6109
- 8410-01-224-6092 8410-01-224-6106
- 8410-01-224-6091 8410-01-224-6105

PROCUREMENT LIST; ADDITION

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 20, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.
SUPPLEMENTARY INFORMATION: On April 24, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (57 FR 15059) of proposed additions to the Procurement List.

Comments were received from the current contractor for this service during the development phase of this proposed addition to the Procurement List. The contractor asked the Committee to consider the economic situation in California as well as the impact of the addition on its sales in making its decision. The contractor noted that office space vacancies had increased substantially and that California had experienced major drought conditions for the past five years. As a result, the office cleaning and landscaping industries have been negatively affected. The contractor also indicated that its uneducated and unskilled workforce would have difficulty finding other employment.

The grounds maintenance service being added to the Procurement List represents a very small percentage of the contractor's total sales. Consequently, the loss of this service would not constitute severe adverse impact on the contractor even considering the current state of the economy in its industry. The contractor has not stated that addition of this service to the Procurement List would definitely cause the loss of employment for any of its workers. However, the Committee believes that any potential loss would be outweighed by the creation of employment for persons with severe disabilities, whose unemployment rates nationally exceed 65%.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the service at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 40-46c and 41 CFR 51-2.8.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.
2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing additional entities to furnish the service to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Grounds Maintenance
U.S. Postal Service
General Mail Facility
San Jose, California

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,
Deputy Executive Director.

DEPARTMENT OF ENERGY
The Development of Coal-Based Fuel Technologies for Department of Defense (DOD) Facilities; Non-Competitive Financial Assistance (Cooperative Agreement) Award


ACTION: Notice of non-competitive financial assistance (cooperative agreement) award to the Consortium for Coal Water Slurry Fuel Technology.

SUMMARY: The Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC) announces that pursuant to 10 CFR 600.7(b)(2)(i) criterion (D), it intends to make a non-competitive Financial Assistance (Cooperative Agreement) award to The Consortium for Coal Water Slurry Fuel Technology.

SUPPLEMENTARY INFORMATION:

Awardees: The Consortium for Coal Water Slurry Fuel Technology
Cooperative Agreement Number: DE-FC22-92PC2162

Cooperative Agreement Value: $18,500,000 with DOD estimated funding of $15,000,000

Scope: Implementation of the proposed program is based upon the authority of 10 CFR 600.7(b)(2)(i) criterion (D) and the "Interagency Agreement (IA) for the National Center of Excellence for Coal Utilization" between the U.S. Army Corps of Engineers and the U.S. Department of Energy. The research program developed under this IA will be financed by Congressionally-directed funds; at this time there is $5 million of FY 1991 DOD research funding available for expenditure or obligation through September 30, 1992. No obligations or commitments for work beyond that which is currently appropriated will commence prior to future appropriations for this purpose.

The objective of the proposed program is to provide financial assistance to The Consortium for Coal-Water Slurry Fuel Technology to increase coal utilization by the Defense Department. Specific areas of research include: superclean coal-water mixtures for boilers, coal-derived alternative fuels, combustion of various wastes with coal and small-scale combustion facilities.

The program will include three phases. Phase I activities will center on developing clean, coal-based combustion technologies for the utilization of both coal-water slurry and dry, micronized coal in oil-designed industrial boilers. The tasks include coal beneficiaion/fuel preparation, combustion tests, engineering design, economic analysis and boiler retrofit design. Phase II research and development will continue to focus on industrial boiler retrofit technology by addressing emissions control and precombustion (i.e., gasification and/or slagging combustion) strategies for the utilization of high ash and sulfur coals.

Phase III will examine other coal-based fuel combustion systems, including those that co-fire wastes with coal-based fuels, and small-scale combustion systems for heating and/or power generation.

The term of the cooperative agreement is for three years. The estimated total value is $18,500,000 with a total DOD share of $15,000,000.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921-118, Pittsburgh, PA 15238. Attn: John R. Columbia, Telephone: AC 412/892-6219.


Carrol A. Lambton,
Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 92-14490 Filed 6-18-92; 8:45 am]
Correction

The correct date for filing comments in Docket No. QF88-418-003 (57 FR 24486, June 9, 1992) should be June 19, 1992.

Lois D. Cashell, Secretary.
[FR Doc. 92-14478 Filed 6-18-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. ES92-40-000 et al.]

UtiliCorp United Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

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

1. UtiliCorp United Inc.
[Docket No. ES92-40-000]
Take notice that on May 29, 1992, UtiliCorp United Inc. (UtiliCorp) filed an application with the Federal Energy Regulatory Commission under Section 204 of the Federal Power Act requesting authorization to issue up to and including 2,500,000 shares of common stock, par value $1.00 per share, pursuant to UtiliCorp's Restated Savings Plan and to issue up to and including 1,000,000 shares of common stock, par value $1.00 per share, pursuant to UtiliCorp's Employee Stock Purchase Plan. Also, UtiliCorp requests exemption from the Commission's competitive bidding regulations.

Comment date: June 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Central Vermont Public Service Corp.
[Docket No. ER92-63-000]
Take notice that on June 3, 1992, Central Vermont Public Service Corporation tendered for filing an amendment to its October 4, 1992 filing in this docket. Central Vermont states that the amendment includes a revised contract and additional explanations and cost support for the contract and that the amendment was made at the request of Commission staff.

Central Vermont requests that the Commission waive its 60-day notice requirement in order to allow the contract to become effective in accordance with its terms.

Comment date: June 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Western Resources, Inc.
[Docket No. ER92-384-000]
Take notice that on June 2, 1992, Western Resources, Inc. (formally named The Kansas Power and Light Company (KPL) filed to withdraw its March 18, 1992 filing which was to revise Exhibits 4A to Transmission Agreements with Kansas Gas and Electric Company, WestPlains Energy Division, UtiliCorp United, Inc., and Missouri Public Service Division, UtiliCorp United, Inc.

Western Resources, Inc. states that copies of this Notice of Withdrawal were served upon Kansas Gas and Electric Company, WestPlains Energy Division, UtiliCorp United, Inc., Missouri Public Service Division, UtiliCorp United, Inc., and the Utilities Division of the Kansas Corporation Commission.

Comment date: June 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Power and Light Co.
[Docket No. ER92-440-000]
Take notice that on June 3, 1992, Wisconsin Power and Light Company (WP&L) tendered for filing with the Federal Energy Regulatory Commission supplemental material relating to the above docket.

WP&L requests expedited consideration of the filing and an effective date of April 1, 1992. Accordingly, WP&L requests waiver of the Commission's notice requirements.

Comment date: June 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ER92-484-000]
Notice of Filing: June 1, 1992.
Take notice that the Notice of Filing issued on June 1, 1992 in Docket No. ER92-582-000 should have been issued in Docket No. ER92-484-000.

[Docket No. ER92-609-000]

A copy of the filing was mailed to the parties of the new Service Agreements.

Comment date: June 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Central Power and Light Co.
[Docket No. ER92-610-000]
Take notice that on June 2, 1992, Central Power and Light Company (CPL) submitted for filing executed Service Agreements providing for full requirements service under CPL's FERC Electric Tariff to Magic Valley Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., South Texas Electric Cooperative, Inc. and Medina Electric Cooperative, Inc. (collectively, the Non-Generating Customers). CPL filed the Service Agreements to implement the Stipulation and Agreement of Settlement dated December 31, 1990, that served as the basis upon which CPL, the Non-Generating Customers and the Commission's trial staff settled Docket No. ER90-289-000, as approved by the Commission in that proceeding.

CPL requests that the Service Agreements be accepted for filing and made effective as of January 1, 1990, in accordance with their terms. In that connection, CPL requests waiver of the Commission's notice requirements.

Copies of the filing have been served on each of the Non-Generating Customers and on the Public Utility Commission of Texas.

Comment date: June 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.
[Docket No. ER92-612-000]

Entergy Services requests an effective date of May 22, 1992 for the Interchange Agreement. Entergy Services requests waiver of the Commission's notice requirements under § 35.11 of the Commission's regulations.

Comment date: June 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Robert H. Smith
[Docket No. ID-2724-000]
Take notice that on June 3, 1992, Robert H. Smith filed an application for...
authorization under section 305(b) of the Federal Power Act to hold the following positions:

Director—Southern California Edison Company
Director, President and Chief Operating Officer—BankAmerica Corporation, Bank of America National Trust & Savings Association

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Henry T. Segerstrom
[Docket No. ID-2723-000]

Take notice that on June 3, 1992, Henry T. Segerstrom filed an application for authorization under section 305(b) of the Federal Power Act to hold the following positions:

Director—Southern California Edison Company
Director—BankAmerica Corporation
Advisory Director—Bank of America National Trust & Savings Association

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Power Inc.
[Docket No. ER92-611-000]

Take notice that on June 3, 1992, Entergy Power, Inc. (EPI), tendered for filing an Interchange Agreement with City Utilities of Springfield, Missouri.

EPI requests an effective date of May 22, 1992 for the Interchange Agreement. EPI requests waiver of the Commission’s notice requirements under Section 35.11 of the Commission’s regulations.

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Western Resources, Inc. and Kansas Gas and Electric Company
[Docket No. EC91-2-001]

Take notice that on June 1, 1992, The Western Resources, Inc. (formally named The Kansas Power and Light Company) and Kansas Gas and Electric Company, a wholly owned subsidiary of Western Resources, Inc. tendered for filing in compliance with the Commission’s September 10, 1991 order, service schedules, pricing schedules, and a form of standard service agreement for firm and non-firm transmission services. The filing also contained an initial estimate of remaining available transmission capacity and a general methodology for calculating available firm transmission capacity.

Copies of the filing were served upon the parties in this docket and upon the wholesale jurisdiction customers of the two companies.

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ER92-564-000]

Take notice that on May 28, 1992, Arizona Public Service Company (APS) tendered for filing a revised Exhibit A to the Wholesale Power Supply Agreement (Agreement) between APS and the United States of America, Bureau of Indian Affairs on behalf of the Colorado River Indian Irrigation Project (CRIIP) (APS-FPC Rate Schedule No. 65). Exhibit A lists contract Demands applicable under the Agreement.

No change from the currently effective rate or revenue levels is proposed herein.

No new facilities or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on CRIIP and the Arizona Corporation Commission.

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ER92-592-000]

Take notice that on June 1, 1992, Yankee Atomic Electric Company (Yankee) tendered for filing, pursuant to subsections 1909(b) and 305(b) of the Federal Power Act and § 35.13 of the Commission’s regulations, an amendment to the Power Supply Agreement for the sale of electricity for resale to ten New England utilities.

Yankee states that the amendment is designed to clarify the obligations of the purchasing utilities following the decision to cease power production at Yankee’s nuclear generating plant.

Yankee’s filing also includes adjustments to amounts being amortized for unburned nuclear fuel, materials and supplies and a revised schedule of decommissioning changes, based on a new study of decommissioning costs. Yankee states that the rate change proposed would, principally as a result of an increase in decommissioning charges, increase Yankee’s rates by $28.4 million annually, but that the combined effect of the decision to cease power production at its generating plant and of this filing is to reduce rates.

Yankee states that copies of its filing have been provided to its wholesale customers and to state regulatory commissions in Connecticut, Vermont, New Hampshire, Massachusetts, Maine and Rhode Island.

Comment date: June 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ER92-600-000]

Take notice that on June 1, 1992, New England Power Company (NEP) submitted for filing a Power Sales Contract with the Central Vermont Public Service Corporation for up to a 100 megawatt sale of capacity and energy from NEP’s Salem arbor Unit No. 4 facility. NEP requests waiver of the Commission’s regulations to allow this Contract to become effective on May 1, 1992.

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ER92-617-000]

Take notice that on June 5, 1992, Consumers Power Company (Consumers) tendered for filing a revision to the annual charge rate for charges due Consumers from Northern Indiana Public Service Company (Northern), under the terms of the Barton Lake-Batavia Interconnection Facilities Agreement (designated Consumers Power Company Electric Rate Schedule FERC No. 44).

The revised charges are provided for in subsection 1.043 of the Agreement, which provides that the annual charge rate may be redetermined effective May 1, 1992 using year-end 1991 data with a new annual charge rate. As a result of the redetermination, the monthly charges to be paid by Northern were reduced from $17,349.00 to $17,277.00.

Consumers requests an effective date of May 1, 1992, and therefore requests waiver of the Commission’s notice requirements.

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Pacific Gas and Electric Co.
[Docket No. ER92-457-000]


This filing amends the filing made on April 11, 1992, which affects Rate Schedule FERC No. 79, between PG&E...
and the Western Area Power Administration (Western).

The proposed amended filing submits a previously filed letter agreement between PG&E and Western dated May 2, 1986 and a table showing the rates of return used in developing rates for the Capacity Account and Energy Account No. 2 (Account No. 2) for the years 1985 and 1990. The 1992 letter agreement originally filed pertains to pricing of power deposited by Western with PG&E. In addition, certain provisions of the PG&E-Western May 2, 1986 letter agreement are modified and extended by the PG&E-Western February 7, 1992 letter agreement filed in this Docket. The amended filing also includes a request for waiver of the notice requirements to allow a retroactive effective date of January 1, 1985 for this Docket.

Comment date: June 25, 1992. In accordance with Standard Paragraph E end of this notice.


Take notice that on June 4, 1992, Alabama Power Company (APCo) tendered for filing three (3) separate Transmission Service Delivery Point Agreements dated May 6, 1992, which reflect an increase in the maximum capacity of certain existing delivery points and/or the addition of certain delivery points of Baldwin County Electric Membership Corporation, Inc., dated August 28, 1980 (designated FERC Rate Schedule No. 147). The parties request an effective date for each of these Transmission Service Delivery Point Agreements of May 6, 1992.

Comment date: June 25, 1992. In accordance with Standard Paragraph E at the end of this notice.


Take notice that on June 5, 1992, Green Mountain Power Corporation (GMP) tendered for filing proposed Attachments A and B to an Agreement dated as of November 1, 1991 between GMP and Vermont Electric Generation and Transmission Cooperative, Inc. which designated certain generating resources of GMP from which capacity and energy sold to VEGAT may be provided and specified the maximum capacity charge to be assessed for sale from each generating source owned by GMP.

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Florida Power & Light Co.

Take notice that on June 5, 1992, Florida Power & Light Company (FPL), tendered for filing a document entitled Amendment Number Two to the Restated and Revised Transmission Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency (FMPA). FPL states that under Amendment Number Two, FPL and FMPA have agreed to amend the Restated and Revised Transmission Agreement such that FPL may provide transmission service for additional FMPA resources in accordance with the provisions of the Restated and Revised Transmission Agreement.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment Number Two be made effective June 1, 1992. FPL states that a copy of the filing was served on the Florida Municipal Power Agency and the Florida Public Service Commission.

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. Camilla C. Frost

Take notice that on June 3, 1992, Camilla C. Frost filed an application for authorization under section 305(b) of the Federal Power Act to hold the following positions:

- Director—Southern California Edison Company
- Director—BankAmerica Corporation
- Bank of America National Trust & Savings Association

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Gulf States Utilities Co.

Take notice that on June 5, 1992, Gulf States Utilities Company (Gulf States) filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to enter into a Guaranty Agreement and related agreements with respect to the issuance of up to $46,285,000 of Pollution Control Revenue Refunding Bonds to be issued by The Industrial Development Board of the Parish of Calcasieu, Inc., in the State of Louisiana, to refund $48,285,000 of Pollution Control Revenue Bonds issued in 1982 to finance certain pollution control facilities for Gulf States. Also, Gulf States requests exemption from the Commission's competitive bidding regulations.

Comment date: July 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. Minnesota Power & Light Co.

Take notice that on May 20, 1992, Minnesota Power & Light Company (MP&L) tendered for filing a Notice of Cancellation of its FERC Rate Schedule No. 11 with Lake Superior District Power Company.

Comment date: June 25, 1992, in accordance with Standard Paragraph E at the end of this notice.


Take notice that on June 9, 1992, Southern California Edison Company (Edison), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) (collectively, the Companies) tendered for filing as a rate schedule, the Coordinated Operations Agreement between Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Participants in the California-Oregon Transmission Project.

The Coordinated Operations Agreement sets forth the rates, terms, and conditions governing the coordinated operation of the Pacific AC Intertie and the California-Oregon Transmission Project for the purpose of exporting and importing power from and to the Pacific Northwest.

The Companies request that the rate schedule go into effect as soon as possible after passage of the 60-day notice provision set forth in 18 CFR 35.3, but in no event later than October 1, 1992.

Copies of the filing were served upon: The California Public Utilities Commission; Western Area Power Administration; Transmission Agency of Northern California; California Department of Water Resources; Carmichael Water District; Plumas-Sierra Rural Electric Cooperative; Sacramento Municipal Utility District; Modesto Irrigation District; Turlock Irrigation District; the California Cities of Alameda, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, Ukiah, and Vernon; Southern San Joaquin Valley Power Authority; San
25. Central Vermont Public Service Corp.

[Docket No. ER92-619-000]

June 12, 1992.

Take notice that on June 8, 1992, Central Vermont Public Service Corporation (CVPS) tendered for filing an amended Exhibit C to the service agreement for electric service provided to New Hampshire Electric Cooperative, Inc. (NHEC) under CVPS’ FPC Electric Tariff, First Revised Volume No. 1. Exhibit C designates a new 46 kV point of delivery at the existing CVPS Maple Avenue substation in Claremont, New Hampshire.

CVPS requests waiver of the 60-day notice requirement to permit the Exhibit C to become effective on July 1, 1992. If CVPS’ request for waiver of the notice requirement is denied, CVPS requests that the Exhibit C be allowed to become effective 60 days from the date of filing.

Central Vermont states that this filing has been posted as required by the Commission’s regulations and that it has served copies of this filing upon the NHEC, the New Hampshire Public Utilities Commission, and the Vermont Public Service Board.

Comment date: June 28, 1992, in accordance with Standard Paragraph E at the end of this notice.


[Docket No. ER92-620-000]

June 12, 1992.

Take notice that on June 8, 1992, Connecticut Valley Electric Company Inc. (CVEC) filed to designate a new delivery point for transmission service provided to New Hampshire Electric Cooperative, Inc. (NHEC) under CVEC’s Rate Schedule FERC No. 8. CVEC’s parent company, Central Vermont Public Service Corporation (CVPS), will deliver power at a new 46 kV point of delivery at the existing CVPS Maple Avenue substation in Claremont, New Hampshire. CVEC will wheel the power delivered to the Maple Avenue substation over its existing distribution lines to a point in North Charleston, New Hampshire where NHEC will take delivery.

CVEC requests waiver of the 60-day notice requirement to add the new delivery point effective on July 1, 1992. If CVEC’s request for waiver of the notice requirement is denied, CVEC requests that its request for a new delivery point be allowed to become effective 60 days from the date of filing.

CVEC states that this filing has been posted as required by the Commission’s regulations and that it has served copies of this filing upon the NHEC, the New Hampshire Public Utilities Commission, and the Vermont Public Service Board.

Comment date: June 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

27. PSI Energy, Inc.

[Docket No. EC92-17-000]

June 12, 1992.

Take notice that PSI Energy, Inc., formerly named Public Service Company of Indiana, Inc., on June 8, 1992, filed an Application with the Federal Energy Regulatory Commission (FERC or Commission) pursuant to section 203 of the Federal Power Act for authorization to purchase certain transmission facilities from the City of Logansport, Indiana, which, except for its ownership, would be subject to this Commission’s jurisdiction.

Copies of the filing were served upon the Indiana Utility Regulatory Commission.

Comment date: June 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

28. Iowa Public Service Co.

[Docket No. ER92-583-000]

June 12, 1992.

Take notice that on June 1, 1992, Iowa Public Service Company (Iowa) on behalf of its division, IPS Electric, tendered for filing a Notice of Cancellation, Iowa states that these Notices of Cancellation are a result of IPS’s review of the RATIS report.

Comment date: June 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

29. Southern California Edison Co.

[Docket No. ER92-623-000]

June 12, 1992.


The Agreement provides the terms and conditions whereby Edison and BPA will exchange energy and other services to enhance Columbia River flow characteristics for anadromous fish migration in the Pacific Northwest while enhancing Southern California air quality by reducing power plant emissions.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: June 26, 1992, in accordance with Standard Paragraph E at the end of this notice.


[Docket No. ER92-491-000]

June 12, 1992.

Take notice that on June 10, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing an amended filing in FERC Docket No. ER92-491-000. FERC Docket No. ER92-491-000 initially submitted, to the Commission, a settlement agreement resolving disputes regarding the nature of transmission service provided by PG&E to the Lawrence Livermore National Laboratory (LLNL). This settlement agreement was between PG&E, the Western Area Power Administration (Western), and the United States Department of Energy, San Francisco Field Office (DOE/SF).

Subsequent to the filing, FERC Staff contacted PG&E and requested that PG&E amend its filing by submitting a page of the settlement agreement which had been omitted from the filed copies and by cost supporting a special facilities rate. PG&E’s amended filing includes the previously omitted page, and an explanation that before charging any special facilities rate PG&E will file and obtain Commission acceptance.

Copies of this filing have been served upon DOE/SF, Western, the CPUC and the parties to the Service List to FERC.

Comment date: June 26, 1992, in accordance with Standard Paragraph E at the end of this notice.

31. PacifiCorp

[Docket No. ER92-623-000]

June 12, 1992.


Exhibit A to the Transmission Agreement is revised annually in accordance with Article 6(b) of the Transmission Agreement, and specifies the projected maximum integrated demand in kilowatts which Tri-State desires to have transmitted to defined...
Points of Delivery for a four year rolling period.

PaciicCorp respectfully requests that a waiver of the prior notice requirements of 18 CFR 35.3 be granted pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations and that an effective date of September 30, 1991 be assigned, this date being consistent with the provisions of Article 6(b) of the Transmission Agreement.

Copies of this filing were supplied to Tri-State and the Wyoming Public Service Commission.

Comment date: June 26, 1992, in accordance with Standard Paragraph E at the end of this notice.

32. Boston Edison Co.  
[Docket No. ER92-621-000]  
June 12, 1992.

Take notice that Boston Edison Company of Boston, Massachusetts (Edison) on June 6, 1992, tendered for filing a specification of the firm transmission service to be taken by New England Power Company (NEP) for NEP's Quincy-Weymouth service area under Edison's firm transmission tariff. Edison states that the filing does not change the terms and conditions of service or affect the rate level charged to NEP.

Copies of the filing have been served upon NEP and the Massachusetts Department of Public Utilities.

Comment date: June 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

33. Old Dominion Electric Cooperative  
[Docket No. ER92-432-001]  
June 12, 1992.

Take notice that Old Dominion Electric Cooperative (Old Dominion), on June 2, 1992, tendered for filing a clarification of its initial rate tariff pursuant to the instructions included in the May 18, 1992, letter order accepting Old Dominion's rate tariff for filing. Old Dominion's filing clarifies that the payroll expenses component in the formula described in Note P of the formulary rate does not include any costs already included in the A&G expense component of that formula. This formula is administrative in nature and has no effect on the rates and charges computed pursuant to the accepted formulary rate tariff.

Old Dominion has served copies of this filing on each of its wholesale customers, the Virginia State Corporation Commission, the Maryland Public Service Commission, the Delaware Public Service Commission, the Public Service Commission of West Virginia, the Rural Electrification Administration and the Bear Island Paper Company.

Comment date: June 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

34. Montaup Electric Co.  
[Docket No. ER92-629-000]  
June 12, 1992.

Take notice that on June 8, 1992, Montaup Electric Company (Montaup) filed an Amendment to an Agreement dated November 1, 1991 between Montaup and Bangor Hydro-Electric Company (Bangor) for the sale of capacity and energy from the Canal 2 Unit from Montaup to Bangor.

The initial Agreement was submitted for filing under Docket No. ER92-201-000 by letter dated November 25, 1991, and was accepted and designated as Montaup Rate Schedule No. 95 on January 13, 1992. The Amendment provides Bangor with 20 MW of additional capacity and associated energy beginning June 1, 1992 and ending October 31, 1992. The demand and energy charges and all other terms and conditions remain the same as stated in the original Agreement as accepted for filing in Docket No. ER92-201-000. Montaup requests waiver of the 60-day notice requirement to permit the filing to become effective June 1, 1992.

Comment date: June 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

35. Schuylkill Energy Resources  
[Docket No. QF85-720-003]  
June 12, 1992.

On June 2, 1992, Schuylkill Energy Resources (Applicant), of 200 Mahantongo Street, Pottsville, Pennsylvania 17901, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(B) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in North Mahany Township, Schuylkill County, Pennsylvania. The facility consists of a fluidized bed boiler and an extraction/condensing steam turbine generating unit. The primary energy source is anthracite coal culm. The net electric power production capacity of the facility is approximately 80 MW.

The certification of the facility was originally issued on October 3, 1986 ([FERC ¶ 62,005 (1986)]. The instant recertification is requested by the Applicant to include the alternative useful thermal outputs from the facility in addition to the useful thermal output previously certified by the Commission. All other facility characteristics remain unchanged as described in the previous certification.

Comment date: July 20, 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. 92-14479 Filed 6-18-92; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2300-002 et al.]

Hydroelectric Applications (James River-New Hampshire Electric, Inc., et al.); Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. Type of Application: New Major License.

b. Project No.: 2300-002.

c. Date Filed: December 17, 1991.

d. Applicant: James River-New Hampshire Electric, Inc.

e. Name of Project: Shelburne Project.

f. Location: On the Androscoggin River, Coos County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 18 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. George W. Hill, James River-New Hampshire Electric, Inc., 650 Main Street, Berlin, NH 03570-2449, (603) 752-4600.

i. FERC Contact: Michael Dees (202) 219-2807.

j. Deadline Date: July 29, 1992.

k. Status of Environmental Assessment: This application is not ready for environmental analysis at this time—see attached standard paragraph E.
I. Description of Project: The Shelburne Project's principal features consist of a dam, an integral powerhouse, an impoundment, and appurtenant facilities. For the existing condition, the Project has a total nameplate generator capacity of 3.72 megawatts (MW) and an average annual generation of about 18,000 megawatt-hours (MWH); James River is proposing to raise the impoundment level by increasing the flashboards height by 1.7 feet. Due to this proposal the average annual generation would increase to 20,000 MWH. In detail, the existing and proposed project is described as follows:

1. A concrete gravity dam, totaling about 551 feet long, consisting of (a) an 83-foot-long concrete spillway section, with a crest elevation of 724.5 feet mean sea level (msl), topped with pinned-flashboards of an existing height of 9 feet; and a proposed height of 10.7 feet; (c) a gate section, about 88 feet long, with a crest elevation of 725.3 feet msl, having three drop wastegates, each about 25 feet wide by 10 feet high, separated by concrete piers about 5 feet wide; (d) a sluicegate structure about 27 feet long; (e) a non-overflow concrete retaining wall, about 95 feet long, with a crest elevation of 736.3 feet msl, topped with 2-foot-high permanent flashboards; and (f) a concrete dike, about 180 feet long, with a crest elevation of 737.8 feet msl.

2. A brick and steel powerhouse, about 27 feet high by 68 feet wide by 150 feet long, with two additions, measuring 66 feet wide by 109 feet long and 40 feet wide by 40 feet long, equipped with (a) two 920 kilowatt (kW) Allis-Chalmers generators driven by 1,200 horsepower (hp) vertical Francis turbines, and (b) 1,800 kW Allis-Chalmers generator driven by a 2,500 hp vertical Kaplan turbine, totaling (c) a rated capacity of 3,720 kW; (b) a hydraulic capacity of 3,150 cubic feet per second (cfs); (e) an existing average annual generation of 18,000 MWH; (f) a proposed average annual generation of 20,000 MWH; and (g) each having a designed head of 17 feet.

3. An existing impoundment, about 7,000 feet long, having (a) a surface area of about 210 acres (AC); (b) a negligible usable storage capacity; and (c) a normal pool headwater elevation of 735.3 feet msl and tailwater elevation of 717.9 feet msl.

4. A proposed impoundment, about 9,400 feet long, having (a) a surface area of about 250 AC; (b) a negligible usable storage capacity; and (c) a normal pool headwater elevation of 735.3 feet msl and tailwater elevation of 717.9 feet msl; and

5. Appurtenant facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

II. Purpose of Project: The purpose of the project is to generate electric power for use in the applicant's pulp and paper mills.

n. This notice also consists of the following standard paragraph: B1 and E.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is available for inspection and reproduction at Wisconsin Power and Light Company, 222 West Washington, Avenue, Madison, WI 53701-0192, or by calling (608) 252-3311.

3a. Type of Application: New Major License (Less than 5 MW).

b. Project No.: 2454-018.


d. Applicant: Minnesota Power & Light Company.

e. Name of Project: Sylvan Hydroelectric Project.

f. Location: On the Crow Wing River in Cass, Crow Wing, and Morrison County, Minnesota.

g. Filed Pursuant to: Federal Power Act, 18 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Stephen A. Kopial, Hydro Operations Manager, Minnesota Power & Light Company, 30 West Superior Street, Duluth, Minnesota 55802, (218) 772-2041.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219-2827.

j. Comment Date: July 23, 1992.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached paragraph E1.

I. Description of Project: The run-of-river project consists of: (1) A 35-foot-high, 1,249-foot-long dam; (2) a 1,275-acre impoundment with a surface elevation of 1,170 feet; (3) a powerhouse containing three generating units with a total installed capacity of 1,800 kW; (4) step-up transformers; and (5) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation from this project to be 9,745 MWh.

m. Purpose of Project: All project energy generated would be put into the applicant's electrical grid and distributed to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is available for inspection and reproduction at Wisconsin Power and Light Company, 222 West Washington, Avenue, Madison, WI 53701-0192, or by calling (608) 252-3311.
Duluth, Minnesota 55802, or by calling Mr. Stephen A. Kopish at (218) 722-2641.

License (Less than 5 MW).

Mr. Stephen A. Kopish at (218) 722-2641.

Act, 16 U.S.C. 791(a)-825(r).

in Morrison County, Minnesota.

This application is not ready for

pool elevation of 1,107 feet; (3) two

powerhouses, one containing four

576-acre impoundment with a normal

attached paragraph El.

containing two generating units with a

capacity of 3,920 MWh; (4) appurtenant facilities.

The Applicant estimates the project to be 26,117 MWh.

changes to the existing project works as

(4) appurtenant facilities.

The Applicant is not proposing any

changes to the existing project works as licensed. The Applicant estimates the average annual generation from this project to be 26,117 MWh.

m. Purpose of Project: All project energy generated would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Indiana Michigan Power Company, One Summit Square, Fort Wayne, IN, (219) 425-2930.

a. Type of Application: New Major License.

b. Projects Nos.: 2712-004

c. Date Filed: December 30, 1991.


e. Name of Project: Twin Branch Hydro Project.


g. Filed Pursuant to: Federal Power Act, 18 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. B. H. Bennett, Assistant Vice President, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215, (614) 223-2930.

i. FERC Contact: Ed Lee (202) 219-2809.

j. Comment Date: July 22, 1992.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. Description of Project: The run-of-river project consists of: (1) A 30-foot high, 900-foot-long concrete dam; (2) a 576-acre impoundment with a normal pool elevation of 1,107 feet; (3) two powerhouses, one containing four generating units with a total installed capacity of 3,920 MW, and one containing two generating units with a total installed capacity of 800 MW; and (4) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation from this project to be 26,117 MWh.

m. Purpose of Project: All project energy generated would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Indiana Michigan Power Company, One Summit Square, Fort Wayne, IN, (219) 425-2930.

a. Type of Application: New Major License.

b. Projects Nos.: 2712-004

c. Date Filed: December 30, 1991.


e. Name of Project: Stillwater Project.

f. Location: On the Stillwater Branch of the Penobscot, Penobscot County, Maine.

g. Filed Pursuant to: Federal Power Act, 18 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Frederick S. Samp, Bangor Hydro-Electric Company, 13 State Street, Bangor, ME 04401, (207) 945-5621.

i. FERC Contact: Robert Bell (dt) (202) 219-2906.

j. Comment Date: July 22, 1992.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. Description of Project: The Stillwater Project's principal features consist of a very long, meandering dam, a powerhouse, an impoundment, and appurtenant facilities. The project has a total nameplate generator capacity of 1.95 megawatts (MW) and an average annual generation of about 13,120 megawatt-hours (MWH). In detail, the project is described as follows:

(1) A main concrete gravity dam, totaling about 1,720 feet long, with a maximum height of 22 feet at crest elevation 91.65 feet National Geodetic
Vertical Datum (NGVD), consisting of thirteen sections: (a) A non-overflow section, totaling 63 feet long, which serves as an abutment and wingwall, containing a 6-foot-wide unused stop log sluice gate; (b) a 381-foot-long primary spillway section, with a maximum height of 22 feet at a crest elevation of 91 feet (NGVD), topped with 2-foot-high pin-supported flashboards; (c) a 65-foot-long by 2-foot-wide by 2.5-foot-high leveling concrete course; (d) a 43-foot-long concrete sill section on top of a ledge island; (e) a 174-foot-long ogee section, with varying heights from 4 to 20 feet, topped with 2-foot-high pin-supported flashboards; (f) a 52-foot-long ogee section, with a maximum height of 9 feet, topped with a concrete curb, 15 inches wide by 25 inches high; (g) a 105-foot-long spillway section, with an average height of 6 feet; (h) a 42-foot-long spillway section, with a maximum height of 8 feet, topped with 1-foot-high pin-supported flashboards; (i) a 73.5-foot-long abutment section, with an average height of 4 feet; (j) a 187-foot-long non-overflow section, with varying heights from 3 to 12 feet, which abuts an abandoned powerhouse; (k) a 63-foot-long non-overflow section, which is part of the abandoned powerhouse's foundation; (l) a 197.5-foot-long section, with varying heights from 2 to 4 feet, abutting the old and existing powerhouses; and (m) a 162.5-foot-long non-overflow section, with a downstream-facing earth backfill, having a maximum height of 12 feet, topped with a 2-foot-high concrete curb and a driveway on top of the earth backfill.

(2) A concrete and wooden powerhouse, about 83.5 feet long by 32 feet wide by 45 feet high, equipped with four horizontal hydro-electrical generating units: (a) Three of which are rated at 430-kW each, with a net head of 18 feet and a hydraulic capacity range from 380 to 1,440 cubic feet per second (cfs), (b) and one rated at 600-kW, with a net head of 18 feet and a hydraulic capacity of 550-cfs; and (c) all totaling a rated capacity of 1,950-kW, a hydraulic capacity range from 380 to 1,700-cfs, an average annual generation of about 13,120-MWH, and each having a net head of 18 feet.

(3) An impoundment, about 3.1 miles long, having (a) a surface area of about 300 acres; (b) a gross storage capacity of 3,040 acre-feet; (c) a normal headwater surface elevation of about 93.65 feet NGVD; and (d) a normal tailwater surface elevation of about 73.85 feet NGVD.

(4) Appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant owns all the existing project facilities. The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. Based on the expiration of December 31, 1993, the Applicant's estimated net investment in the project would amount to $850,600.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

O. Available Location of Application:

A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and File Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20428, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Bangor Hydro-Electric Company, 33 State Street, Bangor, ME 04401. (207) 945-5621.

7a. Type of Application: Amendment of License.

b. Project No.: 5223-018.
e. Name of Project: International Falls Hydroelectric Project.
f. Location: The project is located of the Rainy River in Koochiching County, Minnesota. The dam extends between International Falls, Minnesota, and Fort Francis, Ontario and the project utilizes that portion of the dam that lies within the borders of the United States. The project affects lands administered by the Bureau of Land Management.
g. Filed pursuant to: Federal Power Act, 18 U.S.C. 791(a)–825(r).
h. Applicant Contact: Richard Baxendale, Counsel for International Falls Power Company, One Jefferson Square, P.O. Box 50, Boise, ID 83728.
i. FERC Contact: Michelle Laabs, (202) 219-3274.
j. Comment Date: July 24, 1992.
k. Description of Amendment: International Falls Power Company requests approval of an as-built exhibit A for the International Falls Hydroelectric Project. The as-built exhibit A states an installed plant capacity of 14,450 kW. This is 3,650 kW greater than the authorized capacity of the project. Additionally, the hydraulic capacity of the turbines increased from 2,860 cfs to 8,137 cfs.

I. This notice also consists of the following standard paragraphs: B, C, and D2.
e. **Name of Project:** Mississippi River Lock & Dam No. 15 Davenport.

f. **Location:** On the Mississippi River, near Davenport, Iowa, in Scott County, Iowa, and Rock Island County, Illinois.

g. **Filed Pursuant to:** Federal Power Act 16 U.S.C. 791(a)–825[r].

h. **Applicant** Contact: Mr. Justin Rundle, Iowa Hydropower Development Corporation, 3900 Crosby Drive, suite #1620, Lexington, KY 40515.

i. **FERC Contact:** Mary Golato (202) 219-2804.

j. **Comment Date:** July 22, 1992.

k. **Description of Project:** The proposed project would utilize the existing Corps dam and would consist of the following facilities: (1) A proposed powerhouse consisting of four pit turbine-generator units rated at 7.25 megawatts (MW) each, for a total installed capacity of 28.0 MW; and (2) a new 35-kilowatt transmission line from the project powerhouse to the existing transmission lines at Davenport, Iowa. The total estimated average annual energy production of the proposed project is 144.2 gigawatthours. The applicant estimates that the cost of the studies under permit would be $200,000.

l. **This notice also consists of the following standard paragraphs:** A3, A7, A9, A10, B, C, and D2.

m. **Type of Application:** Preliminary Permit.

n. **Project No.:** 11280-000.

o. **Date Filed:** April 17, 1992.

p. **Applicant:** Zoes J. Dimos and James C. Katsekas.

q. **Name of Project:** Franklin Hydroelectric Project.

r. **Location:** On the Winnipesaukee River, near Franklin and Northfield, in Belknap Counties, New Hampshire.

g. **Filed Pursuant to:** Federal Power Act 16 U.S.C. 791(a)–825[r].

h. **Applicant** Contact: Zoes J. Dimos and James C. Katsekas, 27 Pimlico Ct., Bedford, New Hampshire, (603) 669-7082.

i. **FERC Contact:** Mary Golato (202) 219-2804.

j. **Comment Date:** July 29, 1992.

k. **Description of Project:** The proposed project would consist of the following facilities: (1) A rehabilitated concrete gravity dam 200 feet long and 22 feet high; (2) a proposed reservoir with a surface area of 40 acres at a surface elevation of 405 feet mean sea level, and a storage of approximately 400 acre-feet; (3) a proposed penstock 10 feet in diameter; (4) a proposed powerhouse containing one turbine-generator unit at an installed capacity of 5.8 megawatts; (5) a proposed 300-kilowatt generator/turbine located at the dam; (6) a 34.5-kilovolt transmission line; and (7) appurtenant facilities. The dam is owned by the Public Service Company of New Hampshire. The average annual generation would be 25,788,730 kilowatthours, and the estimated cost of the studies under permit would be $164,000.

m. **This notice also consists of the following standard paragraphs:** A8, A10, B, C, and D2.

n. **Type of Application:** Preliminary Permit.

o. **Project No.:** 11281-000.

p. **Date Filed:** April 17, 1992.

q. **Applicant:** Zeos J. Dimos and James C. Katsekas.

r. **Name of Project:** Winnipesaukee Hydroelectric Project.

s. **Location:** On the Winnipesaukee River, near Franklin, in Merrimack and Belknap Counties, New Hampshire.

g. **Filed Pursuant to:** Federal Power Act 16 U.S.C. 791(a)–825[r].

h. **Applicant** Contact: Zeos J. Dimos and James C. Katsekas, 27 Pimlico Ct., Bedford, New Hampshire, (903) 688-7082.

i. **FERC Contact:** Mary Golato (dmt) (202) 219-2804.

j. **Comment Date:** July 29, 1992.

k. **Description of Project:** The proposed project would consist of: (1) A 36-to-48-inch wide, 14-foot-diameter paddle wheel; (2) a 36-to-40-inch-high, 10-to-15-foot-long diversion wall; (3) a 12-volt alternator and a 24-volt D.C. generator, connected to the paddle wheel by a series of belts and pulleys, producing approximately 600 watts of power; and (4) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Power Act the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project’s head or generating capacity, or have otherwise significantly modified the project’s pre-1935 design or operation.

l. **Purpose of Project:** Applicant intends to use energy produced on-site.

m. **This notice also consists of the following standard paragraphs:** B, C, and D2.

**Standard Paragraphs**

**A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application.**

Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

**A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a**
notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file a competing preliminary permit application no later that 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. 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 protests or motions to intervene must be received on or before the specified comment date for the particular application.

D1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission’s Rule may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" and "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission’s regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any protest or motion to intervene must be served upon each representative of the Applicant specified in the particular application.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions. When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "Protest" or "MOTION TO INTERVENE," (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.200 through 385.2005. 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, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

All filings must (1) bear in all capital letters the title "Protest" or "MOTION TO INTERVENE," (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. 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, 265 North Capitol Street, N.E., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: June 12, 1992, Washington, DC
Lois D. Cashell, Secretary.

[FR Doc. 92-14411 Filed 6-18-92; 8:45 am]
BILLING CODE 7170-01-M

[Docket Nos. CP92-526-000, et al.]

Northwest Pipeline Corporation, et al.; Natural gas certificate filings

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

1. Northwest Pipeline Corp.
   [Docket No. CP92-526-000]
   Take notice that on June 9, 1992, Northwest Pipeline Corporation (Northwest), 285 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP92-259-000 a request pursuant to \$ 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to reallocate firm service between two delivery points to Washington Natural Gas Company (Washington Natural) under Northwest's Rate Schedule ODL-1, under the certificate issued to Northwest in Docket No. CP82-433-000, 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.
   Northwest states that it is presently authorized to provide up to 150,000 dekatherms per day of firm sales service to Washington Natural under Rate Schedule ODL-1. Northwest also states that it is presently authorized to provide up to 156,733 dekatherms per day of firm transportation service to Washington Natural under Rate Schedule FT-1. It is stated that the combined firm sales and transportation delivery obligation at the South Seattle, Washington delivery point to Washington Natural is limited to the maximum daily delivery obligation (MDDO) of 53,000 dekatherms per day and the Fredrickson, Washington delivery point is limited to 10,000 dekatherms per day. Northwest requests authorization to reallocate 5,000 dekatherms per day of firm MDDO from the South Seattle, Washington delivery point to the Fredrickson, Washington delivery point under its currently effective Rate Schedule ODL-1 service agreement with Washington Natural. Northwest states that no facility modifications would be involved with this proposal. Comment date: July 24, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. CNG Transmission Corp.
   [Docket No. CP92-527-000]
   Take notice that on June 4, 1992, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, WV, 26301 filed in Docket No. CP92-527-000, a request pursuant to §§ 157.205, 157.211 and 157.116(b) of the Commission's Regulations under the Natural Gas Act, to abandon by sale 7,189 feet of 6" pipeline and associated facilities, including sales tapes to Pennzoil Products Company, all as fully set forth in the request which is on file with the Commission and open to public inspection.
   CNG explains that it will abandon pipeline No. H-10176 because the related gas purchases have been removed from Commission jurisdiction under the Natural Gas Act by virtue of the Wellhead Decontrol Act of 1989. Hope Gas, Inc. (Hope) which purchases gas for resale from CNG for utility residential usage on the line has agreed and has made arrangements to transfer its customers to Pennzoil, a public utility within the state of WV. Comment date: July 24, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Border Pipeline Co.
   [Docket No. CP92-530-000]
   Take notice that on June 8, 1992, Northern Border Pipeline Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124 filed in Docket No. CP92-528-000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate an existing blanket certificate issued in Docket No. CP82-401-000 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.
   Northern states that the volumes proposed to be delivered to Peoples are 50.4 Mcf per day and 13,396 Mcf on an annual basis. Northern further states that the volumes proposed to be delivered to Peoples at the proposed delivery point will be within the currently authorized level of entitlements for Peoples, and that the required volumes for Coronado will be served from the firm entitlements currently, assigned to other Kansas non-residential, under Northern's Argus Rate Schedule. Northern further states that it will be reimbursed for all costs associated with the installation of the proposed delivery point.

Northern Border states that the natural gas volumes delivered by displacement to Foothills at the proposed delivery point are volumes being transported by Northern Border under terms and conditions of an IT-1 transportation agreement to provide backhaul transportation for Poco Petroleums Ltd. and pursuant to Northern Border's Order 436/500 blanket authorization.

Northern Border further states that the total quantities of natural gas to be delivered by displacement to Foothills would not exceed presently authorized quantities and the change is not prohibited by Northern Border's existing tariff. Northern Border asserts that it has sufficient capacity to perform this backhaul service without detriment or disadvantage to any other customer. Comment date: July 27, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Co.
   [Docket No. CP92-528-000]
   Take notice that on June 5, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124 filed in Docket No. CP92-528-000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate a small volume measuring station and appurtenant facilities as a new delivery point to accommodate natural gas deliveries to Peoples Natural Gas Company, Division of UtiliCorp, Inc. (Peoples) for re-delivery to Coronado Feed Yard, Inc. (Coronado) under the blanket certificate issued in Docket No. CP92-401-000 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.
   Northern states that the estimated volumes proposed to be delivered to Peoples is 50.4 Mcf per day and 13,396 Mcf on an annual basis. Northern further states that the volumes proposed to be delivered to Peoples at the proposed delivery point will be within the currently authorized level of entitlements for Peoples, and that the required volumes for Coronado will be served from the firm entitlements currently, assigned to other Kansas non-residential, under Northern's Argus Rate Schedule. Northern further states that it will be reimbursed for all costs associated with the installation of the proposed delivery point.
Comment date: July 27, 1992, in accordance with Standard Paragraph C at the end of this notice.

5. Northern Natural Gas Co.
[Docket No. CP92–529–000]
Take notice that on June 5, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP92–529–000 a request pursuant to §§ 157.250 and 157.212 for authorization to increase deliveries of natural gas to Peoples Natural Gas Company, a Division of UtiliCorp United Inc. (Peoples), at an existing delivery point, and to construct and operate related facilities under Northern’s blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to increase deliveries of natural gas to Peoples at the East Big Marine Lake, Minnesota, delivery point, as well as to construct and operate necessary facilities to accommodate those deliveries. Northern states that the total proposed peak day sales and transportation entitlements for Peoples, which is on file with the Commission and open to public inspection.

Comment date: July 27, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. Mississippi River Transmission Corp.
[Docket No. CP92–532–000]
June 12, 1992.
Take notice that on June 10, 1992, Mississippi River Transmission Corporation (MRT), 900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP92–532–000, a request pursuant to § 157.205 of the Commission’s Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate an additional delivery point for an existing resale customer, under the authorization issued in Docket No. CP82–498–000 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.

MRT requests authorization to construct and operate facilities necessary to provide an additional point of delivery for Arkansas Louisiana Gas Company (ALG), an existing firm sales customer served under MRT’s Rates Schedule CD–1. The proposed delivery point would serve a customer located near the community of England, Arkansas. MRT states that it would supply an estimated 27 MMbtu of natural gas on a peak day and an estimated 782 MMbtu of natural gas on an annual basis at the proposed delivery point.

MRT states that it provides firm delivery of natural gas to ALG at various delivery points for resale. MRT seeks to install a 1-inch tap and appurtenant facilities to be located on MRT’s existing right-of-way. MRT states that the point of delivery will be on MRT’s Main Line No. 1 located in the NW/4 of the NE/4 of Section 35, TiS RdW, Lonoke County, Arkansas. It is stated that ALG will own a meter and appurtenant facilities which will also be located on MRT’s right-of-way. The gas will be used by ALG’s customers for commercial as well as domestic uses including heating, cooking and water heating.

According to MRT, the additional quantity of gas to be provided through the proposed delivery point will not result in an increase in the daily or annual quantities MRT is authorized to deliver to ALG. It is estimated that the cost of the facilities to be installed is $4,775. MRT states that ALG will reimburse MRT for all costs associated with the facilities and the application filing fee.

MRT states that its FERC Gas Tariff does not prohibit the addition of new delivery points and that it has sufficient capacity to accommodate the deliveries proposed herein without detriment or disadvantage to its other customers.

Comment date: July 27, 1992, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Co.
[Docket No. CP92–531–000]
June 12, 1992.
Take notice that on June 9, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP92–531–000 a request pursuant to § 157.205 of the Commission’s Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to upgrade an existing delivery point to accommodate increased deliveries of natural gas to Northern States Power Company (NSP) in Washington County, Minnesota, under Northern’s blanket certificate issued in Docket No. CP82–401–000, all as more fully described in the request which is on file with the Commission and open to public inspection.

Northern requests authorization to upgrade the Hugo, Minnesota, town border station, in order to serve a portion of NSP’s requirements for St. Paul, in addition to those for the community of Hugo. It is stated that the increased capacity is needed to reflect changes by NSP in its distribution system. It is asserted that the deliveries will remain within NSP’s existing firm sales and transportation entitlements from Northern. Northern proposes to use the upgraded facilities to deliver to NSP 50,000 Mcf of gas on a peak day and 4,562,500 Mcf of gas on an annual basis for residential, commercial and industrial end uses. The cost of the upgrade is estimated at $540,000.

Comment date: July 27, 1992, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission’s staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission’s Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell, Secretary.
[FR Doc. 92–14476 Filed 6–18–92; 8:45 am]
BILLING CODE 6717–01–M
Texas Gas Transmission Corp.;
Compliance Filing

Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1150, Owensboro, Kentucky 42302, tendered for filing in Docket No. TC81-9-008 the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Substitute Third Revised Sheet No. 98
Second Substitute Second Revised Sheet No. 104
Substitute Second Revised Sheet No. 105
Second Substitute Second Revised Sheet No. 106
Second Substitute First Revised Sheet No. 197

Texas Gas proposes a November 1, 1991, effective date for the above tariff sheets and asks for any waivers which may be necessary to accept this compliance filing.

Texas Gas explains that these tariff sheets revise Section 10.5 of its General Terms and Conditions and its Index of Entitlement in compliance with the Commission's May 5, 1992, order in the above captioned proceeding. In the May 5th order, the Commission instructed Texas Gas to eliminate certain language relating to its curtailment demand credit charge and any consideration of D-2s when establishing quantity entitlements with regard to Texas Gas' sales curtailment plan. Texas Gas asserts that it has fully complied with the Commission's order except for three new customers. Texas Gas explains that Citizens Gas & Coke Utility, Dayton Power and Light Company, and City of Gallaway, Tennessee have no historic quantities on which to establish their base period entitlement. Accordingly, Texas Gas requests a limited waiver or modification of the Commission's May 5, 1992, order for these three customers in order for Texas Gas to continue to base their quantity entitlements on D-2 levels in the absence of historic data. In all other circumstances, Texas Gas asserts that the revised Index of Quantity Entitlements submitted herein has eliminated consideration of D-2s pursuant to the Commission's May 5th order.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before June 25, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20428, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). 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 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.

Loris D. Cashall,
Secretary.

Office of Fossil Energy

Alcorn Trading Co., Inc.; Order Granting Blanket Authorization To Export Natural Gas to Mexico
AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order authorizing Alcorn Trading Company, Inc. to export up to 108 Bcf of natural gas to Mexico over a two-year period beginning on the date of first delivery. A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Issued in Washington, DC, June 12, 1992.

Charles F. Vacek,
Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

Anadarko Trading Company; Order Granting Blanket Authorization To Export Natural Gas to Mexico
AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Anadarko Trading Company blanket authorization to export up to 108 Bcf of natural gas to Mexico over a two-year term, beginning on the date of first delivery. A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Issued in Washington, DC, June 12, 1992.

Charles F. Vacek,
Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

Amoco Canada Marketing Corp.; Order Granting Blanket Authorization To Import Natural Gas From Canada
AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Amoco Canada Marketing Corp. blanket authorization to import up to 200 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery. A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Issued in Washington, DC, June 12, 1992.

Charles F. Vacek,
Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

Public Service Department, the City of Burbank, CA, et al.; Applications For Long Term Authorization To Import Natural Gas From Canada
AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of applications.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of three applications to import natural gas from Canada, as follows:
The gas will be purchased on a firm basis under the terms of similar gas sales agreements between the above-listed applicants and Unigas Corporation (Unigas), and will be imported at the U.S./Canada border near Kingsgate, British Columbia (B.C.) through the pipeline facilities of Pacific Gas Transmission (PGT). Imports under the agreements are proposed to begin on the later of the date of first delivery or November 1, 1993, and will extend through October 31, 1999.

The applications are filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 20, 1992.


SUPPLEMENTARY INFORMATION:

1. Background

All three applicants are municipalities organized under the laws of the State of California. Burbank, Glendale, and Pasadena all purchase natural gas to generate electricity to meet the needs of residential, commercial, and industrial customers. Unigas, the marketing company with whom applicants have contracted to purchase firm gas supplies, is a Canadian corporation, with its principal place of business in Calgary, Alberta. Unigas is a subsidiary of Union Energy, Inc., a Canadian energy company engaged in the exploration, development, production, transportation, storage and marketing of natural gas.


Applicants state that the contracts with Unigas were negotiated on an arms-length basis, and are designed to provide price-competitive and reliable gas supplies. Applicants assert that the gas supplies will remain competitive because the contract pricing provisions are structured to conform to changing market conditions. The commodity price will be calculated on a yearly basis, using a base price index adjusted to reflect gas prices from the Alberta and southwest U.S. markets.

3. Transportation Arrangements

All three applicants have signed firm transportation agreements with PGT and Pacific Gas & Electric Company (PG&E). Under the terms of these agreements, PGT would transport the gas from Kingsgate, B.C., to the Oregon/California border near Malin, Oregon. PGT recently obtained a certificate of public convenience and necessity from the Federal Energy Regulatory Commission (FERC) authorizing the construction of new pipeline facilities, otherwise known as the PGT/PG&E Expansion Project. See 56 FERC § 61,192 (1992). The certificate would enable PGT to transport the proposed gas volumes for these three applicants, as well as additional volumes for other shippers. PG&E would transport the gas from Malin, Oregon, to Kern River Station, California, which is the point of interconnection with Southern California Gas Company (SoCalGas). Finally, the gas will be transported by SoCalGas to Burbank, Glendale, and Pasadena under existing transportation tariffs.

Decisions on these applications will be made consistent with DOE’s import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In long-term arrangements such as these, other matters that will be considered in making a public interest determination include need for the gas and security of the long-term supply. Parties, especially those that may oppose these applications, should comment on these issues as set forth in the policy guidelines regarding the requested import authorizations. The applicants assert that imports made under the proposed arrangements will be competitive and otherwise consistent with DOE import policy. Parties opposing these arrangements bear the burden of overcoming these assertions. All parties should be aware that if the requested import arrangements are approved, the authorizations will be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price, in order for DOE to monitor its natural gas import program.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. DOE has previously considered the potential environmental effects of the PGT/PG&E Expansion Project (i.e., the addition of pipeline loop, compression, and metering facilities on the PGT/PG&E system). On May 22, 1992, a Record of Decision (ROD) was published in the Federal Register (57 FR 21784) which addressed the environmental aspects of granting eight blanket applications to import Canadian natural gas under DOE/FE Opinion Order No. 619. In the ROD, DOE concluded that the additional facilities planned by PGT/PG&E could be built and operated in a manner which would adequately protect the environment. Under the import arrangements proposed by Burbank, Glendale, and Pasadena, PGT and PG&E would only be required to dedicate some of the expanded pipeline capacity to transport the proposed volumes. Therefore, approval of these applications would not change the environmental impacts analyzed in the ROD.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person who wants to become a party to any of the three proceedings and to have written comments considered as the basis for the decision on any of the applications must, however, file a separate motion to intervene or notice of intervention, as applicable, in each proceeding. The filing of a protest with respect to these applications will not serve to make the protestant a party to any of the proceedings, although protests and comments received from persons who...
are not parties will be considered in determining the appropriate action to be taken on each application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on each application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.310. Copies of these applications are available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays. Issued in Washington, D.C., on June 12, 1992.

Clifford P. Tomaszewski,
Director, Office of Natural Gas, Office of Fuels Programs, Fossil Energy.

[FR Doc. 92-14495 Filed 6-18-92; 8:45 am]
BILLING CODE 6450-01-M

[FE Docket No. 92-49-NG]
CU Energy Marketing Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting CU Energy Marketing Inc. (CUEM) blanket authorization to import up to 200 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery after June 18, 1992, the day which CUEM's current blanket authorization expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays. Issued in Washington, DC, June 12, 1992.

Charles F. Vacek,
Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-14494 Filed 6-18-92; 8:45 am]
BILLING CODE 6450-01-M

[FE Docket No. 92-40-NG]
Enmark Gas Corp.; Order Granting Blanket Authorization To Export Natural Gas To Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting EnMark Gas Corp. blanket authorization to export to Canada a total of 40 Bcf of natural gas over a two-year term beginning on the date of the first export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays. Issued in Washington, DC, June 12, 1992.

Charles F. Vacek,
Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-14490 Filed 6-18-92; 8:45 am]
BILLING CODE 6450-01-M

[FE Docket No. 91-19-NG]
Inland Gas & Oil Corp.; Order Granting In Part and Denying in Part an Amendment To Blanket Authorization To Import and Export Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has granted in part and denied in part an amendment to the blanket authorization issued to Inland Gas & Oil Corp. (IGOC) in DOE/FE Opinion and Order No. 517, dated July 5, 1991. The amendment authorizes an increase in the import volumes of natural gas, including liquefied natural gas (LNG), from 14 Bcf to 35 Bcf over the two-year term of the authorization. IGOC's request for conditional authorization to import and export over the proposed pipeline facilities of Sumas International Pipeline Inc. was denied for procedural reasons.

A copy of this order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue,
SW, Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 12, 1992.

Charles F. Vacak,
Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-14496 Filed 6-18-92; 8:45 am]
BILLING CODE 6450-01-M

[FED Docket No. 92-15-NG]

Iroquois Gas Transmission System, L.P.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Iroquois Gas Transmission System, L.P., blanket authorization to import up to one billion cubic feet of natural gas from Canada over a two-year period beginning on the date of the first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 12, 1992.

Charles F. Vacak,
Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-14496 Filed 6-18-92; 8:45 am]
BILLING CODE 6450-01-M

[FED Docket No. 92-04-NG]

Kamine/Besicorp Natural Dam L.P.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on January 17, 1992, of an application filed by Kamine/Besicorp Natural Dam L.P. (Kamine/Besicorp), as supplemented on February 25, and March 4, 1992, for authorization to import up to 12,500 Mscf of Canadian natural gas per day, and a total of 114.1 Bcf, over a 15-year term. The natural gas would enter the United States through the pipeline facilities of Iroquois Gas Transmission System, L.P. (Iroquois) at Waddington, New York and be used to fuel Kamine/Besicorp's new 56 MW combined-cycle cogeneration facility to be constructed in Gouverneur, New York. Kamine/Besicorp requests that the authorization commence upon the commercial operation of the plant or June 1993, whichever is earlier.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 20, 1992.


FOR FURTHER INFORMATION CONTACT:

[FR Doc. 92-14499 Filed 6-18-92; 8:45 am]
BILLING CODE 6450-01-M

Kamine/Besicorp states the imported natural gas will be used to fuel a new combined-cycle cogeneration facility to be owned by Kamine-Besicorp and constructed on land leased from James River Paper Company Inc. (JRP), an affiliate of James River Corporation of Virginia, at the JRP's paper mill near Gouverneur, New York. The new facility is expected to be completed and in commercial operation by June 1993. The facility was certified by the Federal Energy Regulatory Commission on August 29, 1991 (56 FERC ¶ 61,145), as a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978. The steam will be sold to JRP's paper mill and the 58 MW of electric power will be sold to Niagara Mohawk Power Corporation (Niagara Mohawk).

Kamine/Besicorp has contracted to purchase this gas from North Canadian Marketing Inc. (NCM), pursuant to an agreement dated July 30, 1991, as amended November 29, 1991. The contract provides for NCM to be the sole supplier of the cogeneration plant's total gas requirements up to the level of the maximum daily quantity (MDQ). The MDQ or "base quantity" under the contract is 10,200 MMbtu's for the period of November 1, 1993, through November 1, 2008. It relates to the first 49 MW of electrical production. An incremental quantity of up to 1,800 MMbtu's per day would be supplied to produce the 9 MW of additional electricity. If Kamine/Besicorp takes less than 90 percent of the MDQ, the contract requires Kamine Besicorp to pay the seller a gas inventory charge equal to $.40 per Mcf of the deficiency volume, subject to an annual percentage increase.

For the base quantity, Kamine/Besicorp would pay specified prices each year beginning at $1.56 (U.S.) per MMbtu (1993-1995) and increasing to $5.45 (U.S.) per MMbtu (2008). This price includes transportation in Saskatchewan and Alberta, royalties, fees, and other charges incurred by NCM. For incremental quantities, the price would be $1.33 (U.S.) per MMbtu in 1993 and thereafter would be indexed to reflect monthly changes to Niagara Mohawk's short-run avoided energy costs. NCM has made arrangements for transportation by NOVA Corporation of Alberta, TransGas, and West Coast Gas which would deliver the gas to various interconnections of their systems near TransCanada PipeLines Limited (TCPPL) in Saskatchewan and Alberta. Kamine/Besicorp would pay TCPPL for transportation from these delivery points to the Iroquois system at Waddington, New York. Based on the application, the total price for base volumes delivered at Waddington in
pipeline. St. Lawrence has applied to the pipeline from Iroquois to the facility. While the Iroquois transportation is interruptible, a peak shaving agreement with Consumers Gas Company Limited has been entered into in the event of an interruption. For final delivery with DOE's gas import policy guidelines. Kamine/Besicorp states that the imported gas will provide a reliable, long-term, secure supply of competitively priced gas to the combined-cycle cogeneration facility. Kamine/Besicorp also state that there is no domestic natural gas delivered into the area in which the facility is located.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters will be considered in making a public interest determination, including need for the natural gas and security of the long-term supply. Parties, especially those that may oppose this application, should comment in their responses on the issue of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. Kamine/Besicorp asserts that this import arrangement is in the public interest because it is needed, competitive, and its natural gas source will be secure. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., requires DOE to give appropriate consideration to the environmental effects of its proposed actions. DOE intends to prepare an environmental assessment (EA) on the cogeneration plant and pipeline lateral proposed by Kamine/Besicorp and St. Lawrence. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Kamine/Besicorp's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 12, 1992.

Charles F. Vacek,
Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-14491 Filed 6-16-92; 8:45 am]
BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the week of May 15 Through May 22, 1992

During the Week of May 15 through May 22, 1992, the appeals and applications for 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.


George B. Breznay,
Director, Office of Hearings and Appeals.
LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS  
[Week of May 15 through May 22, 1992]

<table>
<thead>
<tr>
<th>Date</th>
<th>Name and location of applicant</th>
<th>Case No.</th>
<th>Type of submission</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 18, 1992</td>
<td>Gulf/Jim's Gulf, Atlantic Beach, FL</td>
<td>RR300-155</td>
<td>Request for modification/rescission in the Gulf refund proceeding. If granted: The April 24, 1992 Decision and Order (Case No. RF300-13886) issued to Jim's Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding. Appeal of an information request denial.</td>
</tr>
<tr>
<td>Do</td>
<td>James L. Schwab, Spokane, WA</td>
<td>LFA-0210</td>
<td></td>
</tr>
<tr>
<td>May 19, 1992</td>
<td>Arco/Byto Oil Company, Washington, D.C.</td>
<td>RR304-39</td>
<td>Request for modification/rescission in the Arco refund proceeding. If granted: The November 6, 1989 Decision and Order (Case No. RF304-2372) issued to Byto Oil Company would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.</td>
</tr>
<tr>
<td>Do</td>
<td>Arco/Carl King, Inc., Washington, D.C.</td>
<td>RR304-41</td>
<td>Request for modification/rescission in the Arco refund proceeding. If granted: The June 4, 1989 Decision and Order (Case No. RF304-4443) issued to Carl King, Inc. would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.</td>
</tr>
<tr>
<td>Do</td>
<td>Arco/Flippo's Oil Company, Washington, D.C.</td>
<td>RR304-42</td>
<td>Request for modification/rescission in the Arco refund proceeding. If granted: The December 6, 1989 Decision and Order (Case No. RF304-6541) issued to Flippo's Oil Company would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.</td>
</tr>
<tr>
<td>Do</td>
<td>Arco/Perrine Oils, Washington, D.C.</td>
<td>RR304-40</td>
<td>Request for modification/rescission in the Arco refund proceeding. If granted: The June 2, 1989 Decision and Order (Case No. RF304-3573) issued to Perrine Oils would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.</td>
</tr>
<tr>
<td>Do</td>
<td>Gulf/Pigeon Cooperative, Oil Company, Washington, D.C.</td>
<td>RR300-157</td>
<td>Request for modification/rescission in the Gulf refund proceeding. If granted: The June 2, 1989 Decision and Order (Case No. RF300-3573) issued to Pigeon Cooperative Oil Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.</td>
</tr>
<tr>
<td>Do</td>
<td>Gulf/Moses Chevrolet, Inc., Washington, D.C.</td>
<td>RR300-159</td>
<td>Request for modification/rescission in the Gulf refund proceeding. If granted: The January 6, 1989 Decision and Order (Case No. RF300-4101) issued to Moses Chevrolet, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.</td>
</tr>
<tr>
<td>Do</td>
<td>Gulf/Rupp Oil Company Inc., Washington, D.C.</td>
<td>RR300-158</td>
<td>Request for modification/rescission in the Gulf refund proceeding. If granted: The January 6, 1989 Decision and Order (Case No. RF300-3561) issued to Rupp Oil Company Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.</td>
</tr>
<tr>
<td>Do</td>
<td>Gulf/Shumway Oil Company, Inc., Washington, D.C.</td>
<td>RR300-160</td>
<td>Request for modification/rescission in the Gulf refund proceeding. If granted: The January 6, 1989 Decision and Order (Case No. RF300-3561) issued to Shumway Oil Co., Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.</td>
</tr>
<tr>
<td>Do</td>
<td>Linda Farakoff, Kennewick, WA</td>
<td>LFA-0211</td>
<td>Request for modification/rescission in the Gulf refund proceeding. If granted: The December 6, 1989 Decision and Order (Case No. RF300-3561) issued to Linda Farakoff would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.</td>
</tr>
</tbody>
</table>

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REFUND APPLICATIONS RECEIVED—Continued

<table>
<thead>
<tr>
<th>Date received</th>
<th>Name of refund proceeding/name of refund application</th>
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</tr>
</thead>
<tbody>
<tr>
<td>5/15/92 thru 5/22/92</td>
<td>Cruide Oil Applications Received.</td>
<td>RF272-92353 thru RF272-92421.</td>
</tr>
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</table>

REFUND APPLICATIONS RECEIVED—Continued

<table>
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</tr>
</thead>
<tbody>
<tr>
<td>5/15/92 thru 5/22/92</td>
<td>Atlantic Richfield Applications Received.</td>
<td>RF304-13103 thru RF304-13134.</td>
</tr>
</tbody>
</table>

REFUND APPLICATIONS RECEIVED—Continued

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<th>Case No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/15/92 thru 5/22/92</td>
<td>Texaco Refund Applications Received.</td>
<td>RF321-1861 thru RF321-18632.</td>
</tr>
</tbody>
</table>
EPA expressed objections due to potential impacts to air quality, the increased risk of an oil spill and its associated effects on natural resources. The DEIS clearly demonstrated that alternative pipeline operations are feasible and more environmentally sensitive. When project alternatives are ranked by environmental effect, the proposed project is one of the least environmentally preferred alternatives.

Enforcement Action

EIS No. DS-BLM-K65062-NV Rating RF300-20018. Implementation, Ely District, White Pine, Lincoln and Nye Counties, NV. Summary: EPA expressed environmental concerns regarding the potential impacts of expanded exploration and development actions on regional air quality, water quality, surface resources, wet meadows and associated natural resources. EPA noted that the proposed project may not meet the Clean Air Act's conformity provisions. EPA requested additional information regarding efforts to protect air and water quality.

Final

EIS No. LF-NPS-L11191-AK, Gate of the Arctic National Park and Preserve, Use of All-Terrain Vehicles (ATV) for Subsistence on Park Land, City of Anaktuvuk Pass, AK. Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the agency.


William D. Dickerson,
Deputy Director, Office of Federal Activities.

Enforcement Action

EIS No. D-COE-K03021-CA Rating E02. Gaviota Marine Terminal (GTC) Project, Oil and Gas Production Facilities Consolidation, Section 404 Permit Issuance, Santa Barbara County, CA.

Implementation, Clark and Nye Counties, NV, Due: September 15, 1992, Contact: Jerry C. Wickstrom (702) 647-5000.

EIS No. 920318, Draft Supplement, AFS, AK, Bohemian Mountain Timber Sales, Implementation, Updated Information to Limit Alternatives to those that would not Impact Potential Recommendation of Duncan Salt Chuck Creek from Inclusion in the National Wild and Scenic River System and COE Permit Issuance, Tongass National Forest, Petersburg Ranger District, Sitline, AK, Due: August 03, 1992, Contact: David E. Hellick (907) 772-3843.


The U.S. Department of Agriculture's Forest Service and the U.S. Department of the Interior's Bureau of Land Management are Joint Lead Agencies for this project.

EIS No. 920218, Draft EIS, FHW, PA, Lackawanna Valley Industrial Highway Project, Reconstruction and Redevelopment, I-81 to Dunmore and US Route 6 in Whites Crossing north of Carbondale, Funding and COE Section 404 Permit, Lackawanna Valley, Lackawanna County, PA, Due: August 17, 1992, Contact: Manuel A. Marks (717) 762-2222.

EIS No. 920219, Draft EIS, BLM, ID, Snake River Intertie Project, Construction and Operation, 500kV Transmission Line from the existing Midpoint substation near Shoshone, ID to a new Substation Site in the Dry Lake Valley of Las Vegas, NV area to a point near Delta, UT. Funding and Section 10 and 404 Permits Approval, Several Counties of NV, ID, UT, Due: August 18, 1992, Contact: Karl Simonson (206) 678-5514.

EIS No. 920220, Final EIS, AFS, MT, East Boulder Mine Project, Platinum and Palladium Mining, Construction and Operation, Plan of Operations, Approval and COE Section 404 Permit, Gallatin National Forest, Sweet Grass County, MT, Due: July 20, 1992, Contact: Sherm Solid (406) 587-6701.

EIS No. 920221, Draft EIS, SFW, ND, Lake Ilo Dam and Reservoir Modification Project, Elimination of Existing Dam Safety Deficiencies and Section 404 Permit Implementation, Lake Ilo National Wildlife Refuge, Spring Creek, Dunn County, ND, Due: August
Public Hearing on the Proposal to Grante a Variance from Land Disposal Restrictions to Exxon Company, U.S.A., Billings, MT

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearing.

SUMMARY: The Environmental Protection Agency (EPA or Agency) has proposed to grant a no-migration variance to petitioner Exxon Company, U.S.A., Billings, Montana on March 29, 1992, (see 57 FR 10478). The public comment period on this proposal ended on June 10, 1992. The purpose of this notice is to announce the scheduling of a public hearing on EPA's proposed variance decision, to be held in Billings, Montana, on Friday, July 31, 1992. The purpose of the public hearing will be to give local residents an additional opportunity to comment on the proposed variance. All comments received at the hearing will be entered into the public record for this decision making.

DATES: The public hearing has been scheduled for Friday, July 31, 1992, at Eastern Montana College Library 148, 1500 North 30th Street, Billings, Montana, from 12 noon to 5 p.m. and from 7 p.m. to 9 p.m. Persons interested in making oral statements should register by telephoning Stephanie Wallace, EPA Region VIII, Helena, MT at (406) 449-5414. Requests to make oral comments should be received by July 17, 1992. Written and oral comments on the proposed decision will be accepted by the Hearing Officer only at the public hearing in Billings, Montana on July 31, 1992. If written comments are offered at the public hearing, three copies should be submitted, each identified at the top with the regulatory docket number F-92-NMP-FFFT.

ADDRESSES: The RCRA regulatory docket that contains the administrative record for this public hearing is located at the Parmly Library, 510 North Broadway, Billings, Montana and is available for public review from 10 a.m. to 9 p.m. on Tuesday, Wednesday, and Thursday; from 10 a.m. to 6 p.m. on Friday; and, 10 a.m. to 5 p.m. on Saturday.

An additional copy of the RCRA regulatory docket is available to the public in Helena, Montana, at the EPA Region VIII, Montana Operations Office, Federal Building, 301 South Park. The public may make arrangements to view the documents by calling Stephanie Wallace at (406) 449-5414. This docket is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays. Call (202) 260-1206 for appointments.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this notice, contact Athena Rodbell, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, at (202) 260-0770 For information on administrative matters, or to advise of your intent to attend, please contact Stephanie Wallace, EPA Region VIII at (406) 449-5414.

SUPPLEMENTARY INFORMATION: On March 28, 1992, EPA proposed to grant a no-migration variance petition submitted by Exxon Company, U.S.A., Billings, Montana, pursuant to 40 CFR 268.8, to allow Exxon to conduct the land treatment of hazardous wastes generated at the Billings refinery. See 57 FR 10478 for a more detailed explanation of the Agency's proposal to grant Exxon's petition. This land treatment facility was issued a hazardous waste permit by the Montana Department of Health and Environmental Sciences (DHES) and has been in operation for eleven years. Since publication of the notice proposing to grant the no-migration variance, the Agency has received several requests for a public hearing from local citizens groups and residents of Billings, MT and the surrounding area. In light of the nature of these requests, the Agency decided as a discretionary matter that a public hearing to gather comment from the local citizens in close proximity to Exxon's land treatment facility would be appropriate. The comment period for the notice proposing to grant a no-migration variance to Exxon, Billings, which included...
AGENCY: Environmental Protection Agency (EPA).

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21723). In the Federal Register of November 11, 1984 (49 FR 40666) [40 CFR 723.250], EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 4 such PMN(s) and provides a summary of each.

DATES: Close of review periods:
Y 92-140, June 18, 1992.


SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92-140 Manufacturer: Confidential.

Use/Production. (G) Component used in coatings for plastics. Prod. range: Confidential.

Y 92-141 Manufacturer: Amoco Chemical Company.

Chemical. (G) Tenary polyamide.

Use/Production. (S) Extruded film/extruded fiber. Prod. range: Confidential.

Y 92-142 Manufacturer: Mace Adhesive and Coatings Co., Inc.

Chemical. (G) Aliphatic polyether polyurethane.

Use/Production. (S) Adhesive. Prod. range: 15,000-35,000 kg/yr.

Y 92-143 Manufacturer: Confidential.

Chemical. (G) Styrene-acrylic mercapton polymer.

Use/Production. (G) Automotive coatings resin. Prod. range: Confidential.


FOR FURTHER INFORMATION CONTACT: Steven Newburg-Rinn, Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

Written comments by:

ADRESSES: Written comments, identified by the document control number (“OPPTS-51796”) and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., rm. 201ET, Washington, DC 20460 (202) 205-3532.


SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 92-862 Manufacturer: E.I. Du Pont De Nemours & Company, Inc.

Chemical. (G) Substituted polyolefin.

Use/Production. (G) Coatings/adhesives. Prod. range: Confidential.
P 92-863
Manufacturer. E.I. Du Pont de Nemours & Company, Inc.

Chemical. (G) Substituted polyolefin. Use/Production. (G) Coatings/adhesives. Prod. range: Confidential.

P 92-864
Manufacturer. E.I. Du Pont de Nemours & Company, Inc.

Chemical. (G) Substituted polyolefin. Use/Production. (G) Coatings/adhesives. Prod. range: Confidential.

P 92-865
Manufacturer. E.I. Du Pont de Nemours & Company, Inc.

Chemical. (G) Substituted polyolefin. Use/Production. (G) Coatings/adhesives. Prod. range: Confidential.

P 92-866
Importer. Confidential.

Chemical. (S) Nonacyclo, hexapentaconta, tetracosaoe, octakis (1,1-dimethylthyl). Use/Import. (S) Component of toner. Import range: 2,000–5,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 15 g/kg species (rat). Skin irritaiton: moderate species (rabbit). Skin sensitization: positive species (guinea pig).

P 92-867
Importer. Orient Chemical Corporation.

Chemical. (S) Nonacyclo, hexaconta, tetracosaoe, octakis (cyclohexyl). Use/Import. (S) Component. Import range: 2,000–5,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 15 g/kg species (rat). Skin irritaiton: moderate species (rabbit). Skin sensitization: positive species (guinea pig).

P 92-868
Manufacturer. Goldschmidt Chemical Corporation.

Chemical. (G) Hydroxy functional acrylic copolymer. Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 92-869
Manufacturer. E.I. Du Pont de Nemours & Company, Inc.

Chemical. (G) Methacrylic acid copolymer.

Use/Production. (G) Precursor. Prod. range: Confidential.

P 92-870
Manufacturer. E.I. Du Pont de Nemours & Company, Inc.

Chemical. (G) Methacrylic acid copolymer salt. Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-871
Manufacturer. E.I. Du Pont de Nemours Company, Inc.

Chemical. (G) Methacrylic acid copolymer salt. Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-872
Manufacturer. Confidential.

Chemical. (G) A polymer of acrylic acid esters, methacrylic acid and methacrylic acid, with an alcohol, ammonium salt.

Use/Production. (G) Textile resin dye. Prod. range: Confidential.

P 92-873
Manufacturer. Confidential.

Chemical. (G) 2,2-Dimethyl-1,3-propanediol ester with branched fatty acids.

Use/Production. (G) Synthetic ingredient lubricant. Prod. range: Confidential.

P 92-874
Manufacturer. Bostik, Inc.

Chemical. (G) Polyurethane. Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-875
Manufacturer. Confidential.

Chemical. (G) Olefin maleic polymer. Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-876
Manufacturer. Confidential.

Chemical. (G) Olefin maleic polymer. Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-877
Manufacturer. Confidential.

Chemical. (G) Olefin maleic polymer. Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-878
Manufacturer. Confidential.

Chemical. (G) Olefin maleic polymer. Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-879
Manufacturer. Confidential.

Chemical. (G) Olefin maleic polymer. Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-880
Manufacturer. Confidential.

Chemical. (G) Olefin maleic polymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-881
Manufacturer. Eastman Kodak Company.

Chemical. (G) Trisubstituted triazine salt. Use/Production. (G) Destructive use. Prod. range: 100.

Toxicity Data. Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 92-882
Manufacturer. Champion Technologies, Inc.

Chemical. (G) 2-Hydroxyethyl cellulose, vinyl phosphonic acid graft polymer. Use/Production. (G) Oil well stimulation gellant. Prod. range: Confidential.

P 92-883
Manufacturer. Confidential.

Chemical. (G) Terpolymer of butyl acrylate, butyl methacrylate and substituted ethyl acrylate. Use/Production. (G) Adhesive for contained consumer use. Prod. range: 15,000–65,000 kg/yr.

Toxicity Data. Eye irritation: moderate species (rabbit).

P 92-884
Manufacturer. Monsanto Company.

Chemical. (G) Oxetane none. Use/Production. (G) Intermediate chemical. Prod. range: Confidential.

P 92-885
Manufacturer. Minnesota Mining & Manufacturing Co.

Chemical. (G) Bis-arene complex. Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 92-886
Manufacturer. Minnesota Mining & Manufacturing Co.

Chemical. (G) Bis-arene organometallic complex. Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.

P 92-887
Importer. American Cyanamid Company.

Chemical. (G) Substituted heterocyclic ester. Use/Import. (G) Additive for polymer. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 15 g/kg species (rat). Inhalation toxicity: LC50 > 5 mg/kg species (rat). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit).
2-methyl, 2-propenoate, butyl 2-propenoate and alkyl 2-methyl 2-propenoate polymer with butyl bis(2-aminopropyl) ether, 1,4-benzene oxirane methyl-polymer with oxirane, negative species (guinea pig).

Skin sensitization: positive species (rabbit).

Use/Import. (G) Printing inks. Import range: Confidential.

Manufacturer, Confidential. Chemical. (G) Polyurethane based on polysisocyanate, polyols, and polyamines. Use/Production. (G) Industrial coating. Prod. range: Confidential.

Manufacturer, Samncor Industries, Inc. Chemical. (G) Polyurethane based on polysisocyanate, polyols, and polyamines. Use/Production. (G) Industrial coating. Prod. range: Confidential.

Manufacturer, Samncor Industries, Inc. Chemical. (G) Polyurethane based on polysisocyanate, polyols, and polyamines. Use/Production. (G) Industrial coating. Prod. range: Confidential.

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Manufacturer, Samncor Industries, Inc. Chemical. (G) Polyurethane based on polysisocyanate, polyols, and polyamines. Use/Production. (G) Industrial coating. Prod. range: Confidential.

Manufacturer, Samncor Industries, Inc. Chemical. (G) Polyurethane based on polysisocyanate, polyols, and polyamines. Use/Production. (G) Industrial coating. Prod. range: Confidential.

Manufacturer, union Specialties, Inc. Chemical. (G) Polyurethane based on polysisocyanate, polyols, and polyamines. Use/Production. (G) Industrial coating. Prod. range: Confidential.
poly(oxy(methyl-1,2-ethanediyl)-A-
hydroxy with hydroxy-3-hydroxy-2-
(hydroxymethyl)-2-ethyl.

*Use/Production.* (S) Coatings for flexible and rigid substrates. Prod.
range: 80,000–100,000 kg/yr.

P 92–913
Manufacturer. Reichhold Chemicals, Inc.

*Chemical.* (G) Polyurethane resin.

*Use/Production.* (G) Hot melt adhesive. Prod. range: Confidential.

P 92–914
Manufacturer. Ashland Chemical, Inc.

*Chemical.* (G) Polyurethane.

*Use/Production.* (S) Ingredient used in an adhesive. Prod. range: Confidential.

P 92–915
Manufacturer. Dow Corning Corporation.

*Chemical.* (G) Organosilane.

*Use/Production.* (S) Chemical intermediate for silicon adhesives.
Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute
dermal toxicity: > 2,000 mg/kg species (rabbit). Eye irritation: minimal species

P 92–916
Manufacturer. Dow Corning Corporation.

*Chemical.* (G) Organodisilane.

*Use/Production.* (S) Silicone structural adhesive. Prod. range: Confidential.

P 92–917
Importer. Fabricolor Inc.

*Chemical.* (G) Benzoic acid, 2-
hydroxy-3-(4-nitrophenyl)azo)-5-[(6(7-
sulfonyl)phthaloyl)azo]-disodium salt.

*Use/Import.* (S) Dyeing of leather.

*Import range:* Confidential.

P 92–918
Importer. Fabricolor Inc.

*Chemical.* (G) Substituted tris azo.

*Use/Import.* (S) Dyeing of leather.

*Import range:* Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye
irritation: minimal species (rabbit). Skin irritation: slight species (rabbit).

P 92–919
Manufacturer. Confidential.

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**Massachusetts Marine Sanitation Device Standard; Receipt of Petition**

Notice is hereby given that a petition has been received from the State of
Massachusetts requesting a determination by the Regional
Administrator, Environmental Protection Agency, pursuant to section 312(f)(3) of
Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that
adequate facilities for the safe and sanitary removal and treatment of
sewage from all vessels are reasonably available for all the coastal waters of
the Town of Nantucket, County of
Massachusetts. The Town of Nantucket
is located on Nantucket Island, in Nantucket Sound, approximately 28
miles south of Cape Cod.

There are four pump-out facilities at the Nantucket Boat Basin, which is
located on the western shore of
Nantucket Harbor adjacent to the
downtown area of the Town of
Nantucket. There are two stationary
pump-out units and two portable units
available for use by both Nantucket
Boat Basin patrons and transient
vessels. In addition, the Boat Basin dock is
equipped with nine deck fittings plumbed
directly into the town sewer system that are used in conjunction with
the portable units. These pump-out
facilities will accommodate vessels with a
draft of twelve feet, and are open from
7 a.m. to 7 p.m., seven days a week.

Pump-out services are free to patrons and $10 for all others.

A fifth pump-out facility is located on the Nantucket Boat Basin on Nantucket
Harbor, and is operated by the Town of
Nantucket. This pump-out facility will
accommodate vessels with a draft of
several feet, and is open from 8 a.m. to
7 p.m., seven days a week. Pump-out
services are free of charge to all vessels.

The sixth pump-out facility is
operated by Madaket Marine, which is
located on Hither Creek, in Madaket
Harbor. This portable pump-out facility
will accommodate vessels with a five
foot draft, and is open from 8 a.m. to
4:30 p.m., seven days a week. There is a $10
fee per pump-out.

The State of Massachusetts certifies that the five pump-out facilities in
Nantucket Harbor discharge directly to the
town sewer system. The State of
Massachusetts further certifies that
sewage collected at Madaket Marine is
discharged into an above-ground
holding tank and periodically collected
by a septage hauler for disposal at the
town wastewater treatment plant.

The Nantucket Waste Water Treatment
Facility is located on South Shore Road.
This facility provides advanced primary
treatment and has consistently met or
exceeded EPA and Massachusetts
Department of Environmental Protection
standards.

The maximum daily vessel population for the coastal waters of Nantucket is
approximately 1725. This includes 1250
vessels on private, seasonal moorings
registered with the Town of Nantucket,
and an average of 475 transient vessels
per day. None of these vessels will be
excluded from using one or more of the
existing pump-out facilities.

Comments and views regarding this
request for action may be filed on or
before July 27, 1992. Such
communications, or requests for
information or a copy of the applicant’s
petition, should be addressed to Melville
P. Cote, Jr., U.S. Environmental
Protection Agency—Region I, Marine
and Estuarine Protection Section (WQE–
425), JFK Federal Building, Boston, MA


**Julie Belaga**

Regional Administrator.
A. PUMP-OUT FACILITY TABLE

<table>
<thead>
<tr>
<th>Marina/locations</th>
<th>Number of pump-out units</th>
<th>Hours</th>
<th>Draft limitations</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nantucket Boat Basin, First Winthrop</td>
<td>2 Stationary, 2 Portable</td>
<td>7 am to 7 pm Daily</td>
<td>12’-14’ draft at permanent units, 6’ draft in some</td>
<td>Free for patrons, $10</td>
</tr>
<tr>
<td>Corp., 0 Main Street, Nantucket, MA</td>
<td></td>
<td></td>
<td>locations</td>
<td>others</td>
</tr>
<tr>
<td>02554, (508) 228-1333, Channel 09 VHF-FM</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nantucket Town Pier, Town of Nantuck-</td>
<td>1 Stationary</td>
<td>8 am to 8 pm Daily</td>
<td>12’ draft</td>
<td>Free</td>
</tr>
<tr>
<td>et, 38 Washington Street, Nantucket,</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MA 02554, (508) 228-7250, Channel 09</td>
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<td></td>
<td></td>
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<tr>
<td>VHF-FM</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Madaket Marine, Hither Creek, 20 N.</td>
<td>1 Portable</td>
<td>8 am to 4:30 pm</td>
<td>5’ draft</td>
<td>$10</td>
</tr>
<tr>
<td>Cambridge St., Nantucket, MA 02554,</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(508) 228-9086, Channel 09 VHF-FM.</td>
<td></td>
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</tbody>
</table>

[Federal Register / Vol. 57, No. 119 / Friday, June 19, 1992 / Notices]

[FR Doc. 92-13867 Filed 6-18-92; 8:45 am]
BILLING CODE 6550-M-0-

FEDERAL MARITIME COMMISSION

The Maryland Port Administration et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW, room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.503 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200165-007.
Title: Maryland Port Administration/Ceres Corporation Marine Terminal Agreement.

Parties:
The Maryland Port Administration ("Port") Ceres Corporation ("Ceres").

Synopsis: The Agreement reduces Ceres' acreage at the Port by eliminating a total of 62.25 acres, but retains a total of 6.68 acres. The Agreement also extends the term of the basic Agreement for sixty days.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,
Assistant Secretary.
[FR Doc. 92-13867 Filed 6-18-92; 8:45 am]
BILLING CODE 6730-M-0-

FEDERAL RESERVE SYSTEM

Great Falls Bancorp, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications...
Agricole, Associate Secretary of the Board. Reserve Bank indicated. Once the Shares of Banks or Bank Holding Companies pursuant to § 225.25(b)(1) and (5) of the Board’s Regulation Y (12 CFR 225.21(a)) to commence or to the offices of the Board of Governors. Comments must be received not later than July 9, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55406:
1. Dale Earnye Pahike to acquire 36.38 percent, Raymond Edward Reich to acquire 24.86 percent, Stanley Harold Sayer to acquire 17.15 percent, Security Bank of Hebron Profit Sharing Plan to acquire 4.99 percent, and Security Insurance Services, Inc. to acquire 4.99 percent, all located in Hebron, North Dakota, of the voting shares of Hebron Bancshares, Inc., and thereby indirectly acquire Security Bank of Hebron, both located in Hebron, North Dakota.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:
1. Roger D. Hellimus to acquire 18.24 percent; Charles C. Forbes to acquire 18.24 percent; and James J. Acker to acquire 18.23 percent, for a total of 20.06 percent; all located in Freer, Texas, of the voting shares of Brush Country Holding Co., Inc., and thereby indirectly acquire Brush Country Bank, both located in Freer, Texas.

Jennifer J. Johnson, Associate Secretary of the Board.

PCB Bancorp, Inc.; Notice of Application to Engage de novo In Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board’s Regulation Y (12 CFR 225.23(a)(1)) for the Board’s approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Board of Governors indicated or the offices of the Board of Governors not later than July 13, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW, Atlanta, Georgia 30303:
1. PCB Bancorp, Inc., Largo, Florida; to engage de novo through its subsidiary, Our Mortgage Company, Largo, Florida, in correspondent mortgage lending activities, pursuant to § 225.25(b)(1) of the Board’s Regulation Y.

Jennifer J. Johnson, Associate Secretary of the Board.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Disease Control
[Program Announcement Number 229]

Surveillance of Elevated Blood Lead Levels in Adults and Children; Notice of Availability of Funds for Fiscal Year 1992

Introduction
The Centers for Disease Control (CDC), the Nation’s prevention agency, announces the availability of Fiscal Year 1992 funds for two cooperative agreement programs with state health departments and/or appropriate agencies of state government to build capacity for conducting surveillance of elevated blood lead levels in adults and children. CDC’s National Institute for Occupational Safety and Health (NIOSH) will provide support for the cooperative agreement program entitled,
Adult Blood Lead Surveillance, ABLS, for surveillance of elevated blood lead levels in adults as part of the Sentinel Event Notification Systems for Occupational Risk (SENSOR) program. CDC’s National Center for Environmental Health and Injury Control, NCEHIC) will provide support for the cooperative agreement program entitled, Childhood Blood Lead Surveillance, CBLS, for surveillance of elevated blood lead levels in children.

Both cooperative agreement programs will significantly strengthen the public health infrastructure by integrating resources for occupational safety and health research, environmental health research, and public health prevention programs at the state and local levels. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Health People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health and Environmental Health. (For ordering a copy of Health People 2000, see the section Where to Obtain Additional Information.)

**Authority**

The NIOSH program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended, and the Occupational Safety and Health Act of 1970, section 20 [29 U.S.C. 668]. The NCEHIC program is authorized under section 301(a) (42 U.S.C. 241(a)) and 317A (42 U.S.C. 247b–1) of the Public Health Service Act as amended. Program regulations are set forth in Title 42, Code of Federal Regulations, part 51b.

**Eligible Applicants**

For NIOSH ABLS program: Eligible applicants are the official public health agencies/and or departments of environment of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. For both programs, eligible applicants must have regulations for laboratory-based reporting of blood lead levels consistent with current CDC Surveillance Guidelines (see section Where to Obtain Additional Information) or provide assurances that such regulations will be in place within six months of awarding the cooperative agreement. These programs are intended to initiate and build capacity for blood lead level surveillance. Therefore, any applicant that already has in place a blood lead level surveillance activity must demonstrate how these cooperative agreement funds will be used to enhance, expand or improve the current activity, in order to remain eligible for funding. Cooperative agreement funds should be added to blood lead surveillance funding from other sources, if such funding exists. Funds for these programs may not be used in place of any existing funding for blood lead surveillance.

Awards will be made with the expectation that expanded or improved surveillance activities will continue once awarded funds are terminated at the end of the project period. Applicants seeking funding for other SENSOR conditions are referred to Announcement Number 225.

**Availability of Funds**

For NIOSH ABLS: Approximately $400,000 will be available in Fiscal Year 1992. These funds will be awarded as follows:

- Approximately $300,000 to fund up to five cooperative agreements for states currently without a lead surveillance program. The awards are expected to range from approximately $35,000 to $45,000, with the average award being approximately $40,000.
- Approximately $200,000 to fund up to eight cooperative agreements for states with a current lead surveillance program in need of support to augment or expand present activities. These awards are expected to range from approximately $20,000 to a maximum of $30,000, with the average award being approximately $25,000.

For NCEHIC CBLS: Approximately $200,000 will be available in Fiscal Year 1992 to fund up to four cooperative agreements. The awards are expected to range from approximately $45,000 to $55,000, with the average award being approximately $50,000.

The awards for both programs will be made for a 12-month budget period within project periods of up to three years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

**Purpose**

This cooperative agreement program is intended to assist state health departments or other appropriate agencies to implement a complete blood lead surveillance activity. For the purpose of these programs a complete blood lead surveillance activity is defined as a process which: (1) Systematically collects information over time about children and/or adults (primarily workers) with elevated PbBs using laboratory reports as the data source; (2) provides timely and useful analysis and reporting of the accumulated data; and (3) provides for appropriate medical and environmental followup of cases, including field investigations when necessary.

**Goals**

The ABLS and CBLS programs have the same five goals:

1. Increase the number of state health departments with surveillance systems for elevated blood lead levels (PbBs);
2. Build the capacity of state- or territorial-based blood lead level (PbB) surveillance systems;
3. Use data from these systems to conduct national surveillance of elevated PbBs;
4. Disseminate data on the occurrence of elevated blood lead levels to government agencies, researchers, workers, employers, and medical care providers; and
5. Direct intervention efforts to reduce environmental and occupational lead exposure.

**Program Requirements**

Applicants may choose to focus their efforts on blood lead surveillance in adults by applying to ABLS, and children by applying to CBLS. Applicants may apply for both ABLS and CBLS by submitting separate applications for each project. Throughout the project period, recipients should work in cooperation with the funding agency towards achieving the goals of this cooperative agreement.
Applications to each program will be reviewed and considered separately. Award recipients will interact independently with NIOSH for ABLS and/or NCEHIC for CBLS.

Cooperative Activities
In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and NIOSH/NCEHIC shall be responsible for conducting activities under B., below:

A. Recipient Activities:
1. Revise and refine, in collaboration with NIOSH for ABLS, and/or with NCEHIC for CBLS, the methodology for surveillance as proposed in the respective program application.
2. Implement the revised and approved state-based surveillance activity.
3. Collaborate with NIOSH (for ABLS) and/or NCEHIC (for CBLS) in any interim and/or final evaluation of the surveillance activity. (CDC Guidelines for Evaluating Surveillance Systems, MMWR, 1988.)
4. Provide the surveillance data to NIOSH/NCEHIC in an acceptable format.

B. NIOSH/NCEHIC Activities:
1. Provide technical assistance and consultation in the implementation of the surveillance activities throughout the project period. NIOSH will provide the assistance for ABLS, and NCEHIC will provide the assistance for CBLS.
2. Provide guidelines for evaluating surveillance activities, and technical assistance for evaluation.
3. Provide a format for reporting surveillance data to NIOSH/NCEHIC.
4. Analyze and provide summary surveillance data, at least once a year, to the recipient, from other states and territories where surveillance data are reported to NIOSH/NCEHIC.
5. Provide timely feedback to the recipient from the review of quarterly reports on the program activities conducted by the recipient.
6. Provide assistance in the conduct of field investigations and intervention efforts, at the recipient’s request, as resources permit.

Evaluation Criteria
Applications for ABLS and CBLS will be reviewed, scored, and ranked independently by NIOSH for ABLS, and by NCEHIC for CBLS, according to the following criteria (total 100 points):

1. Surveillance Activity (30%)
   The clarity, feasibility, and scientific soundness of the approach. The following points will be specifically considered:
   a. how will laboratories report blood lead levels?
   b. how will data be collected and managed?
   c. how and when will data be analyzed?
   d. how will summary data be reported and disseminated?
   e. what provisions are made for follow-up of individuals with elevated blood lead levels?
2. Progress Toward Complete Blood Lead Surveillance (25%)
   The extent to which the proposed activities are likely to result in substantial progress towards establishing a state-based complete blood lead surveillance activity (as defined in the “program requirements” section).
3. Timetable and Evaluation (15%)
   The extent to which the proposed schedule for accomplishing each of the project activities, and the methods for evaluating each activity, are clearly defined and appropriate.
4. Project Sustainability (15%)
   The extent to which the proposed activities are likely to result in the long-term maintenance of a state-based complete blood lead surveillance system.
5. Personnel (10%)
   The extent to which the qualifications and time commitments of project personnel are clearly documented and appropriate for implementing the proposal.
6. Use of Existing Resources (5%)
   The extent to which the proposal would make effective use of existing resources and expertise within the applicant agency or through collaboration with other agencies.
7. Budget (Not Scored)
   The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

Other Requirements

Paperwork Reduction Act
Projects funded through a cooperative agreement that involve collection of information from 10 or more individuals will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.
2. Late Applications

Applications which do not meet the criteria in 1.A. or 1.B above are considered late applications and will be returned.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, (404) 842–6630.

Please refer to Announcement Number 229 when requesting information on this program.

Programmatic technical assistance for ABLS may be obtained from Paul Seligman, M.D., Chief, Medical Section, National Institute for Occupational Safety and Health, Robert A. Taft Laboratory, 4676 Columbia Parkway, Cincinnati, Ohio 45226, (513) 841–4353.

Programmatic technical assistance for CBLS may be obtained from Ned Hayes, M.D., Medical Epidemiologist, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health and Injury Control, Mailstop F–28, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333, (404) 488–4880 or Thomas Matte, M.D. at (212) 264–7800.


A copy of Preventing Lead Poisoning in Young Children—a statement by the Centers for Disease Control—October 1991 may be obtained from the Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE, Mailstop F–28, Atlanta, Georgia 30333, (404) 489–4890.


Robert L. Foster,
Acting Associate Director for Management and Operations, Centers for Disease Control.
necessary to schedule meetings well in advance, it is suggested that anyone planning to attend a meeting contact the Scientific Review Administrator to confirm the exact date, time and location.

Name of Panel: NHLBI SEP on Small Grant Applications

Scientific Review Administrator: Dr. David Monslove, Telephone 301-496-7361.


Place of Meeting: Hyatt Regency, Bethesda, Maryland.

Time of Meeting: 7 p.m.

Name of Panel: NHLBI SEP on RFA for Alzheimer’s Amyloid Beta Protein in Hemostasis and Thrombosis.

Scientific Review Administrator: Dr. Carl Ohta, Telephone 301-496-8184.


Place of Meeting: Holiday Inn, Bethesda, Maryland.

Time of Meeting: 8 p.m.

Name of Panel: NHLBI SEP on Demonstration and Education Grant Applications.

Scientific Review Administrator: Dr. C. James Schierer, Telephone 301-496-7383.

Dated: July 12-14, 1992.

Place of Meeting: Crystal City Marriott, Washington, DC 20503.

Time of Meeting: 6 p.m.

Name of Panel: NHLBI SEP on Thrombocytopenias in Women and Neonates.

Scientific Review Administrator: Mrs. Betty Masket, Telephone 301-496-7664.


Place of Meeting: Holiday Inn, Chevy Chase, Maryland.

Time of Meeting: 8 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.836, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)


Susan K. Feldman, Committee Management Officer, NIH.

[FR Doc. 92-14348 Filed 6-18-92; 8:45 am]

BILLING CODE 4160-01-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 99-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on June 5, 1992. (Call Reports Clearance Officer on 410) 965-4149 for copies of package)

1. Psychiatric Review Technique—0960-4141. The information on form SSA-2506-BK is obtained from the claimant’s disability folder. It is used by the Social Security Administration (SSA) to document the fact that the proper assessment sequence for mental impairments has been followed. The respondents are Disability Determination Services (either State or Federal) which make disability determinations for SSA.

Number of Respondents: 54 (State only).

Frequency of Response: 8,492 (per office).

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 114,642 (State only).

2. RSI/DI Quality Review Case Analysis Questionnaires and Annual Earnings Test Questionnaire—0960-0189. The information on forms SSA-2930, SSA-2931, and SSA-2932 is used by SSA to provide a national payment accuracy rate and to provide information regarding the major types and sources of claims deficiencies. The information obtained by form SSA-4659 is used to evaluate the annual earnings test process. The respondents are selected beneficiaries to Retirement and Survivor’s or Disability insurance benefits.

Number of Respondents: 15,012.

Frequency of Response: 1.

Average Burden Per Response: 24 minutes.

Estimated Annual Burden: 6,248 hours.

3. Self-Employment/Corporate Officer Questionnaire—0960-0487. The information on form SSA-4184 is used by SSA to develop a claimant’s earnings or corroborate his or her allegation of retirement when he or she is self-employed or a corporate officer. The respondents are claimants who need to support their allegation concerning earnings or employment.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 16,667 hours.

4. SSA Automated SML Application and SSA Automated SML Application for Building Maintenance—0960-0475. The information on forms SSA-4123 and SSA-4124 is used by SSA to maintain an automated listing of vendors interested in doing business with SSA. The respondents are all such vendors who complete either of these forms.

Number of Respondents: 4,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 333 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3226, Washington, DC 20503.

Dated: June 12, 1992.

Judy Hascha, Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 92-14348 Filed 6-18-92; 8:45 am]

BILLING CODE 4160-01-M

Statement of Organization, Functions and Delegations of Authority

Part 8 of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration. Chapter S2 covers the Office of the Deputy Commissioner for Operations; Subchapter S2H covers the Office of Disability and International Operations (ODIO). Notice is given of the following changes in ODIO. In the Office of Disability Operations (ODO), the number of Process Divisions is increased from four to five, and the Division of Appealed Claims (DAC) is abolished. The functions of the DAC are merged with those of the ODO Process Divisions. Subchapter S2H is changed as follows:

Section S2H.10 The Office of Disability and International Operations—(Organization):

D. The Office of Disability Operations (S2HA).

Substitute: 1. The Process Divisions (S2HA1, 2, 3, 4, 5).

Delete: 2. The Division of Appealed Claims (S2HA5).

Section S2H.20 The Office of Disability and International Operations—(Functions):

D. The Office of Disability Operations (ODO) (S2HA).

Substitute: 1. The Process Divisions (S2HA1, 2, 3, 4, 5).

a. Make initial determinations of disability and reconsider disability determinations of claims excluded from State agency jurisdiction. Make determinations of continuing disability entitlement.
b. Make determinations of entitlement or eligibility to primary or auxiliary benefits, and authorize allowance or disallowance of disability claims not otherwise authorized by district offices and reconsider those cases appealed for issues other than the existence of disability. Make representative-payee determinations, process representative-payee accountability reports, approve issues other than the existence of disallowance of disability claims not otherwise appealed for reconsideration and maintain the files of disability claim folders.

c. Implement, adjust, suspend and terminate programs and prepare benefit payment data for introduction into the computer system; process all actions to maintain beneficiary payment rolls; recover or waive recovery of amounts incorrectly paid to beneficiaries, prepare and release award certificates, denial letters and other claims-related notices and maintain the files of disability claim folders.

d. Answer inquiries regarding individual cases and ensure expeditious processing of actions where claimant hardship is indicated.

e. Contact outside Federal/State components such as the Department of Labor, Railroad Retirement Board, Workers’ Compensation Commissions and other SSA components, as necessary, to resolve disability claims actions.

Delete: 2. The Division of Appealed Claims (S2H1AS) and all its functions (a through e).

Dated: June 8, 1992.
Ruth A. Pierce, Deputy Commissioner for Human Resources.

[FR Doc. 92-14384 Filed 6-18-92; 8:45 am]
BILLING CODE: 4190-25-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of the Assistant Secretary for Community Planning and Development
[Docket No. N-92-1917; FR-2934-N-83]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7202, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2505 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: By publication in the Federal Register, the Department of Housing and Urban Development, 58 FR 24379 (May 24, 1991) and the Secretary of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1986 Court Order in National Coalition for the Homeless v. Veterans Administration, No. 85-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency’s needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5800 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Robert Conte, Deputy Adjutant General, 100 Constitution Ave., N.W., Washington, D.C. 20310-2600; (202) 501-0067; U.S. Navy: Richard Libby, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, D.C. 20405; (202) 501-0067; (These are not toll-free numbers).

Dated: June 12, 1992.
Paul Roliman Bardack, Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program
Federal Register Report for 06/19/92

Suitable/Available Properties
Land (by State)

Guam
Portion, Former Marbo Base Command “B”-4
Andersen Air Force Base (Admin Annex)
Yigo GU

Landholding Agency: GSA
Property Number: 549220007
Status: Surplus
Comment: 80 acres, land/water use restriction, former housing area, paved
<table>
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<th>Building Number</th>
<th>Property Number</th>
<th>Status</th>
<th>Landholding Agency</th>
<th>Reason</th>
<th>Comment</th>
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</tbody>
</table>
Comment: Extensive deterioration
LAND (by State)
Alaska
Portion—Gibson Cove
1211 Gibson Cove Road
Kodiak Co: Kodiak Island AK 99615
Landholding Agency: GSA
Property Number: 54920011
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 9-C-AK-573
[FR Doc. 92-14361 Filed 6-18-92; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Realty Action—Land Use Permit;
Montana
AGENCY: Bureau of Land Management, Billings Resource Area, Miles City District Office, Interior.
ACTION: Notice of Realty Action MTM 76071. Land use permit on public lands in Carbon County, Montana, for making motion pictures.
SUMMARY: The land was examined and found suitable for land use permitting under the provisions of Section 302b of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, (43 U.S.C. 1710) and 43 CFR part 2920 and is located and described as follows:

P.M.M., T. 7 S., R. 24 E.,
Sec. 17, NE 1/4,

Containing 160 acres of public land more or less

DATES: For 30 days from June 19, 1992, interested parties may submit comments to the Bureau of Land Management at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Area Manager, Billings Resource Area, 810 East Main, Billings, Montana 59105, or Phone 406 657-6262.
SUPPLEMENTARY INFORMATION: Applications will only be accepted at the BLM Billings Resource Area office at the address shown above for 30 days after June 19, 1992. The site will be permitted on a noncompetitive basis. All applications must include a reference to this notice and a complete description of the proposed facilities, services, access needs and activities on the site with a map to make it legible. The description must be in sufficient detail to allow evaluation of the land use including feasibility, environmental impacts, residual impacts, if any, and public benefits. Applicants may be required to furnish satisfactory evidence that they have the technical and financial capability to construct, operate, maintain and terminate the use authorization requested in the application. If the rental is determined to be more than $250 for the project, the selected permittee shall reimburse the United States for reasonable administrative costs incurred in processing the land use permit. Costs include preparing the environmental assessment and related activities, monitoring construction and operation on the permit area and rehabilitation of the area in accordance with the provisions of 43 CFR 2920.6, 2903.3 and 2903.4. The processing and monitoring fees will be charged in addition to the rental.

A bond to ensure full compliance with the conditions and terms of the permit shall be furnished when the authorized officer responsible determines it is appropriate. Length and degree of occupancy, type and number of vehicles and equipment and amount of resource disturbance are factors that will be considered to determine the amount of the bond.

Any permit issued for filming or commercial photography will specify that credit be given to the Department of Interior, Bureau of Land Management, through use of appropriate title of credit unless waived by the authorized officer.

This realty action is consistent with BLM policies and land use planning and has been discussed with state and local officials. The estimated intended length of the permit is two months.

Dated: June 12, 1992.
Arnold E. Dougan,
Acting Associate, District Manager.
[FR Doc. 92-14361 Filed 6-18-92; 8:45 am]
BILLING CODE 4710-DN-M

[401-02-G2-0113-4212-20, RGRP; NMNM 87735]
Albuquerque District, New Mexico;
Realty Action; Disposal of Public Lands (Valencia II and III Disposal Block)
AGENCY: Bureau of Land Management, Interior.
ACTION: Notice (Correction).
In the Federal Register Notice (Document 88-1936, page 2793) dated Monday, February 1, 1988, add the following corrected legal description:

T 7 N., R. 2 E., NMNM, Sec. 36 (portions thereof)
Comprising of approximately 200 acres.
Robert T. Dale,
District Manager.

BILLING CODE 4310-FB-M

Bureau of Reclamation
Lake Berryessa Reservoir Area
Management Plan, Napa County, California
AGENCY: Bureau of Reclamation (Interior).
ACTION: Notice of availability: final EIS
(INT-FES-92-12).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (as amended), the Bureau of Reclamation (Reclamation) announces the availability of a final environmental impact statement (EIS) which addresses the impacts from several land management, water surface management, and concession management actions that Reclamation is considering for eventual adoption in a Reservoir Area Management Plan (RAMP) for Lake Berryessa.

At scoping workshops held in April and June of 1987 and during an additional commenting period (June 28—August 1, 1988), the public was afforded an opportunity to comment on a variety of actions being considered during Reclamation’s initial planning efforts for the RAMP. Reclamation considered the input provided by the public in order to determine the significant issues and impacts which were analyzed and included in the draft EIS.

During the public review period for the draft EIS (INT DES-89-30), Reclamation received significant public input from three public hearings and 140 written letters. As such, modifications have been made throughout the document, particularly in the Actions and Alternatives section. Additionally, Reclamation has prepared a Public Involvement Report (PIR) which is part of the final EIS. The PIR includes a summary of questions presented at the public hearings with Reclamation’s prepared responses and copies of all written letters received with Reclamation’s prepared responses to questions.

COMMENTS
Following availability of the final EIS, the public will have 45 days to provide
comments on the adequacy of actions and issues identified in the document. Written comments should be sent to the Lake Berryessa Recreation Office at the address given below by August 3, 1992. In addition, an open house will be held to further clarify the information in the FEIS.

DATE AND LOCATION: The open house will be held on: Sunday, July 12, 1992, Clarion Inn, 3425 Solano Avenue, Napa, California, 10 a.m. to 4 p.m.

ADDRESSES: Single copies of the final EIS may be obtained on request to the Regional Director at the address below:

• Regional Director, Bureau of Reclamation, Mid-Pacific Region (MD-750), 2800 Cottage Way, Sacramento CA 95825, telephone: (707) 966-2111.

Copies of the final EIS are available for public inspection and review above and at the following locations:


Library:

Bureau of Reclamation Library, 2800 Cottage Way, Sacramento, California
Bureau of Reclamation, Denver Office Library, Denver Federal Center, 6th and I Kipling, Building 67, room 107, Denver CO 80225.
Fairfield-Suisun Community Library, 1150 Kentucky, Fairfield CA 94533;
Vacaville Public Library, 680 Merchant, Vacaville CA 95688;
Napa Public Library, 1150 Division St., Napa CA 94558;
Sacramento Central Library, 828 I Street, Sacramento CA 95814;
Main Library, Civic Center, Larkspur & McAllister, San Francisco CA 94101;
San Jose Main Library, 190 West San Carlos, San Jose CA 95113;
Oakland Public Library, 125 14th Street, Oakland CA 94617;
University of Davis, Shields Library, Government Documents, Davis CA 95616.

FOR FURTHER INFORMATION CONTACT:
Mr. Ron Brockman, Outdoor Recreation Planner, Bureau of Reclamation, Mid-Pacific Region (MD-401), 2800 Cottage Way, Sacramento CA 95825, (916) 978-5313; or Mr. Robert Semmens, Recreation Manager, Bureau of Reclamation, Lake Berryessa Recreation Office, PO Box 9332, Napa CA 94558 (707) 966-2111.

SUPPLEMENTARY INFORMATION: Lake Berryessa has been in existence since 1957, after the impoundment of Putah Creek by Monticello Dam. Managed initially by Napa County until 1975, and now by Reclamation, recreation lands use at the lake has changed ranging from dispersed use of undeveloped lands to highly concentrated development and use in seven resort areas. A Public Use Plan (PUP) was prepared by the National Park Service which designated certain areas for development with suggestions regarding specific types of improvements and their locations. Over the years, improvements were made which did not always follow the original designations of areas and uses. In addition, some lands were never fully developed as specified in the PUP. To compund this situation, the demand for day use and other short-term recreation facilities has increased while most development has been oriented toward long-term mobile home and travel trailer parks. In view of the above and recognizing the need to further identify the long-range needs and uses of Lake Berryessa, Reclamation has initiated a planning effort culminating in a RAMP, updating and revising the earlier PUP.

The final EIS prepared by Reclamation analyzes the impacts of various actions which are being considered for inclusion and adoption in the RAMP for Lake Berryessa. Key actions involve the development of additional short-term recreation facilities, establishment of a houseboat program, removal and protection of facilities subject to flooding, promotion of safer and varied water use activities, conversion of long-term sites to short-term uses during resort reorganizations, expansion of visitor information services, increases in law enforcement presence, establishment of a fish and wildlife management area, and other development and master planning actions.

Environmental consequences of the actions analyzed for various resource categories include soils and topography, water quality, vegetation and wildlife, fish resources, recreational uses, land uses, cultural resources, traffic and circulation, scenic resources, and socioeconomics (recreation visitors, resort tenants, resort owners, and local economy).

Dated: May 20, 1992
Joe D. Hall,
Deputy Commissioner.

BILeNG CODE: 4310-06-M

Fish and Wildlife Service
Intentional Introductions Policy Review Committee Public Meetings

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meetings.

SUMMARY: This notice announces four public meetings for the discussion of an "Options Paper" developed by the Intentional Introductions Policy Review Committee, a committee of the Aquatic Nuisance Species (ANS) Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 et seq.). A notice of availability of the Options Paper was published in the Federal Register on May 28, 1992 (57 FR 22863). At each public meeting a summary of the Options Paper will be presented, after which, there will be opportunity for public comment.

TIMES AND DATES: Public meetings are scheduled for June 8, 1992, in Portland (OR), July 8, 1992, in Vicksburg (MS), July 10, 1992, in Valrico (FL), and July 14, 1992, in Baltimore (MD). All meetings are scheduled for 10 AM to 1 PM.

ADDRESSES: The July 6 meeting will be held in the Third Floor conference room of the U.S. Fish and Wildlife Service Regional Office at 911 NE 11th Avenue, Portland, Oregon. The July 8 meeting will be held in the auditorium (Bldg. 1008) of the U.S. Army Corps of Engineers Waterways Experiment Station at 3500 Halls Ferry Road, Vicksburg, Mississippi. The July 10 meeting will be held in the Community Room of the Hillsborough County Farm Bureau at 100 South Mulrennan Road (corner of Highway 60 and Mulrennan Road), Valrico, Florida. The July 14 meeting will be held at the University of Maryland Center for Marine Biotechnology on the campus of the Community College of Baltimore, 600 E. Lombard Street (across from the National Aquarium), Baltimore, Maryland. Requests for additional information on the public meetings or copies of the Options Paper should either be directed to the name and telephone number listed below or mailed to the following address: Intentional Introductions Policy Review Committee, c/o Dr. Dennis R. Lassuy, U.S. Fish and Wildlife Service (820 ARLSQ), U.S. Department of Interior, 1849 C Street, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Dennis Lassuy at (703) 358-1718.
InternationaI Trade Commission

[Investigation No. 337-TA-335]

Certain Dynamic Sequential Gradient Compression Devices and Component Parts Thereof; Commission Decision to Vacate a Portion of an Initial Determination Concerning Temporary Relief and to Deny Motion for Temporary Relief


ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to vacate a portion of the presiding administrative law judge's (ALJ's) initial determination (ID) denying temporary relief in the above-captioned investigation and not to modify or modify the ID in other respects. The Commission's determination has the effect of denying the motion for temporary relief.


On January 10, 1992, The Kendall Company ("Kendall") filed a complaint under section 337 alleging unfair acts in connection with the importation and sale of certain dynamic sequential gradient compression devices ("SGCDs") and component parts thereof. The complaint alleged, inter alia, importation and sale of articles infringing certain claims of U.S. Letters Patent 4,029,087, which Kendall owns. Kendall concurrently moved for temporary relief. The ALJ conducted an evidentiary hearing on the temporary relief motion between March 18 and 23, 1992. All parties participated in the hearing. On April 20, 1992, each party filed a memorandum with the Commission concerning the issues of remedy, the public interest, and respondents' bond, pursuant to Commission interim rule 210.24(e)(18)(ii). On April 28, 1992, the ALJ issued Order No. 4, designating the temporary relief phase of the investigation "more complicated."

On May 15, 1992, the ALJ issued an ID denying Kendall's motion for temporary relief. The ALJ found that Kendall had shown either a reasonable likelihood that it would prevail on the merits nor that irreparable harm will occur in the absence of relief. With respect to Kendall's showing on the merits, the ID concluded that Kendall is unlikely to establish a violation of section 337 because: (1) Claim 1 of the '087 patent is likely invalid for obviousness under 35 U.S.C. 103; (2) claims 1 and 25 of the '087 patent are likely not infringed by respondents; and (3) Kendall is not likely to establish the existence of a domestic industry with respect to the '087 patent. The ID found no irreparable harm in light of the limited nature of competition between the Kendall SGCDs alleged to infringe it and in view of the market strength and pricing practices of Kendall.

The Commission has determined to vacate the ID's discussion of the issue of obviousness under 35 U.S.C. 103. It has determined not to modify or vacate the ID in any other respect. The ID's discussion on obviousness is neither necessary to its conclusion that Kendall is unlikely to establish a violation of section 337 nor dispositive of its determination that temporary relief should be denied. Consequently, the Commission's action not to modify or vacate the other portions of the ID has the effect of denying Kendall's motion for temporary relief.

Copies of the Commission opinion issued in connection with this temporary relief determination, the public disclosure version of the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

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Commission's TDD terminal on 202-252-1610.
By order of the Commission.
Kenneth R. Mason,
Secretary.
[FR Doc. 92–14438 Filed 6–18–92; 8:45 am]
BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporation intends to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: ICI Explosives USA Inc. (formerly Atlas Powder Company), 15301 Dallas Parkway, suite 1200, Dallas, TX 75248–4629.
2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation:
   - Explo-Midwest—Incorporated in Delaware
   - CAPCO—Incorporated in Delaware, Sidney L. Strickland, Jr., Secretary.
   [FR Doc. 92–14439 Filed 6–18–92; 8:45 am]
   BILLING CODE 7025–02–M

Northern Indiana Commuter Transportation District—Exemption From Tariff Filing Requirements—Special Fares

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts certain "special fares" to be offered by the Northern Indiana Commuter Transportation District from the Commission's tariff filing requirements at 49 U.S.C. 10702, 10761, and 10762, and at 49 CFR part 1314. This exemption will provide the District with the flexibility needed to market its services for special events, group movements, premium services, and other activities of benefit to the traveling public.

DATES: This exemption will be effective on June 30, 1992. Petitions to stay must be filed by June 24, 1992, and petitions to reopen must be filed by July 8, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 32067 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423,
(2) Petitioner's representative: Bjarme R. Henderson, Northern Indiana Commuter Transportation District, 33 East U.S. Hwy. 12, Chesterton, IN 46304.


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, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.

Decided: June 12, 1992.

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

Sidney L. Strickland, Jr., Secretary.

[FR Doc. 92–14435 Filed 6–18–92; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act.

The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and Federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and superseded decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.
Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses. The federal register document is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume.

Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.


Alan L. Moss,
Director, Division of Wage Determinations.

[FR Doc. 92-14243 Filed 8-18-92; 8:45 am]
BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-26,427]

Digital Equipment Corp. Colorado Springs, CO; Negative Determination on Reconsideration

On February 14, 1992, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The notice was published in the Federal Register on February 24, 1992 (57 FR 6335).

One of the petitioners states that the transfer of disc drive production overseas and the use of foreign made disc drives in imported and domestically produced mainframes has adversely affected employment at Colorado Springs. Also Systems Industries and Emulex which use foreign disc drives have taken business away from Digital Equipment. The petitioner notes that workers at other Colorado Springs' companies—Ampex, Laser Magnetics and IBM/Rolm—were certified. Finally, the petitioner states that since 1974 Digital Equipment has used original equipment manufacturers (OEM) to provide magnetic storage disc drives for sale in its computer systems. These disc drives were until recently produced domestically but are now being produced offshore.

Workers at Digital produce disc drives for mainframes and other data processing equipment. The Colorado Springs facility produced the RA disc drives until fiscal 1991 and currently produces the RF family. The RA drives reached their end-of-life for the U.S. market and were phased out because the technology they embody is out-dated. The RA disc drives were phased out in Colorado Springs during fiscal year 1991 and are scheduled to be phased out in Kaufbeuren in fiscal year 1992, ending on June 30, 1992. The new generation of system storage devices (RF family) requires a much smaller manufacturing labor force because the disc drives contain substantially fewer component parts.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements was not met since the workers separations at Digital were not the result of increased imports but a change in technology.

Findings on reconsideration show negligible company imports of RA disc drives from Germany. The few that were imported declined in fiscal year 1991 compared to fiscal year 1990. The imports were primarily warranty replacements of earlier sales from Colorado Springs. Other findings show that Kaufbeuren did not produce the RF disc drives.

Further, worker separations due to imported data processing equipment incorporating disc drives would not form a basis for certification of workers producing disc drives. In United Shoe Workers of America, AFL-CIO v. Bedell, 506 F2d (D.C. Circ. 1974) the court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Accordingly, increased imports of data processing equipment cannot be considered in determining injury to workers producing disc drive components. In determining import injury to workers at Colorado Springs, the Department must consider the finished article produced at Colorado Springs—disc drives.

A worker group certification is based on increased imports of products that are like or directly competitive with those produced at the workers' firm. A review of the Department's files shows that workers at Ampex, Laser Magnetic and IBM Rolm were certified for TAA but produced products different from that of Digital. The Ampex certification, TA-W-20,067, was for workers producing telecommunications systems. These certifications were issued in a different time period from that of Digital's and the aggregate import data for video equipment, cassette tapes
and telecommunications systems would not apply for disc drives. Findingson reconsideration show that Systems Industries and Emulex were not customers of Digital during the relevant period. Imports by non-customers of Digital could not have caused an actual loss of sales or production at Digital but only a potential loss of future business. A potential loss of business would not form a basis for a worker group certification. Finally, the findings show that during the period relevant to the petition, Digital had no agreements with OEMs either to manufacture or to install disc drives characterized as "foreign-made" by the petitioner.

Signed at Washington, DC, this 10th day of June 1992.

Stephen A. Wandner,
Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[F.R Doc. 92-14489 Filed 6-18-92; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-26,984 and TA-W-26,985]

Potlatch Corp.; Clearwater Logging Unit, and Northern Logging Unit, Lewiston, ID; Negative Determination Regarding Application for Reconsideration

By an application dated May 27, 1992, the Joint Administration No. 1 of the International Woodworkers of America (IWA) AFL-CIO, requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 4, 1992 and published in the Federal Register on May 26, 1992 (57 FR 22492).

Pursuant to 29 CFR 90.16(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;
(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or
(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union states that the worker separations were the result of imports which have occurred over the years. The Department's earliest coverage in certifying workers for TAA is limited by Section 223(b)(1) of the Trade Act to worker separations which occurred no more than one year prior to the date of the petition which in this case would be February 28, 1991.

The investigation findings show that the Potlatch Corporation is an integrated company engaged in the production of lumber and plywood products. The subjects of the investigation were the two logging units in Lewiston which produce logs that are shipped to affiliated manufacturing facilities of the company. Only a very small amount of logs are sold to local lumber mills. The Department's denial was based on the fact that the increased import criterion of the Group Eligibility Requirements of the Trade Act was not met. U.S. imports of logs (both softwood and hardwood) are negligible and declined absolutely and relative to domestic shipments in 1991 compared to 1990. Also, there are no company imports of logs.

Since most of the logs were shipped to affiliated manufacturing facilities of Potlatch, the workers could be certified for trade adjustment assistance if they experienced a reduced demand for their product from a production facility of the firm whose workers are already independently certified for trade adjustment assistance. However, these conditions have not been met since there are no workers at Potlatch who are currently certified for TAA.

Further, the Department's negative determination explained why imports of lumber cannot be used in meeting the increased import criterion for workers producing logs. Imports of the finished product (lumber) are not like or directly competitive with their component parts (logs).

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 11th day of June 1992.

Stephen A. Wandner,
Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 92-14487 Filed 6-18-92; 8:45 am]
BILLING CODE 4510-30-M

Identification of Qualified Sources to Conduct Pilot Projects on Skill Standards and Certification

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The U.S. Department of Labor/Employment and Training Administration, with the U.S. Department of Education and assisted by the National Advisory Commission on Work-based Learning, is seeking sources capable of pilot-testing approaches to develop, implement and gain acceptance for voluntary skill standards and certification in U.S. industries.

DATES: Interested organizations should submit the information requested in this notice by July 9, 1992.

ADRESSES: Responses to this Notice should be mailed to Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, 200 Constitution Ave., NW., rm. C-4306, Washington, DC 20210.

Stevenson Co-Ply, Inc. Stevenson, WA; Affirmative Determination Regarding Application for Reconsideration

On May 26, 1992, the company 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 March 31, 1992 and published in the Federal Register on April 27, 1992, (57 FR 15331).

The company claims that the Department's survey was inadequate, since it did not survey its customers for competitive products—oriented strand board and wafer board.

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 12th day of June 1992.

Stephen A. Wandner,
Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-14488 Filed 6-18-92; 8:45 am]
BILLING CODE 4510-30-M
The Department of Labor (DOL) / Employment and Training Administration (ETA) is seeking sources capable of pilot-testing approaches to develop, implement and gain acceptance for voluntary skill standards and certification in U.S. industries. DOL is undertaking this effort in cooperation with the U.S. Department of Education and utilizing advice from the National Advisory Commission on Work-based Learning (NACWBL).

The Secretaries of Labor and Education were charged by the partnership by which business and labor voluntarily "adopt a strategy to spearhead a public-private approach; to initiate the voluntary development by U.S. industries of their own competency-based skill standards and certification can be developed. In the long haul, it is envisaged that the development and maintenance of voluntary industry-based skill standards will become self-supporting. Funding will be provided through cooperative agreements with industrial trade associations for particular industries to create a leadership coalition and inclusive project management structure involving the key partners in the industry which will lead to the recognition of skills attained or enhanced through training. The Federal role will also be one of supporting industry-based efforts through the provision of additional technical and research assistance. Interested parties, limited to national trade associations or consortia of national trade associations, are invited to respond to this sources-sought notice by submitting a capabilities statement addressing the following six broad criteria which have been identified by the NACWBL as predictive of successful pilot projects:

1. Takes an industry perspective to the development of voluntary standards as opposed to an occupation-based approach.
2. Represents an industry of significant size to the national economy.
3. Affirms that most, if not all, non-baccalaureate degree workers will be covered under the standards developed during the pilot project.
4. Commits their own resources to the project, at least matching any Federal money.
5. Assumes the involvement of all relevant parties, e.g., labor organizations, workers, trainers, educators and representatives from the human resource development/personnel communities; and
6. Demonstrates a willingness to cooperate in a loose network of other pilot project operators. This is not a request for competitive proposals. Respondents will be screened against the above criteria by a panel of specialists. A solicitation will be issued to those prospective sources whose responses indicate the potential for successfully fulfilling the requirements of the planned cooperative agreements. Other respondents will not be notified as to the results of the evaluation of information submitted.

Signed at Washington, DC, this 12th day of June, 1992.

Robert T. Jones,
Assistant Secretary of Labor.

Supplementary Information: The Committee's primary responsibility is to consider and make recommendations to the NASA Director, Personnel Division, on all matters involved in the development and authorization of a Wage Schedule for the Cleveland, Ohio, wage area, pursuant to Public Law 92. The Committee, chaired by Dr. David Pofler, consists of five members. During this meeting the Committee will consider wage data, local reports, recommendations, and statistical analyses and proposed wage schedules reviewed therefrom. Discussions of these matters in a public session would constitute release of confidential commercial and financial information obtained from private industry. Since this session will be concerned with matters listed in 5 U.S.C. 552(b)(4), it has been determined that this meeting will be entirely closed to the public. However, members of the public who may wish to do so, are invited to submit material in writing to the Chairperson concerning matters felt to be deserving of the Committee's attention.

Type of Meeting: Closed.

Purpose of Meeting: The Committee will recommend to the NASA Wage Fixing Authority the proposed wage schedule to be adopted.


John W. Gaff,
Advisory Committee Management Officer,
National Aeronautics and Space Administration.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[FR Doc. 92-14397 Filed 6-18-92; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-39]

NASA Wage Committee Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Wage Committee.

DATES: June 30, 1992, 1 p.m. to 3:30 p.m.

ADDRESS: National Aeronautics and Space Administration, room 6004, Federal Building 8, 400 Maryland Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Deborah Green Glasco, Code FPP, National Aeronautics and Space Administration, Washington, DC 20546 (202) 453-3701.

SUPPLEMENTARY INFORMATION: The Committee's primary responsibility is to consider and make recommendations to the NASA Director, Personnel Division, on all matters involved in the development and authorization of a Wage Schedule for the Cleveland, Ohio, wage area, pursuant to Public Law 92. The Committee, chaired by Dr. David Pofler, consists of six members. During this meeting the Committee will consider wage data, local reports, recommendations, and statistical analyses and proposed wage schedules reviewed therefrom. Discussions of these matters in a public session would constitute release of confidential commercial and financial information obtained from private industry. Since this session will be concerned with matters listed in 5 U.S.C. 552(b)(4), it has been determined that this meeting will be entirely closed to the public. However, members of the public who may wish to do so, are invited to submit material in writing to the Chairperson concerning matters felt to be deserving of the Committee's attention.

Type of Meeting: Closed.

Purpose of Meeting: The Committee will recommend to the NASA Wage Fixing Authority the proposed wage schedule to be adopted.


John W. Gaff,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for collection of information under the provisions of the
Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision or extension: Extension.
2. The title of the information collection: Qualifications Investigation, Clerical/Secretarial.
3. The form number if applicable: NRC Form 212A.
4. How often the collection is required: Whenever NRC Office of Personnel specialists determine qualification investigations are required in conjunction with applications for employment related to vacancies.
5. Who will be required or asked to report: Supervisors, former supervisors, and/or other references of external applicants.
6. An estimate of the number of responses: 1,500 annually.
7. An estimate of the total number of hours needed annually to complete the requirement or request: 375 (15 minutes per response).

8. Section 3504(h), Public Law 96-511 does not apply.
9. Abstract: Information requested on NRC Form 212A is used to determine the qualifications and suitability of external applicants for employment in clerical/secretarial positions with the NRC. The completed form may be used to examine, rate and/or assess the prospective employee’s qualifications. The information regarding the qualifications of applicants for employment is reviewed by professional personnel of the Office of Personnel, in conjunction with other information in the NRC files, to determine the qualifications of the applicant for appointment to the position under consideration.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC 20555.

Comments and questions should be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information & Regulatory Affairs (3150-0033), NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084.

NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 11th day of June, 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,
Designated Senior Official for Information Resources Management.

Western Nuclear Inc., Split Rock Mill; Intent to Amend Source Material License SUA-56

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to amend Source Material License SUA-56 for Western Nuclear, Incorporated’s Split Rock Mill to approve a plan for reclamation and archaeological borrow preservation plans into the license.


ADDRESSES: Copies of the license amendment request and the staff evaluations which are the basis for revision of the license are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, Suite 100, Golden, CO, and the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules and Directives Review Branch, Office of Administration, P-223, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, with a copy of the Director, Uranium Recovery Field Office, 730 Simms Street, Suite 100, Golden, CO.

Comments may be hand-delivered to room P-223, 7920 Norfolk Avenue, Bethesda, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, Box 25325, Denver, CO. Telephone: 303-231-5800.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC)
and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the Federal Register on October 25, 1991 (56 FR 55434). The MOU requires that the NRC complete review and approval of detailed reclamation (i.e., final closure) plans, for nonoperational tailings impoundments as soon as practicable, but in any event not later than September of 1993.

The NRC, in letter dated August 15, 1986, informed the licensee that a reclamation plan and surety arrangement adequate to meet the requirements of 10 CFR part 40, appendix A, was required. The licensee provided a reclamation plan on June 30, 1987. This reclamation plan was revised and supplemented several times, and on April 21, 1992, the final reclamation plan was submitted.

The NRC has reviewed the proposed final reclamation plan and other supporting information, against current design guidance, and has determined that the plan meets the requirements of 10 CFR part 40, appendix A.

Dated at Denver, Colorado, this 12th day of June 1992.

For the Nuclear Regulatory Commission
Ramon E. Hall,
Director, Uranium Recovery Field Office.
[FR Doc. 92-14470 Filed 6-18-92; 8:45 am]
BILLING CODE 7590-01-M

[DOCKET NO. 40-1162]

Western Nuclear, Inc., Split Rock Mill; Intent To Amend Source Material License SUA-56

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to amend Source Material License SUA-56 for the Split Rock Mill to Incorporate Reclamation Schedules.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend Source Material License SUA-56, Western Nuclear, Inc., Split Rock Mill, to incorporate a revised reclamation schedule and to add a new license condition.


ADDRESSES: Copies of the response from Western Nuclear, Inc. and the staff evaluation of the licensee’s request are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, Suite 100, Golden, CO, and the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules and Directives Review Branch, Office of Administration, P-223, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Director, Uranium Recovery Field Office, P.O. Box 25325, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, Box 25325, Denver, CO. Telephone: 303-231-5800.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the Federal Register on October 25, 1991 (FR 55434). The MOU also listed expected dates for completion of site reclamation, or other factors beyond the control of the licensee.

For the Economic Costs Involved and Other Factors justifying the request such as delays caused by inclement weather, regulatory delays, litigation, and other factors beyond the control of the licensee.

Dated at Denver, Colorado, this 10th day of June 1992.

For the Nuclear Regulatory Commission.
Ramon E. Hall,
Director, Uranium Recovery Field Office.
[FR Doc. 92-14471 Filed 6-18-92; 8:45 am]
BILLING CODE 7590-01-M

[DOCKET NOS. 50-295 AND 50-304]

Commonwealth Edison Co.; Considereation of Issuance of Amendment to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment...
to Facility Operating License Nos. DPR-39 and DPR-48, issued to Commonwealth Edison Company (CECo, the licensee), for operation of the Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

The proposed amendments request changes to License Condition 2.C.(7) and Technical Specification 5.0, "Design Features" to address the planned rereck of the spent fuel pool at the Zion Nuclear Power Station. The proposed rereck will increase the spent fuel pool storage capacity from 2112 to 3012 storage cells. The added capacity will extend the projected loss of the full core discharge capability date from 1994 to 2005. The proposed amendment would also add new Specifications 3.13.13, "Spent Fuel Pool Storage" and 3.13.14, "Spent Fuel Storage Pool Boron Concentration," to provide consistency with the rereck project safety analysis assumptions.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. A spent fuel assembly drop in the spent fuel pool.
2. Loss of spent fuel pool cooling system flow.
3. A seismic event.
5. Rack (heavy load) drop during construction.

It has been concluded that the proposed modification to the spent fuel pool does not increase the probability of accident scenarios 1–4 since the increase in storage capacity is not assumed to be an initiator of events involving the loss of spent fuel pool cooling, a dropped spent fuel assembly in the spent fuel pool, a seismic event, or a spent fuel cask drop.

CECo has also considered the probability of an accident resulting from a postulated rack (heavy load) drop during the construction process. Zion Operating Licenses Condition 9 prohibits loads heavier than the weight of a single spent fuel assembly plus the tool for moving that assembly from being carried over fuel storage in the spent fuel pool. All work in the spent fuel pool area will be controlled and performed in strict accordance with specific written procedures and administrative controls to prevent the movement of a rack directly over any fuel. Therefore, the probability of an accident resulting from the drop of a rack module on spent fuel in precluded.

In addition, sections 5.1.1, 5.1.2 and 5.1.6 of NUREG-0612, entitled "Control of Heavy Loads at Nuclear Power Plants," provide guidance for heavy load handling operations pursuant to a spent fuel storage rack replacement. Section 5.1.2 provides four alternatives for assuring the safe handling of heavy loads during a fuel storage rack replacement. Section 5.1.6 provides that the control of heavy loads guidelines can be satisfied by establishing that the potential for a heavy load drop is extremely small, as demonstrated by satisfaction of the single-failure-proof crane guidelines. The provisions of alternative (1) will be met during implementation of the subject application.

NUREG-0554, entitled "Single-Failure-Proof Cranes for Nuclear Power Plants," provides guidance for the design, fabrication, installation and testing of new cranes that are of a high reliability design. For operating plants, NUREG-0612, appendix C, entitled "Modification of Existing Cranes," provides guidelines on the implementation of NUREG-0554 at operating plants. An evaluation of storage rack movements which will be accomplished by the Zion Fuel Storage Building crane to determine conformance with the NUREG-0554 guidelines demonstrated that alternative (1) above is satisfied, i.e., the probability of a drop of a storage rack is extremely small. As stated in section 9.7.2.5.8 of the updated Zion FSAR, the Fuel Building crane has a rated capacity of 125 tons, which incorporates a design safety factor of five. The maximum weight of any existing or replacement storage rack and its associated handling tool is 19 tons. Therefore, there is ample safety factor margin for movements of the storage racks by the Fuel Building crane. This applies to non-redundant load-bearing components. Redundant special lifting devices, which have a rated capacity sufficient to maintain sufficient safety factors, will be utilized in the movements of the storage racks. As per NUREG-0612, appendix B, the substantial safety factor margin ensures that the probability of a load drop is extremely low.

CECo has evaluated the consequences of a spent fuel assembly drop in the spent fuel pool and found that the criticality acceptance criterion, k_{eff} less than or equal to 0.96, is not violated. In addition, CECO found that there was no significant change in the radiological consequences of a fuel assembly drop from the previous analyses. Analyses demonstrate that the calculated doses are well within 10 CFR part 100 guidelines. The analysis show that a dropped spent fuel assembly on the racks will not distort the racks such that they would not perform their safety function. Thus, the consequences of this type of accident are not significantly changed from the previously evaluated spent fuel assembly drops.

The consequences of a loss of spent fuel pool cooling system flow have been evaluated and it was found that sufficient time is still available to provide an alternative means of cooling in the event of a complete failure of the cooling system. Thus, the consequences of this type of accident are not significantly increased from previously evaluated lost of cooling system flow accidents.

The consequences of a seismic event, have been evaluated. The new racks will be designed and fabricated to meet the requirements of applicable portions of the NRC Regulatory Guides and published standards. The new racks are designed, as are the existing free-standing racks, so that the integrity of the racks and the pool structure is maintained during and after a seismic event. Thus, the consequences of a seismic event are not significantly increased from previously evaluated evaluated events.

The probability and consequences of a spent fuel cask drop will not be affected by the replacement of the racks. The Zion Operating Licenses Condition 2.C.(7)(b) prohibit spent fuel cask movements over any region of the spent fuel pool which contains irradiated fuel. During the modification phase of the re-rack project, administrative controls governing safe load paths will supplant the Fuel Building crane interlocks and limit switches. Upon completion of the re-rack installation, the Fuel Building crane safety interlock and limit switch functions will be restored.

The consequences of a rack (heavy load) drop during construction are not significantly increased from the previously evaluated events. Analyses show that the calculated doses are well within 10 CFR part 100 guidelines. The analysis show that a dropped spent fuel assembly on the racks will not distort the racks such that they would not perform their safety function. Thus, the consequences of this type of accident are not significantly changed from the previously evaluated spent fuel assembly drops.

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The consequences of a rack (heavy load) drop during construction are not significantly increased from the previously evaluated events. Analyses show that the calculated doses are well within 10 CFR part 100 guidelines. The analysis show that a dropped spent fuel assembly on the racks will not distort the racks such that they would not perform their safety function. Thus, the consequences of this type of accident are not significantly changed from the previously evaluated spent fuel assembly drops.
significantly increased from previously evaluated events.

Therefore, it is concluded that the proposed amendment to replace existing spent fuel racks in the spent fuel pool does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

CECo has evaluated the proposed modification in accordance with the guidance of the NRC Position Paper entitled, "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," appropriate NRC Regulatory Guides, appropriate NRC Standard Review Plans, and applicable industry codes and standards. In addition, CECo has reviewed several previous NRC Safety Evaluation Reports for rerack applications similar to this proposed modification.

No proven technology will be utilized either in the construction process or in the analytical techniques necessary to justify the planned fuel storage expansion. The basic reracking technology in this instance has been developed and demonstrated in other applications for fuel pool capacity increases previously approved by the NRC.

The change to a two-region spent fuel pool requires the performance of additional evaluations to ensure that the criticality criterion is maintained. These include the evaluation of the limiting criticality condition, i.e., misplacement of an unirradiated fuel assembly of 4.65% enrichment into a Region II storage cell or outside and adjacent to a Region II rack module. The evaluation for this case shows that when the boron concentration meets the proposed Technical Specification requirement, the criticality criterion is satisfied. Although this change does pose the need to address additional aspects of a previously analyzed accident, it does not create the possibility of a previously unanalyzed accident.

Based upon the foregoing, CECo concludes that the proposed modification does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

The NRC Staff safety evaluation review process has established that the issue of margin of safety, when applied to a reracking modification, should address the following areas:

1. Nuclear criticality considerations
2. Thermal-hydraulic considerations
3. Mechanical, material and structural considerations.

The established acceptance criterion for criticality is that the maximum fuel pool temperature when a fuel assembly is dropped from any height and the fuel pool is fully loaded so as to maximize the thermal-hydraulic conditions of the water in the fuel pool.

The methods used in the criticality analysis conform to the applicable portions of the appropriate NRC guidance and industry codes, standards, and specifications. In meeting the acceptance criteria for criticality in the spent fuel pool, such that k<sub>eff</sub> is always less than 0.95 at 90/95% probability confidence level, the proposed amendment does not involve a significant reduction in the margin of safety for nuclear criticality.

Conservative techniques were used to calculate the maximum fuel pool temperature and the increase in temperature of the water in the spent fuel pool. The thermal-hydraulic evaluation used the methods previously employed for evaluations of the present fuel racks to demonstrate that the temperature margins of safety are maintained.

The proposed modification will increase the heat load in the spent fuel pool. However, the evaluation shows that a sufficient margin of safety exists such that the maximum allowable temperature for bulk boiling is not exceeded for the calculated increase in pool heat load utilizing the existing spent fuel cooling system. The evaluation also shows that maximum local water temperatures along the hottest fuel assembly are below the nuclear boiling condition value. Thus, there is no significant reduction in the margin of safety for thermal hydraulic or spent fuel cooling concerns.

The main safety function of the spent fuel pool and the racks is to maintain the spent fuel assemblies in a safe configuration through all normal or abnormal loadings. Abnormal loadings which have been considered are the effect of an earthquake, the impact due to a spent fuel cask drop, the drop of a spent fuel assembly, or the drop of any other heavy object. The mechanical material, and structural design of the new spent fuel racks is in accordance with applicable portions of: "NRC Position for Review and Acceptance of Spent Fuel Storage and Handling Applications", dated April 14, 1978, as modified January 18, 1979; Standard Review Plan 3.4.4 and other applicable NRC guidance and industry codes.

The rack materials used are compatible with the spent fuel pool and the spent fuel assemblies. The structural considerations of the new racks of safety against tilting and deflection or movement, such that the racks do not impact each other during the postulated seismic events. In addition the spent fuel assemblies remain intact and no criticality concerns exist. Thus, the margins of safety are not significantly reduced by the proposed rerack.

In summation, it has been shown that the proposed spent fuel storage facility modifications do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a margin of safety.

Thus, CECo has determined that the proposed amendment does not involve significant hazards and that the criteria [of] 10 CFR 50.92 have accordingly been met. In addition, the proposed amendment must closely resembles example (X) of "Amendments That Are Considered Not Likely to Involve Significant Hazards Considerations" as provided in the final NRC adoption of 10 CFR 50.92, 51 FR 7753 (March 8, 1986). This example indicates that an amendment is not likely to involve a significant hazards consideration as follows:

(X) An expansion of the storage capacity of a spent fuel pool when all of the following are satisfied:

1. The storage expansion method consists of either replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor that space permits.

The Zion spent fuel pool rerack involves the replacement of the present capacity racks with a design which, by requiring only burned fuel to be stored in Region II, allows closer spacing of the stored spent fuel cells. Region I is designed for allowing safe storage of unburned fuel.

(2) The storage expansion method does not involve rod consolidation or double tiering.

The Zion racks are not double tiered and all racks will sit on the spent fuel pool floor.

In addition, the amendment application does not involve consolidation of spent fuel.

(3) The k<sub>eff</sub> of the pool is maintained less than or equal to 0.95.

Thus, this submittal meets example (X) as presented in the supplementary information accompanying publication of the Final Rule as an example of situations which are considered not to involve significant hazards considerations.

Based on the foregoing, CECo has concluded that all criteria for issuance of a no significant hazard statement are satisfied.

The NRC staff has reviewed the licensees analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be
considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of request for hearing and petitions for leave to intervene is discussed below.

By July 20, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. If a request for a hearing or a petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board Panel will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the expressed legal principles which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that such dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contentions must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard J. Barrett; Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidley and Austin, One First
National Plaza, Chicago, Illinois 60606, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board Panel that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10184. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to “any matter which the Commission determines to be in controversy among the parties.” The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, “Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors” (published at 50 FR 41670, October 15, 1985), and 10 CFR 2.1101 et seq. Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1100. To be timely, the request must be filed within 10 days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR part 2, subpart K, and 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceedings requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G, apply.

For further details with respect to this action, see the application for the amendment dated January 15, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 9th day of June, 1992.

For the Nuclear Regulatory Commission.

[FR Doc. 92-14472 filed 6-18-92; 6:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-424, License No. NPF-68, EA 91-141]

Georgia Power Co. (Vogtle); Order Imposing Civil Monetary Penalty

I

Georgia Power Company (Licensee) is the holder of Operating License No. NPF-68 issued by the Nuclear Regulatory Commission (NRC or Commission) on March 16, 1987. The license authorizes the Licensee to operate Vogtle Electric Generating Plant Unit 1 in accordance with the conditions specified therein.

II

An investigation of the Licensee’s activities was completed on March 19, 1991 by the Nuclear Regulatory Commission. The results of this investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated December 31, 1991. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by letters dated January 30 and February 3, 1992. In its responses, the Licensee denied the violations, disagreed with the severity level, and requested complete mitigation of the proposed civil penalty.

III

After consideration of the Licensee’s responses and the statements of fact, explanation, and argument for mitigation contained therein, the NRC Staff has determined, as set forth in the appendix to this Order, that Violations A, B, C, and D occurred as stated. With regard to Violation C2, the NRC Staff agrees with the Licensee that the wrong revision of VEGP Procedure 10000-C was referenced in the Notice. However, as discussed in the Appendix to this Order, the NRC Staff has concluded that, the Licensee’s action, when viewed against the correct revision of the procedure, still constitutes a violation. Therefore, the proposed penalty designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (ACT), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of $100,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a “Request for an Enforcement Hearing” and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region II, 101 Marietta Street NW., Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall
be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such a hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice as modified in section III above, and

(b) Whether, on the basis of such violations, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 12th day of June 1992

James H. Sniezek,
Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations, and Research.

Appendix

Evaluations and Conclusion

On December 31, 1991, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to Georgia Power Company (GPC) for violations identified by the Nuclear Regulatory Commission (NRC) Staff during an investigation. GPC responded to the Notice in correspondence dated January 30, 1992 and February 3, 1992. GPC denies the violations occurred and also considers the civil penalty to be unwarranted. The NRC Staff's evaluation and conclusions regarding GPC's responses are presented below.

Restatement of Violation A

A. Technical Specification (TS) 3.4.1.4.2 (1988 edition) required that two residual heat removal (RHR) trains shall be OPERABLE and at least one RHR train shall be in operation. Reactor Makeup Water Storage Tank (RMWST) discharge valves (1206-U4-175, 1206-U4-176, 1208-U4-177, and 1208-U4-183) shall be closed and secured in position whenever the plant is in Mode 5 with reactor coolant loops not filled. Action c. of TS 3.4.1.4.2 required that with the RMWST valves not closed and secured in position, immediately close and secure them in position.

Contrary to the above, on October 12 and 13, 1988, with Unit 1 in Mode 5, loops not filled, RMWST valves 1206-U4-175 and 1206-U4-176 were opened in order to add chemicals to the reactor coolant system.

Summary of Licensee's Response to Violation A

GPC denies Violation A based on its position that the decision to voluntarily enter the Limiting Conditions for Operation (LCO) of TS 3.4.1.4.2 (1988 edition) was consistent with the language of the TS as well as the established practice and NRC guidance available at the time. In addition, GPC contends that since an entry into the specific TS LCO was not prohibited, no violation occurred. GPC also contends that the term "immediate" as applied to this TS is open to interpretation.

NRC Evaluation of Licensee's Response to Violation A

The language which GPC contends sanctioned its voluntary entry into TS LCO can be found in a section from the Inspection and Enforcement (I&E) Manual, [Note: This manual is now titled NRC Inspection Manual, chapter 9900, STS (Standard Technical Specifications) section 3.0, Voluntary Entry Into Action Statements, with an issue date of January 1, 1982 (Exhibit 24).]

In this guidance, GPC states that "The NRC endorses Voluntary Entry into the Action Statement Conditions and has structured the TS to permit the licensee to exercise judgment within the latitude permitted by the Action Statement language". TS 3.4.1.4.2 action statement does not contain any latitude. Action c. of that TS can only be reasonably read to address the situation where the valves are found either not closed or unsecured and requires in those circumstances that the valves immediately be closed and secured. Interpreting the TS to allow intentional opening of valves that were closed and tagged to perform an evolution is directly contrary to the stated requirement of the TS.

In choosing the NRC Staff's guidance it cites, the licensee selectively picked guidance that supports its position and did not address guidance that did not support its position. Another section of the same I&E chapter referred to by the licensee, discusses in detail an interpretation of locked or otherwise secured components. In part, that guidance stated October 17, 1977, states that the locking into a prescribed position of a manually operated valve should be accomplished using a key or combination lock or other acceptable means to preclude the manipulation from the prescribed position. This guidance also states that the use of a tag or similar device on a valve handwheel does not meet the requirements for a locked valve in a fluid system important to safety. Clearly, if tags in lieu of a locking device on a closed valve would not meet a requirement that mandates the valve be closed and secured in position, then an individual actually opening the valve (exactly opposite to the required position) under some undocumented administrative control could be determined in the case at issue, is clearly unacceptable.

The GPC statement that since "Such an entry was not prohibited by TS, no violation occurred", is not supported. As discussed above, the TS clearly prohibited the licensee's action in this case. A document containing guidance in this area is the Technical Specification Improvement Program Highlights, dated August 1967 (Exhibit 27) which the licensee again attempts to selectively use to support its argument. In the section entitled "Voluntary Entry into Technical Specification Action Statements", a specific comment is made to address the entry into TS 3.0.3 (standard version) by licensees. The guidance states that "since such actions remove the last echelon of defense against deleterious events, NRR (Nuclear Reactor Regulation) has NRC evaluation...[insert text]

1 All exhibits referenced are contained in Appendix I of GPC response to the NRC June 3, 1991 Demand for Information.

Finally, consistent with the above referenced guidance, the licensee did not extensively consider other possible courses of action before opening the valves in Mode 5, loops not filled. Notwithstanding the language of the TS basis, the language of the Final Safety Analysis Report (FSAR), section 15.6.2.3 and 15.6.2.2, did not support the Operations Manager's decision. Therefore, the action that NRC Staff imposed a definition of "immediate" as not permitting any time interval before the required action must be taken in this enforcement action.

Arguments about the term "immediate" have no relevance in this case. Interpretation of that term would only become necessary if it were concluded that in the situation at issue the licensee could have properly entered Action c. of T.S. 3.4.1.4.2.

However, in Mode 5, loops not filled, entering Action c. by intentionally opening the RMWST valves is in direct violation of the TS requirement. The NRC Staff readily acknowledges that the TS basis states that the requirement is included to preclude an uncontrolled boron dilution. However, the TS requirement achieves that by prohibiting all injections through the valves in Mode 5, loops
not filled. While the requirement may have been more stringent than necessary, the licensee is bound by the requirement and not the basis. As was subsequently done by GPC, the TS requirement could have been modified through the amendment process by providing additional analysis, supported by the TS basis, to allow opening the valves with proper controls under those plant conditions.

GPC claimed that the Sequoyah plant staff used the same logic as if the Vogtle Electric Generating Plant (VEGP) staff when they chose to voluntarily enter an LCO which contained a required immediate action (Exhibit 31). The licensee states that the NRC Staff's present position is an example of inconsistency in the application of the regulatory process. However, interpretations concerning the term "immediate" are not relevant due to the clear language of the Vogtle TS. Nevertheless, a detailed review of the Sequoyah event has been conducted by NRC Staff. That event is detailed in Licensee Event Report (LER) 50-328/91-06 dated April 10, 1991, and NRC Inspection Report No. 90-327/91-06 dated April 25, 1991. A summary of the review of the inspection report and LER is included below:

- Areas of similarity between the event at VEGP and the event at Sequoyah are as follows:
  a. Neither evolution was performed using an approved procedure.
  b. Senior level operations managers were involved in the initial decision to enter the TS action statement.
  c. The evolutions were conducted using verbal directions from the control room.
  d. The evolutions were only discussed with operations personnel at the time actions were initiated.

- Areas of dissimilarity between the Sequoyah and Vogtle event are as follows:
  a. The Technical Specifications for Sequoyah TS 3.5.1.1 and the related surveillances TS 4.5.1.1.1.d and 2) are worded differently from the Vogtle TS.
  b. Specifically, there are two differences that are germane to discussion of the October 1988 Vogtle event. First, Sequoyah's TS 4.5.1.1.1.d, which allows for the licensees to periodically close the valves, in the applicable mode, in order to perform surveillance activities. This is in direct contrast with the Vogtle TS which contains no provisions for opening the RMWST valves, in the applicable mode. Second, should the action for Sequoyah TS 4.5.1.1.d be entered, in addition to requiring the isolation valve to be immediately reopened, it provides a specific amount of time within which a plant shutdown must be initiated (1 hour). Again, this contrasts with the Vogtle TS which contains no specific action time limit.

- At Sequoyah, while placing the plant outside the design basis, the valve was manipulated as an operating evolution in response to a potential safety concern. Identified as an issue as in-leakage into a cold leg accumulator allowed the problem to be addressed and maintained a safety system in an operable status. At Vogtle the manipulations were not to maintain a safety system in the event the condition could have been made at a time when the TS did not preclude operation of the valves.

- c. The event at Sequoyah was investigated and reviewed in detail by the licensee resulting in a LER. At Vogtle, the decision to manipulate the valves was only reviewed within the Operations Department, was not investigated until long after the event, and a report was not submitted.

- d. The Sequoyah personnel who investigated this event recognized that the actions they had taken resulted in placing the plant in a condition outside the design basis. At Vogtle, the event was not recognized as a condition outside the design basis even though a question about the evolution was raised by a senior reactor operator and an analysis did not exist to address a dilution event for the specific plant conditions.

- e. The root cause of the event at Sequoyah was determined to be either personnel error which resulted in a failure to return a circuit breaker to its specified position. The licensee received a Notice of Violation associated with this problem. The Vogtle event resulted in multiple violations, when considered collectively, indicate a significant breakdown in management and administrative controls of licensed activities in a number of inter-related areas.

- Based on this review, the NRC staff has concluded that the Sequoyah event, while similar in several minor respects to the Vogtle event, was based on a different set of circumstances from the event at VEGP and different requirements and therefore does not reflect any inconsistency in the NRC Staff's application of the regulatory process.

Restatement of Violation B

B. 50.73(a) (2) (ii) [B] requires licensees to submit a Licensee Event Report (LER) within 30 days after the discovery of any event or condition that resulted in the nuclear power plant being in a condition outside the design basis of the plant.

Contrary to the above, on or about November 17, 1988, the Plant Review Board determined the opening of the RMWST valves specified in TS 3.4.1.4.2 was not reportable and, consequently, an LER was not submitted within 30 days even though the valves were opened on October 12, and 13, 1988 has placed the plant in a condition outside of the design basis. Opening the valves constituted a condition outside the plant design basis because at the time the valves were opened an analysis for a boron dilution accident through the valves did not exist.

Summary of Licensee's Response to Violation B

GPC denies this violation based on its contention that opening the RMWST discharge valves specified in TS 3.4.1.4.2 did not place the plant in a condition outside the design basis. GPC contends that the TS Base for TS 3.4.1.4.2 state that the subject valves are closed to prevent an uncontrolled boron dilution event. Since the evolution was administratively controlled the licensee argues that the manner in which the controls were applied precluded an uncontrolled boron dilution event.

GPC further states that 10 CFR 50.2 defines design basis as "information which identifies the specific functions to be performed by a structure, system, or component of a facility, and the specific values or ranges of values chosen for controlling parameters of the system in the regulation for the facility."

In addition, GPC contends that the physical design of the chemical addition portion of the chemical and volume control system is such that the chemical addition evolution of October 1988 did not exceed the acceptance criteria specified in the Standard Review Plan (SRP).

In its discussion of the SRP, GPC cites Section 15.4.6 which specifies time limits associated with operator actions to mitigate an unplanned dilution event.

GPC also argues that 10 CFR 50.73(a) (2) (ii) treats conditions outside the design basis of the plant and unanalyzed conditions that significantly compromise plant safety as two separate and distinct criteria for reportability. The licensee asserts that if an unanalyzed condition necessarily places that plant outside the design basis there is no need for two different criteria.

GPC provides an analysis performed in November 1989 (November 14, 1989) by Westinghouse that supports its position that the plant was not placed in a condition outside the design basis.

NRC Evaluation of Licensee's Response to Violation B

The NRC Staff also relies on the definition of design basis contained in 10 CFR 50.2, which includes additional clarifications not provided in the excerpt cited by GPC. Again, the licensee is selectively choosing excerpts from the referenced document to support its position. The language that was omitted states (with regard to "values chosen for controlling parameters as reference bounds for design") "These values may be (1) restraint limits derived from generally accepted "state of the art" practices for achieving functional goals, or (2) requirements derived from analysis (based on calculation and/or experiments) of the effects of a postulated accident for which the parameters or component must meet its functional goals."

As discussed in the FSAR, the specific RMWST valves were to be closed and secured in position in order to prevent uncontrolled dilution events in those events not filled. That configuration (RMWST valves closed and secured in position) is the one that the NRC Staff reviewed and accepted in granting the plant a license. Consistent with 10 CFR 50.2, that configuration achieved the functional goal of preventing an uncontrolled dilution event and therefore defines, in part, the system design basis. Because at the time the valves were opened in October 1988, no analysis had been performed to support that condition the plant was placed in a condition outside the design basis as defined in 10 CFR 50.2. The licensee's attempts to now rely on selected words of 10 CFR 50.2 to justify its position are completely contrary to the fact that at the time of licensing, a dilution event through the RMWST valves was specifically excluded from the plant design basis. (See section 15.4.6.2.1.1 of the FSAR).

The NRC Staff does not dispute the fact that the subsequent Westinghouse analysis provides support for changing the TS
requirement and allowing administrative controls on these valves. As stated above, the analysis did not exist at the time the valves were opened. Additionally, the administrative control of the maximum time the valves would be open, that the licensee stated they would be opened, was not clearly specified. At least one of the plant equipment operators involved in the October 1986 event did not recall that there was any prohibition on how long the valves could be open. In fact, his recollection was consistent with the then-existing chemical addition procedures, which specified minimum rather than maximum flush times to ensure all chemicals were added. More fundamental is the fact that the TS requirement prohibited opening the valves regardless of what the analysis might have been able to support.

GPC states that "VESG recognizes, as did the PRB in 1989, that the use of the flow path in question was not currently analyzed in the Final Safety Analysis Report (FSAR). However, this condition did not significantly compromise plant safety and does not equate to a condition outside the design basis of the plant, and therefore was not reportable." The PRB could not conclude without first performing an analysis in accordance with the requirements of 10 CFR 50.59 because the FSAR required the valves to be closed and secured in position. Since the PRB did not obtain information to support this conclusion until mid-November 1989, the manipulation of the RMWST valves on October 12 and 13, 1986 met the criteria for reportability pursuant to 50.73(a)(2)(i)(B). Even if the PRB had immediately obtained the Westinghouse analysis in August 1989, when questions about the October 1986 event were raised again, the correct determination would have been that the event was reportable as the plant had been outside its design basis, as identified in 10 CFR 50.2, when the valves were opened in October 1986.

With regard to the licensee's specific argument that the reportability under 50.73(a)(2)(i)(B)(ii), the NRC Staff makes the following summary points:

1. The NRC Staff's position regarding the reportability of this event is supported by the discussion on pages 6 and 7 of this appendix that, by the definition of 10 CFR 50.2, opening the RMWST valves in Mode 5, loops not filled, placed the plant in a condition outside the design basis.

2. As the NRC Staff cited the licensee for failing to report the plant being in a condition outside the plant design basis, discussion of the applicability of 50.73(a)(2)(i)(B) and its relationship to 50.73(a)(2)(ii)(B) is not relevant. Further, a discussion of whether plant safety was significantly compromised, in the context of supporting a reportability determination, would only be necessary if a citation had been made under 50.73(a)(2)(ii)(A).

GPC introduced a Sequoyah LER to support their Action with respect to Violation A. Apart from the NRC Staff's position regarding the Sequoyah event discussed above, GPC's arguments ignore the fact that the Sequoyah event was reported under 50.73(a)(2)(ii)(A). Specifically, in the Sequoyah LER report it was concluded that the event was a condition outside the design basis of the plant (See LER 50-328/91-1003 page 7 of 11, Analysis of Event).

Restatement of Violation C

C. Technical Specification 6.7.1 requires written procedures shall be established, implemented, and maintained covering the activities recommended by appendix A of Regulatory Guide (RG) 1.33, Revision 2. Section 15.4.8.2.1 and 15.4.8.2.2 of chapter 15, specify that the RMWST valves to be locked closed in the refueling mode and in cold shutdown when the loops are drained. The action specified in these sections was to prevent any dilution during these conditions and not just uncontrolled dilution. Notwithstanding the words of the TS basis, the licensee failed to perform an adequate analysis to address the language of the FSAR and even failed to properly control the evolution that was improperly approved.

With regard to the use of administrative controls, the licensee had in place procedural requirements such that if a procedure could not be followed as written, then either a temporary or permanent change is required to be made to the procedure in question. A review of VESG Procedure No. 00304-C, addresses equipment clearance and tagging. The purpose of this procedure was to address clearance processes for any equipment in the maintenance, testing or inspection. Since there was no discussion of tagging associated with operational controls for evolutions in progress, the use of Procedure No. 00304-C for that purpose was not appropriate. Further, even if the NRC Staff's view of Procedure No. 00304-C could have been used to modify the requirements of Procedure No. 12006-C without a 10 CFR 50.59 analysis, the procedure was not permanently or temporarily modified to allow such a use. In summary, the licensee had no basis to allow administrative control of the RMWST valves when they were opened in October 1986.

The NRC Staff acknowledges that the incorrect revision of Procedure No. 10000-C was referenced in the violation. However, after review of the applicable revision, dated October 3, 1986, it was concluded that while the position titles changed, the substantive requirements did not and, therefore, notwithstanding the incorrect reference, the responsible individual had not failed in his assigned duties. That leads to the licensee's second argument, which is that Procedure No. 10000-C is an organizational procedure which establishes broad areas of responsibility and that the mere occurrence of a TS violation does not establish that a violation of Procedure No. 10000-C occurred. The case at hand is not one of those situations. In this case, the evolution which resulted in the TS violation, and violation of Procedure No. 10000-C, was an evolution occurring with specific On-Shift Operations Supervisor (OSOS) approval despite the fact that questions had been raised about the evolution's appropriateness. Additionally, the detail in which the functions of personnel described in Procedure No. 10000-C were defined, argue against the broadness advocated by the licensee. Specifically, section 2.4.6 requires that the OSOS ensure that operations are conducted in accordance with the Technical Specifications. Sections 15.4.8.1 through 15.4.8.2.2 define, among other things, temporary procedure changes are properly administered. The OSOS should have recognized that contrary to section 2.4.6, the evolution could not be accomplished (see
Violation D) in accordance with existing procedures and, as required by section 2.4.1, the temporary change procedure was not properly implemented when Procedure No. 12006-C, as written, was not followed.

The NRC staff does not agree with the interpretation made by GPC with regard to the proper closure of the descriptions provided by Procedure No. 10000-C. If the procedure was really intended to be only broad guidance, there would be no need for it to contain the detailed defining functions that it does. A violation of a procedure and, as required by section 2.4.1, the temporary change procedure was not performed as the procedure delineates and that was the situation in this case. However, because the NRC Staff agrees with GPC that the wrong revision of Procedure No. 10000-C was cited in Violation C.2, NRC records will be amended to reference the correct procedure revision and corresponding applicable steps.

Restatement of Violation D

D. 10 CFR part 50, appendix B, Criterion V, requires, in part, that activities affecting quality shall be prescribed by documented instructions, procedures, or drawings of a type that specifies the circumstances and shall be accomplished in accordance with these instructions, procedures or drawings. VEGP Procedure No. 13007-1, VCT Gas Control and RCS Chemical Addition, section 4.7, VEGP Chemical Control of the Reactor Coolant System, section 4.7, provides the instructions on chemical additions to the Reactor Coolant System. Contrary to the above, on October 12, and 13, 1988, VEGP Procedure Nos. 13007-1 and 35110-C were inadequate in that these procedures did not contain provisions for adding chemicals to the reactor coolant system in Mode 5, loops not filled. Specifically, the procedures specify such conditions as having a reactor coolant pump running which is not possible in Mode 5, loops not filled.

Summary of Licensee's Response to Violation D

GPC denies this violation based on the position that the procedures were adequate to perform the evolution that was being conducted.

GPC states that the NRC Staff erred in limiting its view to only a portion of Procedure No. 13007-1. GPC contends that there is a hierarchy of procedures applicable to the evolution of October 1988, and that the sum total of all these procedures addressed the evolution of adding chemicals in Mode 5 and ensured proper mixing. GPC states that Procedures Nos. 13007-C and 35110-C addressed the specific task of adding chemicals and the configuration control aspects of the evolution. In addition, GPC points out that Procedure No. 49006-C, Health Physics and Chemistry Department Outage Activities Implementing Procedures, (Exhibit 40) addresses the required configuration control. GPC also acknowledges a weakness in the development of this procedure which failed to identify a potential TS conflict; yet GPC believes that the procedure was adequate for the chemical addition evolution.

Summary of Licensee's Answer To A Notice of Violation

In answer to the Notice, GPC denies that a violation occurred based on the information it provided which has been addressed above and its conclusion that the positions taken by the NRC Staff are based on a new interpretation of the existing guidance contributed to the failure of licensed operators to recognize a TS compliance issue in October 1988. Also acknowledged were weaknesses in the procedure for adding chemicals in Mode 5, loops not filled, were inadequate.

NGC Evaluation of Licensee's Response to Violation D

The NRC Staff has reviewed the licensee's arguments and the procedures referenced. The NRC Staff finds a number of inconsistencies in the licensee's arguments. First, it is not clear how Procedure No. 49006-C, which is solely a Health Physics and Chemistry Department Procedure, can accomplish the required configuration controls, which are within the purview of the Operations Department. While Procedure No. 49006-C addresses what the plant conditions need to be to perform certain chemical procedures, it does not detail how to attain those conditions. That problem leads to the second point. It is inconsistent for the licensee to require very detailed step-by-step operations procedures, with very specific prerequisites and precautions, for chemical additions at power and in certain routine shutdown conditions, but then argue that chemical additions in a very infrequent and abnormal shutdown condition such as Mode 5, loops not filled, require only general guidance. Finally, GPC states that the NRC Staff erred in limiting its view to only Procedures 13007-1 and 35110-C. However, starting on Page 77, for example, of the GPC enforcement conference transcript, it is clear that it was only those procedures and not Procedure No. 49006-C which were relied on by the operators in October 1988. This is not surprising given the discussion above. Procedure No. 49006-C only applied to Health Physics and Chemistry Department personnel. In summary, the NRC Staff concludes that the procedures for adding chemicals in Mode 5, loops not filled, were inadequate.

Summary of Licensee's Answer To A Notice of Violation

In answer to the Notice, GPC denies that a violation occurred based on the information it provided which has been addressed above and its conclusion that the positions taken by the NRC Staff are based on a new interpretation of the existing guidance contributed to the failure of licensed operators to recognize a TS compliance issue in October 1988. Also acknowledged were weaknesses in the procedure for adding chemicals and the FSAR associated with this chemical addition occurred in October 1988. As previously discussed with respect to Violation B, GPC's position is that the PRB decision is a simple reportability disagreement rather than a management problem.

GPC's response also addresses the command and control of the operations staff with respect to the activities that occurred in October 1988. GPC states that the shift crew worked as a team to diligently and continuously monitor the various changes in operation parameters and appropriately delegated specific tasks to qualified individuals. It concludes that since this was a preplanned activity and scheduled to be performed at this time, there was no loss of command and control. GPC acknowledges the extreme importance of ensuring compliance with TS and its obligation to comply regardless of whether NRC Staff guidance is available. It is GPC's view that even if the NRC Staff disagrees with its
position that a TS violation did not occur in this case, the violation would not rise to the level of a Severity Level III violation. GPC indicates that in March of 1991, licensed personnel at TVA's Sequoyah plant used the same logic and the enforcement action taken in that case was inconsistent with the action taken in this case with GPC. (See discussion above in section entitled NRC Evaluation of Licensee's Responses to Violation A).

GPC has also requested in its correspondence that the NRC Staff reconsider the escalation applied to the base civil penalty for untimely long-term corrective action and NRC identification of the violation. This request is based on the following factors: (1) Since GPC determined that no violation occurred, no long-term corrective actions were required, and (2) The PRB, recognizing that future questions would be raised whenever this activity was to be performed, initially wanted to change the TS for clarification purposes before the next scheduled outage. Based on this action, GPC concludes that the action taken was timely. GPC also requests reconsideration of the escalation factor associated with identification based on the position that since it did not conclude that a violation occurred, the identification factor should not be used to escalate the base civil penalty. GPC's position in this regard is that licensees are penalized for opinions differing from those of the NRC Staff.

In addition to the above issues, the licensee's response of February 3, 1992 asserts that the NRC Staff failed to determine whether a violation occurred before referring the matter to the Office of Investigations (OI) and that the proposed large fine was apparently based more on the level of NRC Staff resources devoted to the matter rather than on safety significance. GPC's final position, based on the information provided above, is that the violations did not occur and that a civil penalty is inappropriate in this case.

NRC Evaluation of Licensee's Request for Reconsideration of Severity Level and Mitigation

The NRC Staff has reviewed GPC's response in detail and has also reviewed the bases upon which the staff concluded that taken collectively these violations represent a significant regulatory concern. The individual violations have previously been discussed in this Appendix. The NRC Staff is not relying on the cascading effect of one principal violation, in that numerous violations occurred representing a lack of adequate "command and control." Although the NRC Staff concludes that violation of the TS requirement is important by itself, taken collectively the violations represent a significant regulatory concern. As stated in the cover letter to the Notice of Violation and Proposed Imposition of Civil Penalty, these violations indicate a significant breakdown in managerial and administrative controls of licensed activities. This case not only involved inadequate actions and faulty decisions during the event by individual senior licensed operators in management positions, but included the Plant Review Board which subsequently performed an inadequate review, consequently confirmed the reasonableness of the Technical Specification interpretation and did not recommend reporting the matter. Therefore, even though a direct compromise of plant safety did not occur, the NRC Staff is well within the rationale of the Enforcement Policy in aggregating these violations into a Severity Level III problem.

The NRC Staff has also reviewed the licensee's request for reconsideration of the proposed escalation of the civil penalty. With regard to the escalation for identification, the NRC Staff maintains that the questions raised by GPC staff about the appropriateness of the evolution and the concerns about the identification factor, that resurfaced in August 1990 and were improperly disposed by the PRB in November 1990, gave GPC adequate opportunities to identify this violation. With respect to escalation for corrective action, contrary to GPC's assertion, the concerns about PRB activities were not the only NRC Staff concerns which have not been addressed as part of the licensee's corrective actions. Procedures which were clearly insufficient in addition in Mode 8, loops not filled, were not temporarily corrected when used, as required by the existing temporary change mechanism, and were not subsequently updated to resolve the problems. In summary, the NRC Staff concludes that the proposed civil penalty was appropriate for NRC identification and inaccurate corrective actions.

While the NRC Staff finds them in no way to be germane to the action, two additional issues were raised in the licensee's February 3, 1992 letter. In that letter, the licensee contends the NRC Staff issued a civil penalty to recover staff costs and initiated an investigation without first concluding there was a violation. GPC apparently draws its conclusion that the NRC Staff failed to determine whether a violation occurred before referring the matter to the Office of Investigations (OI), from internal NRC correspondence that the NRC Staff issued a civil penalty to recover staff costs and initiated an investigation without first concluding there was a violation. GPC apparently draws its conclusion that the action taken was timely. While it is true that both the request for the interpretation and the reply occurred after OI involvement, review of only that internal correspondence would present an incomplete picture. The request simply memorialized the basis for the written position that had been taken by NRC Region II prior to referral of the issue to OI. With regard to the GPC assertion that the proposed fine was apparently based more on the level of staff resources devoted to the matter rather than on the safety significance of the events, that assertion is again without foundation. All civil penalties collected, no matter how large or small, are deposited in the U.S. Treasury with the NRC Staff receiving no direct benefit. That being the case, the NRC Staff not only did not but could use a civil penalty to offset staff costs. As discussed extensively throughout this Appendix the NRC Staff maintains that the severity level is interpreted by the events that occurred at Vogtle which are the subject of this action. Further, having properly arrived at the severity level, the NRC Staff maintains the escalation and mitigation factors of the Enforcement Policy were properly assessed and appropriate to the circumstances. In summary, the NRC Staff finds the two additional issues raised by the licensee to be unsupported by the facts and completely unrelated to the significant issues in this action which are adequate control of on-shift activities and thorough review of matters potentially impacting plant safety.

NRC Conclusion

The NRC Staff has concluded that GPC has not provided adequate basis for the assertion that the violations should be withdrawn or that the civil penalty is inappropriate. Consequently, the NRC Staff concludes that the proposed civil penalty in the amount of $100,000 should be imposed.

[Docket Nos. 50-272 and 50-311]

Public Service Electric and Gas Co., et al.; Withdrawal of Application For Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Public Service Electric and Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company and Atlantic Electric Company (the licensees) to withdraw its July 10, 1990, application, as supplemented by letter dated August 28, 1990, for a proposed amendment to Facility Operating Licenses Nos. DPR-70 and DPR-75 for Salem Nuclear Generating Station, Units 1 and 2, respectively, located in Salem County, New Jersey.

The proposed amendments would have revised the Operating Licenses for Salem Nuclear Generating Station, Units 1 and 2, by adding a section entitled "The terms of the May 6, 1983 order have been satisfied by the incorporation of the long-term corrective action requirements into the Salem Updated Final Safety Analysis Report. Appendix 7.A."

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on October 5, 1990 (55 Fed. Reg. 35228). However, by letter dated June 1, 1992, the licensee withdrew the proposed change. For further details with respect to this action, see the application for amendment dated July 10, 1990, the supplement dated August 28, 1990, and the licensees' letter dated June 1, 1992, which withdrew the application for license amendment. The above documents are available for public

Dated at Rockville, Maryland this 12th day of June, 1992.

For the Nuclear Regulatory Commission.

James C. Stone,
Senior Project Manager, Project Directorate I-2, Division of Reactor Projects—I/I, Office of Nuclear Reactor Regulation.

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[Docket No. 50-029]
Yankee Atomic Electric Co. (Yankee Nuclear Power Station); Exemption

I

The Yankee Atomic Electric Company (YAEC or the licensee), is the holder of Operating License No. DPR-3 which possesses, operation and maintenance of the Yankee Nuclear Power Station (facility or plant). The license provides, among other things, that the plant is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility is a pressurized water reactor, currently in the process of being decommissioned, and is located at the licensee’s site in Franklin County, Massachusetts. The plant is shut down and the reactor is defueled.

II

In a letter dated February 27, 1992, from the licensee, the NRC staff was informed that YAEC had permanently ceased power operations and planned to develop detailed plans to decommission the facility. The staff subsequently issued a Confirmatory Action Letter (CAL) dated April 7, 1992, which confirmed these commitments. By letter dated May 11, 1992, the licensee requested an exemption to the containment leak test requirements of 10 CFR 50.54(o) in accordance with 10 CFR 50.12. The specific leak test requirements of 10 CFR 50.54(o) are contained in appendix J to 10 CFR part 50. These leak tests are required to demonstrate the leak tight integrity of the reactor containment.

III

In the licensee’s letter of May 11, 1992, the justification presented for the exemption was that the reactor had been defueled and the fuel removed from the containment (Vapor Container) to the spent fuel storage pool (Fuel Pit) and could not be returned to the containment because of the NRC CAL of April 7, 1992. Therefore, YAEC compliance with 10 CFR 50.54(o) is no longer needed as the releases for which the rule is predicated are no longer possible.

The Commission will not consider granting an exemption unless special circumstances are present. In the licensee’s letter of May 11, 1992, these special considerations were addressed as follows:

10 CFR 50.12(a)(2)(ii)—Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule * * *

Licensee’s response: The purpose of 10 CFR 50.54(o) is to ensure through periodic testing that the leak-tight integrity of the primary reactor containment and containment penetrations and isolation valves is maintained during operating and design basis accident conditions. Integrity of the primary reactor containment structure, penetrations, and isolation valves ensures against the uncontrolled release of fission products into the environment from main coolant system pressure boundary leakage.

For YNPS, compliance with 10 CFR 50.54(o) is no longer needed. The type of releases upon which 10 CFR 50.54(o) are predicated are no longer possible. YNPS is permanently shutdown. All special nuclear material used as reactor fuel has been transferred from the reactor vessel in the Vapor Container to the Spent Fuel Pit. Movement of reactor fuel into the reactor vessel or Vapor Container is prohibited. Therefore, implementation of the rule for YNPS would not serve the underlying purpose of the rule.

IV

The staff agrees with the licensee’s analyses as presented in section III above and concludes that sufficient bases have been presented for our approval of the exemption request. Accordingly, the staff finds that there are special circumstances presented that satisfy the requirements of 10 CFR 50.12(a)(2)(ii). In the event that the licensee seeks to resume operation, this exemption will terminate.

V

Based on the above evaluation, the Commission has determined that pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security.

Accordingly, the Commission hereby grants an exemption to all requirements contained within 10 CFR 50.54(o) and 10 CFR part 50—appendix J for the Yankee Nuclear Power Station, provided, however, that this exemption will terminate in the event that the licensee seeks to resume operation of the facility.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (57 FR 22939) dated May 29, 1992.

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 15th day of June 1992.

For the Nuclear Regulatory Commission.

Bruce A. Boger,
Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-14475 Filed 6-18-92; 8:45 am]
BILING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Expedited Clearance of Form OPM 2809-EZ2

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for an expedited clearance of an information collection. Form OPM 2809-EZ2, Open Season Health Benefits Enrollment Change, is used by annuitants only at Open Season to elect a change in health benefits coverage.

Approximately 38,315 OPM 2809-EZ2 forms are completed per year. Each form takes approximately 30 minutes to complete. The annual burden is 19,158 hours.

A draft copy of this form is appended to this notice.

DATES: Comments on this proposal should be received within 3 calendar days from the date of this publication. OMB will act on this clearance within 4 calendar days after the close of the comment period.

ADDRESSES: Send or deliver comments to—


FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—
SEcurities AND EXchANGE COMMISSION
[Release No. 34-30798; File No. SR-MSRB-92-2]

Self-Regulatory Organizations; Order Approving Proposed Rule Change of the Municipal Securities Rulemaking Board Relating to Professional Qualifications


I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78ss(b)(1), on March 3, 1992 the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to amend Board rule G-3, concerning professional qualifications. The rule change revises the organization of the rule and deletes the "grandfathering" language as a means of qualification as a municipal securities principal.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 30694 (April 17, 1992), 57 FR 15343. The Commission received no comments on the proposal. This order grants approval of the proposed rule change. However, at the Board's request, the effectiveness of the proposed rule will be delayed for a period of 90 days following approval, so that individuals may have adequate time to verify their qualification registrations with the appropriate regulatory agencies and ensure that their registrations are accurate, particularly those individuals who have been acting as municipal securities principals or municipal securities representatives with the belief that their records indicate that they were "grandfathered."

II. Description of Proposed Rule Change

The Board rules set minimum qualification standards for dealers and their associated persons. The Board has defined four categories of associated persons: Municipal securities representative, municipal securities principal, municipal securities sales principal, and financial and operations principal. Each of these categories has its own set of standards and qualification requirements to maintain those standards. Under rule G-2, governing standards of professional qualifications, every dealer must meet professional qualification standards before effecting any transaction in municipal securities. Rule G-2 also is applicable to every associated person of the dealer who will engage in municipal securities activities.

The application of the professional qualification standards is delineated in rule G-3. Specifically, rule G-3 prescribes qualification examinations and provides for waiver of an examination in special circumstances. Rule G-3 requires that municipal securities professionals take and pass examinations prior to being qualified to engage in municipal securities representative activities or to supervise municipal securities activities as principals. The rule also requires a dealer to have a certain number of municipal securities principals and financial and operations principals to ensure that its activities in municipal securities are being adequately supervised, and requires that a candidate entering the municipal securities industry for the first time as a representative serve an apprenticeship of at least 90 days.

Reorganization of Rule G-3

Rule G-3 currently is arranged according to the following general categories: the definitions of the four categories of associated persons, numerical requirements for municipal securities principals and financial and operations principals, the qualification requirements of the four categories of associated persons, provisions concerning the confidentiality of the qualification requirements, provisions concerning the retaking of qualification examinations, and provisions concerning employment (relating to the apprenticeship of municipal securities representatives).

The proposed rule change revises the organization of the rule into the following headings:

(a) Municipal Securities Representative
   (i) Definition
   (ii) Qualification Requirements
   (iii) Apprenticeship

(b) Municipal Securities Principal
   (i) Definition
   (ii) Qualification Requirements
   (iii) Numerical Requirements

(c) Municipal Securities Sales Principal
   (i) Definition
   (ii) Qualification Requirements

(d) Financial and Operations Principal
   (i) Definition
   (ii) Qualification Requirements
   (iii) Numerical Requirements

(e) Confidentiality of Qualification Examinations

(f) Retaking of Qualification Examinations

(g) Waiver of Qualification Requirements
The reorganization of rule G-3 seeks to make the presentation of the rule’s requirements more understandable. The definitions, qualification requirements, and numerical and apprenticeship requirements, if applicable, have been brought under the major headings of each category of associated person. In reorganizing the rule’s presentation, no additional qualification requirements have been placed in the rule. The section on qualification requirements for municipal securities sales principals was revised to reflect that the General Securities Sales Supervisor Qualification Examination is the appropriate examination for qualification in that associated person category.

Numerical Requirements

Rule G-3(6) currently contains the numerical requirements for municipal securities principals and financial and operations principals. The numerical requirements set forth a minimum number of municipal securities principals required to be associated with a dealer engaging in a municipal securities business. An NASD-member firm that conducts a general securities business is required to have at least one municipal securities principal. A dealer that has fewer than eleven associated persons employed in any capacity on a full-time basis must have at least one municipal securities principal. All other dealers must have at least two municipal securities principals. The proposed rule change would place the numerical requirements for municipal securities principals in revised section (b) with the definition and qualification requirements of municipal securities principals.

The numerical requirement for financial and operations principals has been placed in revised section (d) with the definition of and qualification requirements for financial and operations principals. Every dealer, except for bank dealers, is required to have at least one associated person, its chief financial officer, qualified as a financial and operations principal. The individual with the policy-making authority for the processing and clearance of municipal securities for a bank dealer is required to qualify as a municipal securities-principal. The numerical requirement for financial and operations principals also does not apply to dealers that function solely as “introducing brokers.”

No substantive changes were made to the provisions on numerical requirements.

Apprenticeship

Rule G-3(1), governing employment, currently contains a description of the 90-day apprenticeship period. An individual who first becomes associated with a dealer in a representative capacity (whether as a municipal securities representative or general securities representative) and who has not previously qualified as a municipal securities representative or general securities representative must complete a period of apprenticeship. In the proposed rule change, the requirements of this section have been placed in section (a) along with the definition and qualification requirements of municipal securities representatives. In addition, language has been added to the rule to clarify that prior experience, of at least 90 days as a general securities representative, mutual fund salesperson, or government securities representative, would fulfill the apprenticeship requirement.

Confidentiality of Qualification Examinations and Retaking of Qualification Examinations

Revised sections (e), on confidentiality of the qualification examinations, and (f), on retaking of qualification examinations, have not been substantively revised. Section (e) sets forth strict prohibitions against activities that would compromise the confidential nature of a Board examination or its purpose as a test of an individual’s professional qualifications. Section (f) imposes specified time periods before an individual may retake a failed examination. There is no provision in the rule that allows these time period restrictions to be waived under any circumstances.

Waiver of Qualification Requirements

The proposed rule change includes a new section (g), governing waiver of qualification requirements. New section (g) presents under one heading the waiver provisions applicable to the four associated person qualification examinations and the apprenticeship period for municipal securities representatives as currently contained in various sections throughout the rule. The waiver is granted only in extraordinary circumstances—it is not a means to circumvent the intent and spirit of the examination or the apprenticeship requirement. For the most part, the Board expects a candidate to demonstrate competence by examination. The decision to grant a waiver request is made by the appropriate regulatory body that has primary jurisdiction over the dealer—either the NASD or one of the federal bank regulatory agencies. Waiver requests are made directly to the organization that regulates the applicant’s dealer.

Deletion of “Grandfathering” Provisions

Individuals seeking to qualify at this time in any of the four categories of associated persons are required to take qualification examinations or obtain a waiver from the qualification requirements. For a period of time following the development of the current qualification rules and their implementation, certain industry professionals became qualified as municipal securities representatives or municipal securities principals based on designated qualification credentials in a specified area at a specified time. Qualification through this means was known as “grandfathering.”

An individual could qualify as a municipal securities representative by “grandfathering” if one or more of the following criteria had been met:

1. The individual was functioning as a municipal securities representative on December 1, 1975, and continuously functioned in this capacity through July 14, 1978;
2. The individual was qualified as a general securities representative or a general securities principal by the NASD on July 14, 1978;
3. The individual was qualified in a general securities supervisory capacity (branch manager or allied member) with a national securities exchange on July 14, 1978;
4. The individual was associated with a “SEC only” (“SEC0”) firm as a qualified general securities representative or principal on July 14, 1978, or
5. The individual began functioning as a municipal securities representative after December 1, 1975, was qualified at that time as a general securities representative or principal or in a general securities supervisory capacity, and continuously functioned as a municipal securities representative from that time until July 14, 1978.

An individual could qualify as a municipal securities principal by “grandfathering” if one or more of the following criteria had been met:

1. The individual was functioning as a municipal securities principal on December 1, 1975, and continuously functioned in this capacity through November 28, 1979;
2. The individual was qualified as a general securities principal with the NASD on November 28, 1979;
The proposed rule change clarifies and simplifies the qualification requirements of rule G-3 by removing the reference to the "grandfathering" provisions. The "grandfathering" provisions are no longer relevant to anyone seeking to qualify as a municipal securities principal or municipal securities representative at this time. The proposed rule change does not affect the qualification status of those individuals who previously have qualified as municipal securities principals or municipal securities representatives through "grandfathering." However, qualifications through "grandfathering" do not mean that an individual is always qualified in a particular category. A municipal securities representative ceasing to be an associated person with a dealer for two years or more loses his or her qualification status as a municipal securities representative. A municipal securities principal ceasing to supervise in his or her area of responsibility for two years or more loses qualification status as a municipal securities principal.

III. Discussion and Conclusion

The Commission finds that approval of this proposed rule change is consistent with the Act and the rules and regulations thereunder applicable and, in particular, the requirements of section 155(b)(2)(A) of the Act, which provides that the rules of the Board, as a minimum, shall ensure that municipal securities exchanges, as a general securities supervisory capacity, and continuously function as a municipal securities principal from that time until November 28, 1979.

The proposed rule change clarifies and simplifies the qualification requirements of rule G-3 by removing the reference to the "grandfathering" provisions. The "grandfathering" provisions are no longer relevant to anyone seeking to qualify as a municipal securities principal or municipal securities representative at this time. The proposed rule change does not affect the qualification status of those individuals who previously have qualified as municipal securities principals or municipal securities representatives through "grandfathering." However, qualifications through "grandfathering" do not mean that an individual is always qualified in a particular category. A municipal securities representative ceasing to be an associated person with a dealer for two years or more loses his or her qualification status as a municipal securities representative. A municipal securities principal ceasing to supervise in his or her area of responsibility for two years or more loses qualification status as a municipal securities principal.


drafting of the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-14481 Filed 6-18-92; 8:45 am]

BILLING CODE 8010-01-M

(Release No. 34-30792; File No. SR-PTC-92-07)

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Relating to the Eligibility of Certain Securities Guaranteed by the United States Department of Veterans Affairs


Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on May 29, 1992, Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-PTC-92-07) as described in Items I and II below, which items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments from interested persons and to grant approval of the proposed rule change on an accelerated basis until December 31, 1992.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change provides that PTC may designate as eligible for deposit with PTC certain securities guaranteed by the United States Department of Veterans Affairs (commonly referred to as the "Veterans Administration" or "VA") and backed by the full faith and credit of the United States.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to designate certain new issues of securities that will be guaranteed by the Veterans Administration (the "VA securities") as eligible securities under Article I, Rule 2 of PTC's Rules. Real Estate Mortgage Investment Conduits ("REMIC") will be issued by a trust and guaranteed by the Veterans Administration pursuant to 38 U.S.C. 3720 h(1) and (2) (as amended by Public Law 102-291, enacted on May 20, 1992, which granted the VA temporary authority to guarantee certain new issues through December 31, 1992). On the closing for issuance of the securities under this program, the issuing trust will receive an opinion of the General Counsel of the VA to the effect that the VA's obligations under the VA guarantee constitute absolute and unconditional general obligations of the United States, for which the full faith and credit of the United States is pledged.

PTC has been advised that the Veterans Administration plans to issue three REMIC issues during the balance of 1992. Each issue will be comprised of approximately eight to ten tranches and each tranche will constitute a "security" within the PTC definition of "securities." The anticipated total face value amount of each issuance is approximately $350,000,000.

PTC's current system will accommodate the VA securities. Because the VA securities are comparable to GNMA's, no substantive operational change need to be made to PTC's computer processing system. For example, it is expected that there will be daily settlement of the VA securities. Currently, a substantial portion of GNMA's settle daily. There will be a single monthly payment date for principal and interest ("P & I") on the VA securities. GNMA I currently pays on the 15th of the month and PTC

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distributes P & I on payment date plus one. GNMA II currently pays on the 20th of the month, and PTC pays on that date. Therefore, PTC's system is capable of making distributions of P & I on the same day as payment date. The VA securities will be registered in the name of PTC's custodian bank, MBSCC & Co., and the physical certificates will be held in custody for PTC by a custodian bank (currently Chemical Bank) as is the case for GNMA securities.

The volume of the VA securities to be deposited at PTC (estimated total amount of $1 billion by the end of 1992) is modest compared to the total face amount of GNMA securities now on deposit at PTC ($90 billion) and is expected to have comparably small impact on PTC's overall transaction volume. P & I distributions will total less than $10 million per month by year-end 1992 (compared to $5 to $8 billion per month for GNMA I). Accordingly the impact on PTC's overall transaction processing or P & I disbursement facilities. PTC has tested its securities processing system and determined that it can accommodate the VA securities.

Although PTC has not previously handled any REMIC issues, the processing and handling of these VA REMIC issues as eligible securities does not necessitate any change in PTC's rules or affect the rights of its participants. Because the VA REMICs will be functionally comparable to GNMA securities, PTC's rules and procedures are applicable, without change, and govern PTC's and its participants' rights and obligations with respect to the VA securities. Finally, the fees imposed by PTC for providing depository services for VA securities will be the same as those in effect for GNMAs.

(b) Since the proposed rule change provides for the addition of securities as eligible for deposit in PTC and the consequent availability of the efficiencies of PTC's book-entry depository and settlement services with respect to those securities, it is consistent with the requirement of section 17A(b)(3)(F) of the Act requiring that the rules of a clearing agency be designed to promote the prompt and accurate settlement of securities transactions. The Commission believes that this proposal furthers the perfection of the national system for the clearing and settlement of securities transactions, because it will allow the VA REMIC to be processed within a centralized, electronic book-entry environment instead of a decentralized, manually intensive physical settlement environment.

PTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Such accelerated approval will not necessitate any change in PTC's processing and handling of these VA REMICs. In fact, the physical settlement of securities transactions and to remove impediments to the prompt and accurate settlement of securities transactions. The VA securities will be maintained in the physical custody of a commercial bank custodian in the same manner as are the GNMA securities currently held by PTC, and like services will be provided for VA securities as for GNMA securities consistent with the safeguarding of securities and funds in the custody and control of PTC or for which PTC is responsible.

The Commission believes PTC's proposal to designate VA guaranteed securities as eligible securities for deposit with PTC is consistent with the Act and particularly with section 17A of the Act. PTC has gained almost four years experience with GNMAs. VA securities have many of the same general attributes as GNMAs (e.g., the securities are issued in physical form and are backed by the full faith and credit of the United States). The Commission believes PTC's experience with GNMAs serves as a good foundation for handling REMICs. In addition, the VA REMIC program will provide PTC valuable experience in the handling of REMIC-type securities.

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that this proposal furthers the perfection of the national system for the clearance and settlement of securities transactions because it will allow the VA REMIC to be processed within a centralized, electronic book-entry environment instead of a decentralized, manually intensive physical settlement environment.

PTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the Federal Register. The issuance of the VA securities pursuant to 38 U.S.C. 3720 h (1) and (2) [as amended by Public Law 102-291, enacted on May 20, 1992] will occur on or about June 25, 1992. PTC has requested accelerated effectiveness of the proposal in order to give PTC and its participants sufficient time to prepare for the deposit of VA securities upon issuance. The Commission, therefore, believes there is good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Such accelerated approval will permit PTC to make eligible for deposit at PTC the REMICs that put the V plans to issue on or about June 25, 1992.

The authorization for new guarantees by the VA terminates on December 31, 1992. PTC as represented to the Commission that it will submit a subsequent rule filing in respect of VA securities issued after December 31, 1992. The Commission, therefore, is approving the proposal on a temporary basis until December 31, 1992. The expiration of the temporary approval period and the submission by PTC of a proposed rule change at that time will not affect the eligibility of VA securities that are already on deposit at PTC. VA securities that were issued and made eligible for deposit at PTC prior to December 31, 1992 will remain eligible.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR-PTC-92-07 and should be submitted by July 10, 1992.


V. Conclusion

On the basis of the foregoing, the Commission preliminarily finds that PTC’s proposed rule change is consistent with the Act and in particular with section 17A of the Act.

It is therefore Ordered, under section 19(b)(2) of the Act, that the proposed rule change (File No. SR-PTC-92-07) be, and hereby is, approved until December 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. MacFarland,
Deputy Secretary.

[FR Doc. 92–14482 Filed 6–18–92; 8:45 am]
BILLING CODE 8010–01–M

[Rel. No. IC-18778; 812–7940]

First Investors Corporation, et al.;
Conditional Temporary Order

June 12, 1992.

AGENCY: Securities and Exchange
Commission ("SEC" or “Commission”).

ACTION: Temporary Order and Notice of
Application for Permanent Exemption
under the Investment Company Act
of 1940 (the "Act").

APPLICANTS: First Investors Corporation,
First Investors Management Company,
Inc., Executive Investors Corporation,
Executive Investors Management
Company, Inc., and First Investors Life
Insurance Company.

RELEVANT ACT SECTIONS: Permanent
order requested, and conditional
temporary order granted, under sections
9(c) granting an exemption from section
9(a).

SUMMARY: Applicants have been granted
a conditional temporary order, and have
requested a permanent order, exempting
them from the prohibitions of section
9(a), solely with respect to the injunction
erected by the United States District
Court for the Southern District of New
York enjoining applicants from
violations of section 10(b) of, and rule
10b–5 under, the Securities Exchange
Act of 1934 (the "Exchange Act") and
section 17(a) of the Securities Act of
1933 (the "Securities Act"), subject to
each of the conditions contained in the
application. The temporary order will
expire on the earlier of one year from
the date of its issuance, or the date on
which the Commission takes final action
on the application for a permanent order
exempting applicants from the
prohibitions of section 9(a).

APPLICANTS: First Investors Corporation,
First Investors Management Company,
Inc., Executive Investors Corporation,
Executive Investors Management
Company, Inc., and First Investors Life
Insurance Company.

Applicants' Representations

1. First Investors Corporation ("FIC") is a broker-dealer registered under the Exchange Act. FIC serves as the
counderwriter or underwriter for 12
registered investment companies, which
are comprised of 41 different funds or
series of funds, including First Investors
Fund for Income, Inc. ("FIFI"), First
Investors High Yield Fund, Inc.
("FIHY") First Investors Series Fund
(which consists of 4 series), First
Investors Global Fund, Inc., First
Investors Cash Management Fund, Inc.,
First Investors Tax-Exempt Money
Market Fund, Inc., First Investors
Insured Tax Exempt Fund, Inc., First
Investors New York Insured Tax Free
Fund, Inc., First Investors Multi-State
Insured Tax Free Fund (which consists of 17 series), First Investors Government
Fund, Inc., First Investors Life Series
Fund (which consists of 9 series), and
First Investors U.S. Government Plus
Fund (which consists of 3 series).

2. FIC also serves as a sponsor and
underwriter to First Investors single
payment and periodic payment plans for
investment in First Investors Global
Fund, Inc., First Investors Government
Fund, Inc., First Investors Insured Tax
Exempt Fund, Inc., FIFI, and FIHY. FIC
maintains approximately 100 branch
offices in 36 states, and is registered as
a broker-dealer in 49 states.

3. First Investors Management
Company, Inc. ("FIMCO") is a broker-
dealer registered under the Exchange
Act. FIMCO serves as the counderwriter
with FIC for the twelve registered
investment companies named above.
FIMCO also is an investment adviser
registered under the Investment
Advisers Act of 1940 (the "Advisers
Act").

4. FIMCO serves as the investment
adviser for each of the funds or series of
funds of which FIMCO and FIC act as
underwriter, including FIFI and FIHY, as
well as First Investors Special Bond
Fund, Inc.

5. Executive Investors Corporation
("EIC") is a broker-dealer registered
under the Exchange Act. EIC serves as
the underwriter of each of the three
series of Executive Investors Trust, a
registered management investment
company. In this capacity, EIC does not
maintain a retail sales force or directly
market shares of Executive Investors
Trust to the investing public. EIC has
entered into dealer arrangements with
independent registered broker-dealers
that directly market Executive Investors
Trust to the public.

6. Executive Investors Management
Company, Inc. ("EIMCO") is an
investment adviser registered under the
Advisers Act. EIMCO serves as the
investment adviser for each of the three
series of Executive Investors Trust.

7. First Investors Life Insurance
Company ("First Investors Life"), a
stock life insurance company
incorporated under the laws of the State
of New York, offers life insurance,
annuities, and accident and health
insurance. First Investors Life serves
as sponsor or depositor for First Investors
Life Variable Annuity Fund A, First
Investors Life Variable Annuity Fund C,
and First Investors Life Level Premium
Variable Life Insurance, each of which is
a registered unit investment trust.

1 Pursuant to an order issued last year by the
Commission, new payments received under the FIFI
and FIHY plans are being invested in shares of the
First Investors Government Fund, Inc. See First
Investors Corp., Investment Company Act Release
No. 17942 [Feb. 10, 1991] (notice) and 17981 [Feb. 5,
1991] (order).
Shares of these unit investment trusts are sold exclusively through FIC, and First Investors Life does not maintain an independent retail sales force with respect to these products.

8. All of the registered management investment companies and unit investment trusts described above are collectively referred to as the “First Investors Investment Companies.”

9. FIC, FIMCO, EIC, EIMCO, and First Investors Life are wholly owned subsidiaries of First Investors Consolidated Corporation (“FICON”). FICON is a closely-held corporation of which Messrs. David D. Grayson and Glenn O. Head each own or control approximately 34% of the outstanding voting shares.

10. FIFI and FIHY are both open-end management investment companies organized under the laws of the State of Maryland and registered under the Act. As of June 8, 1992, FIFI had net assets of approximately $432 million and FIHY had net assets of approximately $207 million. FIFI and FIHY are diversified funds which invest primarily in high-yield, high-risk, debt securities.

11. On June 11, 1992, the Commission filed a complaint (the “Complaint”) in the United States District Court for the Southern District of New York (the “Court”) against FIC alleging, among other things, that from in or about 1984 through in or about 1990, FIC violated section 10(b) of the Exchange Act, rule 10b-5 thereunder, and section 17(a) of the Securities Act. The Commission alleges that, in connection with the sale of shares of FIFI and FIHY, FIC directly or indirectly, through its representatives, made misleading statements of material fact regarding the risk of loss of principal invested in FIFI and FIHY and the return on an investment in FIFI and FIHY, and omitted to state material facts necessary in order to make the statements made regarding those subjects, in light of the circumstances under which they were made, not misleading. The Commission also alleges, among other things, that during that period FIC, directly or indirectly, recommended and sold shares of FIFI and FIHY to investors for whom such shares were unsuitable investments.

12. On June 12, 1992, FIC consented to (the “Consent”), and the Court entered a final judgment (the “Judgment”), enjoining and restraining FIC from violating the foregoing sections and rule, and requiring FIC to pay $24.7 million, representing sales commissions and management fees received by FIC and certain affiliated firms in connection with the sale of shares of FIFI and FIHY from in or about November 1984 to in or about November 1990, plus prejudgment interest, less $4,436,700 representing the amount FIC has paid or agreed to pay in connection with settlements with certain state regulators.

13. On June 12, 1992, the Commission commenced an administrative proceeding (the “Administration Proceeding”) against FIC pursuant to section 15(b)(4) of the Exchange Act to determine what action, if any, was necessary in light of the Consent and the Judgment. In the order instituting proceedings, making findings, and imposing remedial sanctions under the Administrator Proceeding (the “Order”), the Commission censured FIC and ordered FIC to comply with certain undertakings regarding its sales, training, supervisory, and compliance policies and procedures.

14. On June 12, 1992, the Commission commenced an administrative proceeding (“FIMCO Administrative Proceeding”) against FIMCO pursuant to section 203(e) of the Advisers Act and section 9(b) of the Act alleging that FIMCO had violated section 17(j)(1) of the Act and rule 17j-1 thereunder by failing to timely file timely rule 17j-1 reports as required by FIMCO’s code of ethics. In the order instituting proceedings, making findings, and imposing remedial sanctions under the FIMCO Administrative Proceeding (the “Section 17(j)(1) Order”), the Commission censured FIMCO and ordered FIMCO to comply with certain undertakings regarding compliance with section 17(j)(1) of the Act and rule 17j-1 thereunder. Such undertakings include: (a) the adoption, implementation, and maintenance of procedures reasonably designed to ensure compliance with section 17(j)(1) of the Act and rule 17j-1 thereunder; (b) employment of a full-time compliance officer who, among other things, will enforce FIMCO’s procedures adopted pursuant to (a) above; (c) the prompt development and distribution to all access persons and supervisory personnel of FIMCO of a compliance manual containing provisions reasonably designed to ensure compliance with section 17(j)(1) of the Act and rule 17j-1 thereunder; and (d) for the year beginning July 1, 1991, the conduct of a review of FIMCO’s compliance with section 17(j)(1) of the Act and rule 17j-1 thereunder, and the submission to the Commission’s staff of a report detailing the results of such review on or before September 1, 1992.

15. On November 8, 1990, the Securities Division of the Commonwealth of Massachusetts instituted an administrative action against, among other persons, FIC, FIMCO, FICON, FIFI, and FIHY (collectively, the “Respondents”). Also on November 8, 1990, the State of New York filed a complaint in the Supreme Court of the State of New York (New York County) alleging that each of the Respondents had violated that state’s securities laws. The State sought both preliminary and permanent injunctive relief, in addition to other relief, for actions taken in connection with the sale of shares of both FIFI and FIHY, and for the use of deficient prospectuses.

16. Following commencement of the New York and Massachusetts proceedings on November 8, 1990, FIFI and FIHY suspended sales of new shares. Pursuant to stipulations entered into by Respondents with the State of New York and with the Commonwealth of Massachusetts on December 14, 1990, New York withdrew its motion for, and Massachusetts agreed not to seek, preliminary injunctive relief against Respondents. Respondents, including FIFI and FIHY, agreed to certain restrictions and record maintenance requirements and to resume sales of shares of FIFI and FIHY only upon 30 days’ prior notice to New York and Massachusetts.

17. On October 15, 1991, pursuant to an ex parte request for preliminary relief by the State of New York, the New York Supreme Court ordered Respondents to show cause why, among other relief, there should not be a freeze on certain asset transfers by the Respondents and the appointment of a receiver for the corporate Respondents. Respondents have opposed this relief. In connection with this, on November 15, 1991, the corporate Respondents (other than FIFI and PIHY) placed $25 million in escrow from which payments for settlements or judgments, including the Commission settlement described above, can be made. Pending a determination of the order to show cause, Respondents other than FIFI and FIHY currently are being restrained temporarily by the New York Supreme Court from certain asset transfers.

18. Since the institution of the New York and Massachusetts inquiries, other securities regulators commenced inquiries and have begun investigations into FIC’s sales practices with respect to FIFI and FIHY and, as described in the application, some states have filed their own lawsuits.

19. In addition to the state actions, seven private class actions (six in federal district court and one in state court) and two derivative actions (both in federal district court) have been filed against Respondents. Five of the federal class actions have been consolidated as In Re First Investors Securities
Litigation. A private class action, Schmaeling v. First Investors Corp., was filed against Respondents in the Supreme Court of New York (New York County). The two derivative actions are both captioned Penzer v. First Investors Corp., one of which was filed on behalf of FIFI, and the other on behalf of FIHY. In addition, individual shareholders or groups of shareholders of FIFI and FIHY have brought actions in state and federal courts and arbitration proceedings against certain of the Respondents.

20. The above actions (collectively, the “State and Civil Complaints”) allege that Respondents engaged in unlawful sales practices and did not make proper disclosure in FIFI’s and FIHY’s prospectuses. The State and Civil Complaints also allege, among other things, that the sales force that solicited purchases of FIFI’s and FIHY’s shares was inadequately trained and supervised; that the sales force represented or implied that FIFI’s and FIHY’s securities were safe, “guaranteed” or “insured,” and suitable for potential investors without regard to the investors’ investment objectives, income, or net worth; that the sales force improperly emphasized the potential yield rather than the total return of investments in FIFI and FIHY, made improper comparisons between FIFI and FIHY and bank instruments, and did not disclose applicable sales loads; and that the sales force did not make timely delivery of prospectuses to certain investors and in some cases advised or implied that investors should ignore the information contained therein. Further, the State and Civil Complaints allege that FIFI’s and FIHY’s prospectuses used in connection with sales contained material misstatements and omissions with respect to, among other things, the selection, evaluation, and diversification of investments in FIFI’s and FIHY’s portfolios and relative risk versus return on investments in junk bonds. In addition to the allegations discussed above, the two derivative actions allege that FIFI and FIHY paid excessive advisory, underwriting, and transfer agency fees and expenses, and that the boards of directors breached their fiduciary duties to FIFI and FIHY by accepting or approving such fees.

21. The relief sought by the State and Civil Complaints includes the payment of restitution and damages by Respondents, restrictions and/or prohibitions on Respondents’ involvement in the offer or sale of securities, and the appointment of a receiver to take possession of property derived unlawfully.

22. To date, settlements have been reached with several states that provide for payments to certain investors in FIFI and FIHY, or state regulators, and for the implementation of certain training and compliance procedures by the Respondents. The settlements also permit the sale of FIFI and FIHY shares in the settling states. FIFI and FIHY provided notice to New York and Massachusetts of their intent to resume sales of their shares in those states in which settlements have been made.

23. An agreement in principle has been reached and filed with the Court concerning settlement of all of the class actions and derivative actions. That agreement is contingent upon satisfaction of several material conditions, including class certification, court approval, and other regulatory approvals, some of which have been satisfied.

Applicants’ Legal Analysis

1. Section 9(a) of the Act disqualifies any person or company from serving or acting in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company if such person, or an affiliated person of such person, has, by reason of misconduct, been permanently or temporarily enjoined by an order, judgment, or decree from any court of competent jurisdiction from acting as an underwriter, broker, dealer, or investment adviser, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.

2. The prohibitions in section 9(a) apply to FIC as a result of the Judgment entered against FIC. In addition, because FIMCO, EIC, EIMCO, and First Investors Life are under common control with FIC, and are thus affiliated persons of FIC by virtue of section 2(a)(3) of the Act, the section 9(a) prohibitions also apply to FIMCO, EIC, and EIMCO, and to First Investors Life.

3. Section 8(c) of the Act provides that, upon application, the Commission shall grant an exemption from the provisions of section 9(a) either unconditionally or on appropriate temporary or other conditional basis if it is established that: (a) the prohibitions of section 9(a), as applied to the applicant, are unduly or disproportionately severe; or (b) the conduct of such person has been such as to not make it against the public interest or protection of investors to grant such application.

4. Applicants assert that the Commission should grant an exemption from the prohibitions of section 9(a) of the Act, based on the following:

a. Denial of the requested relief and the disqualification of FIC, FIMCO, EIC, and EIMCO would not be in the interests of, and in fact, would be harmful to shareholders of all the First Investors Investment Companies due to, among other factors, the need to incur substantial costs in obtaining shareholder approval of new investment advisers.

b. Applicants have taken, and continue to take, steps designed to enhance their sales training, compliance, and supervision programs, including: (i) Retention of an independent, outside consultant (the “Broker-Dealer Consultant”) to examine and report on the sales training, supervisory, and compliance practices and procedures of FIC and the creation of a program based upon the Broker-Dealer Consultant’s recommendations specifically designed to strengthen the sales training, supervision, and compliance systems of FIC; (ii) development and implementation of a new sales presentation; (iii) establishment of a new training program; (iv) a substantial review of, and revisions to, FIC’s compliance manual; (v) retention of outside legal counsel to examine and report on compliance with the Act’s requirements; and (vi) preparation of a new portfolio managers’ compliance manual.

c. Applicants have taken the remedial steps described below, and all such steps described with respect to FIC and FIMCO also have been applied to the other respondents to the extent relevant.

1. FIC has implemented various changes in senior management. All applicants (other than First Investors Life) have hired Michael S. Miller as Chief Executive Officer with full authority over their operations. Prior to being employed by applicants, Mr. Miller was in private law practice for thirteen years. Mr. Miller has ultimate responsibility for overseeing the development and implementation of all policies and procedures, including those relating to sales training, supervision, and compliance systems. FIC also has hired as general counsel Susan E. Bryant, Esq., a former Securities Administrator of Oklahoma. Senior officers of EIC are identical to those of FIC.

ii. FIC has formed a separate compliance department, which also oversees the compliance activities of
EIC, and has increased its compliance personnel to ten persons. The department director, aided by a full-time administrative assistant, manages the compliance department and oversees all duties performed by compliance personnel, including conducting sales office inspections, providing compliance training for sales personnel, responding to customer complaints and regulatory inquiries, and handling the questions and problems regarding sales personnel. A compliance manager and subordinates research and respond to customer complaints, inquiries, and questions and maintain computerized databases relating to customer complaints and sales office inspections. In addition, two securities examiners conduct and follow-up on sales office inspections and handle compliance questions and problems. A compliance specialist and her assistant review sales activity and monitor all trading for potential breakpoint violations and excessive trading or switching. In addition, all customer complaints forwarded by a regulator or involving complex issues are reviewed by an attorney within the legal department. The FIC legal department also provides legal services to the other applicants.

d. Applicants have been advised by the First Investors Investment Companies which are management investment companies that: (i) Their respective boards of directors or trustees (the "Directors") have determined that the retention of FIC, EIC, FIMCO, or EIMCO as distributors and advisers, respectively, is in the best interests of the funds' shareholders; (ii) to the extent that information has been available, the Directors have reviewed the circumstances pertinent to the Complaint, the Consent and the Judgment, and they have considered the prior services rendered to such funds and trusts by FIC, EIC, FIMCO, and EIMCO; and (iii) after review and consideration of the alternatives, including consultation with legal counsel who is experienced in the Act for the Directors of the funds who are not "interested persons" of those investment companies as defined in section 2(a)(19) of the Act (the "Independent Directors"), and including consideration of such factors as they deemed appropriate, the Directors of the First Investors Investment Companies which are management investment companies believe that FIC, EIC, FIMCO, and EIMCO are in the best position to provide the necessary services to such funds and trusts.

e. FIC has served as a distributor of mutual funds shares over 60 years.

Except for one case in 1983, prior to the institution of the proceeding by the states of New York and Massachusetts, FIC has not been found to have engaged in sales practices involving fraud or misrepresentations by any regulatory authority. The activities giving rise to the Complaint and Administrative Proceeding took place during the period between 1984 and 1990 and relate solely to the sale and distribution of FIFI and FIHY shares during that period. While the FIMCO Administrative Proceeding was based upon violation of certain reporting requirements under section 17(j) of the Act and rule 17f-4, no allegations have been made in the Complaint, the Administrative Proceeding, or in the various State and Civil Complaints relating to the management or advisory services provided by FIMCO to FIFI or FIHY, or to others, nor did those activities relate to any of the underwriting and investment activities of EIC and EIMCO or the activities of First Investors Life as depositor or sponsor of the unit investment trusts. Similarly, none of the activities giving rise to the Complaint and the Administrative Proceeding concern the sale and distribution of any of the other First Investors Investment Companies.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order of the Commission granting relief:

1. Any temporary exemption issued pursuant to this application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigations of, or administrative proceedings against, applicants pursuant to the Act, including, without limitation, any administration proceeding under section 9(b) of the Act or the consideration by the Commission of any application for exemptions from statutory requirements under the Act, including without limitation, the consideration of the permanent exemption pursuant to section 9(a) of the Act; requested pursuant to this application or the revocation or removal of any temporary exemptions granted under the Act in connection with this application.

2. FIC will comply with every provision of the Consent, the Order, and the Section 17(j) Order.

3. Outside counsel to FIC has retained the Broker-Dealer Consultant to conduct a review of, and to report and make recommendations to, FIC's sales, training, supervisory, and compliance policies and procedures. The Broker-Dealer Consultant has submitted to outside counsel a draft report making recommendations for instituting new procedures and revising existing procedures, to provide for the regular and systematic supervision and monitoring of FIC's compliance, supervisory, and sales personnel, including regional and home office monitoring and supervision of branch office activities. Outside counsel has conveyed those recommendations to FIC. Within ten day after issuance of the temporary exemptive order requested herein, outside counsel will make available a copy of the Broker-Dealer Consultant's draft report to the Commission's staff for the internal use of the Commission, and its staff in determining whether to issue the permanent exemptive order requested herein. In addition, promptly upon request by the Special Reviewer (hereinafter defined) to be appointed pursuant to condition 10(a) of this notice, outside counsel will make available a copy of the Broker-Dealer Consultant's draft report to the Special Reviewer.

4. FIC completed a detailed written Action Plan to implement the recommendations of the Broker-Dealer Consultant's draft report regarding FIC's sales, training, supervisory, and compliance programs, and to institute procedures to prevent and detect violations of applicable state and federal securities laws and the rules and regulations of any national securities exchange, the National Association of Securities Dealers ("NASD"), or any other self-regulatory organizations of which FIC is a member. The Action Plan includes a review and assessment of the adequacy of FIC's current sales, training, supervisory, and compliance programs. The subjects to be covered by
the Action Plan shall include, without limitation, the following matters:

a. The monitoring and supervision of FIC's sales, training, supervisory, and compliance programs by senior management.

b. The monitoring and supervision of FIC's registered representatives by FIC's branch and sales complex managers.

c. The adoption and maintenance of uniform standards of sales training by FIC on a company-wide basis.

d. The solicitation of retail purchases and sales, and the suitability of trading activity in customer accounts, including the establishment of written suitability guidelines for specific investment products sponsored by FIC and sold by FIC's registered representatives.

e. The preparation and review of all prospectuses, scripts, visuals, and other materials used by FIC in the sale of an investment product sold by FIC or in training registered representatives to sell such products, to ensure that such materials comply with applicable state and federal securities laws and the rules and regulations of any national securities exchange, the NASD, or any other self-regulatory organizations of which FIC is a member.

f. The conducting of periodic training courses for all applicable personnel, including all registered representatives, branch and sales complex managers, and other supervisory personnel, regarding compliance procedures generally and the policies and procedures specifically adopted pursuant to the undertakings herein.

g. The adoption of written policies and procedures clearly delineating the responsibilities of FIC's compliance and legal departments with regard to the matters covered by the undertakings herein.

5. Within ten days of the entry of the Order, FIC will submit a copy of the Action Plan to the Commission's staff and make such changes or additions to the Action Plan as may be necessary to make it not unacceptable to the staff.

6. FIC has begun to implement the Action Plan and will implement fully the Action Plan as soon as possible, but no later than 30 days after the entry of the Order and thereafter will adopt, implement, and maintain adequate procedures with respect to FIC's sales, training, supervisory, and compliance programs, designed to prevent and detect violations of applicable state and federal securities laws and the rules and regulations of any national securities exchange, the NASD, or any other self-regulatory organizations of which FIC is a member.

7. Within 30 days of the entry of the Order, FIC will compile and disseminate to all registered representatives and supervisory personnel a revised compliance manual setting forth FIC's current compliance policies and procedures, including policies and procedures adopted pursuant to the undertakings herein, and will periodically update and review such manual and disseminate the revised manual to all registered representatives and supervisory personnel. FIC also will make a copy of such manual available to the Commission's staff.

8. Within 30 days of the entry of the Order, FIC will adopt procedures for annual internal audits of FIC's branch offices and sales complexes, which shall be designed reasonably to detect failures to comply with the policies and procedures adopted pursuant to the Broker-Dealer Consultant's report and the Order and any violation of applicable state and federal securities laws and the rules and regulations of any national securities exchange, the NASD, or any other self-regulatory organizations of which FIC is a member. FIC also will adopt procedures designed to assure that all failures and violations identified by such audits will be remedied or brought to the attention of the Commission's staff to perform a follow-up review and to prepare a report on whether FIC has adopted and is complying with the practices and procedures recommended in the Broker-Dealer Consultant's report and recommended FIC's undertakings herein. FIC will submit each such annual report to the Commission's staff within 90 days of the anniversary of the entry of the Order.

10. a. Applicants will retain, at their sole expense and within 30 days of the interim order requested herein, an independent special reviewer acceptable to the Commission ("Special Reviewer") who will prepare a report (the "Report") concerning, and make recommendations regarding, the manner in which applicants carry out and have carried out (during such past period as the Special Reviewer in his or her discretion deems appropriate for the preparation of the Report) their investment company activities. The purpose of the Report shall be to assist the Commission in determining whether applicants' investment company activities. The purpose of the Report shall be to assist the Commission in determining whether applicants, their management personnel, and controlling shareholders will conduct their business in compliance with such laws, rules, and regulations in accordance with applicable industry standards, and have implemented or are implementing systems reasonably designed to accomplish this goal. The Special Reviewer shall consider the extent to which past misconduct by applicants' management personnel and controlling shareholders affects applicants' ability to conduct their business properly in the future. Nothing herein shall preclude use by the Commission of information contained in the Report. In addition, applicants will not object if the Commission determines to disseminate publicly the Report.

b. The Independent Directors, with the advice of their independent legal counsel, have undertaken to review the Report and recommendations and to monitor on an ongoing basis compliance with those recommendations.

c. Applicants shall provide such cooperation as is requested of them by the Special Reviewer, including undertaking to obtain the cooperation of their employees or other persons under their control. Such cooperation shall include, without limitation, providing such information and documents (unless otherwise expressly provided in this notice) as the Special Reviewer reasonably may request concerning applicants' current, past, and proposed activities which are relevant to any of applicants' businesses described in section 9(a) of the Act, making employees of applicants available for interviews by the Special Reviewer as such assistants as the Special Reviewer may retain, access to applicants' computerized data, and access to applicants' premises; provided, however, That no provision contained in this application shall prevent the assertion of any applicable constitutional or legally recognizable privilege by any natural person on his or her behalf. Applicants and their legal counsel shall provide to the Special Reviewer all information and documents specifically requested by the Special Reviewer, without regard to any privilege or the work product doctrine, relating to past, present, and future compliance and internal audit activities which are relevant to any of applicants' businesses described in section 9(a); provided, however, That the Special Reviewer shall take into account the existence of a privilege in assessing his or her need for access to, or his or her disclosure of.
privileged information or documents, and shall keep any documents or information he or she obtains or prepares in connection with his or her review confidential and not disclose same to any person other than to the Commission or its staff or to the boards of directors of the First Investors Investment Companies.

d. Applicants shall not (i) compel, or require or attempt to compel or require, any employee, officer or agent, or his counsel, to disclose to anyone what information or testimony the employee has provided to the Commission, its staff or the Special Reviewer, except pursuant to lawful process in a civil action as to which the employee’s testimony is relevant; or (ii) take any adverse employment or other action against any person based in whole or in any part on or because of that person’s (A) decision to provide information or evidence to the Special Reviewer, or (B) declaration to disclose to applicants, their counsel, other employees, officers or counsel for any present or former employee, officer or agent what information or evidence was given to such persons or entities.

e. The Special Reviewer may communicate with the staff of the Commission in the course of performing his or her responsibilities; provided, however, That any such communication shall not be deemed to waive any privilege with respect to that communication or other information. Applicants shall not seek to invoke attorney-client or other privilege to prevent or restrict any such communication to the Commission or similarly object to the submission to the Commission by the Special Reviewer of any work papers, notes, schedules, transcripts or other documents or materials created, reviewed or obtained by the Special Reviewer in connection with his or her review (collectively, “Work Papers”). Applicants may request that the Commission afford any Work Papers of the Special Reviewer and the Broker-Dealer Consultant’s draft report confidential treatment in accordance with 17 CFR 200.63. In the event that the Commission or the Special Reviewer is requested to produce any Work Papers of the Special Reviewer or the Broker-Dealer Consultant’s draft report to third parties pursuant to subpoenas or otherwise, the person to whom the request is made will afford applicants and, if the request is made to the Special Reviewer, the Commission as well, five business days’ notice or, if not practicable, reasonable notice to allow applicants the opportunity to oppose such production.

The Special Reviewer may engage such assistance at applicants’ expense, as he or she, in his or her discretion, deems appropriate to carry out his or her duties.

f. The Special Reviewer, in his or her discretion, from time to time may transmit such information to the Independent Directors as he or she deems necessary or appropriate. Applicants shall not, and the First Investors Investment Companies have advised the applicants that the Independent Directors shall not, seek to invoke attorney-client or other privilege with respect to such information.

g. Within 30 days of the designation of the Special Reviewer, the Special Reviewer shall submit to the Commission, applicants, and the Independent Directors a comprehensive, detailed outline of the scope of, and protocol to be followed in performing, the required review. Thereafter, the Special Reviewer shall proceed expeditiously with his or her review.

h. The Special Reviewer may determine that there exists a reasonable basis for excluding a fund or trust (or any portfolio thereof) or any investment management practice from further review. Any such determination shall be in writing setting forth the basis therefor, and shall be promptly submitted to the Commission.

i. Within 180 days from the entry of the temporary order, applicants shall submit the Report to the Commission and to the Independent Directors.

j. Within 60 days of submission of the Report, applicants shall submit a report to the Commission and to the Independent Directors on the actions it has taken or will take in response to the recommendations contained in the Report, unless otherwise directed by the Commission within 30 days of its receipt of the Report, either as a result of the Commission’s own review of the recommendations or in response to any request by applicants or the Independent Directors not to implement any recommendation.

k. During his or her engagement and for a period of two years following submission of the Report to the Commission, unless the Commission first consents in writing, neither the Special Reviewer nor any law firm which he or she may retain shall represent any of the applicants or the First Investors Investment Companies, or any affiliate, officer, agent, or employee of any of them, in any capacity.

l. Applicants will reimburse the First Investors Investment Companies for all costs and expenses, if any, incurred by those investment companies in connection with the preparation of this application and in providing information to, or adopting recommendations of, the Special Reviewer.

m. Applicants will not make any assignment (as the term “assignment” is defined in section 2(a)(4) of the Act) of any contract to act as an investment adviser or underwriter of any fund, unless each such assignee has agreed, no later than the date of the assignment, that (i) it will provide such cooperation as is requested of it by the Special Reviewer to the same extent as is required by applicants, including undertakings to obtain the cooperation of its employees or other persons under its control, and (ii) it will maintain and make available all records for the period specified herein.

11. Pursuant to rule 8 of the Commission’s Rules of Practice, applicants hereby consent to the staff of the Commission advising the Commission regarding the subject matter of the application and waive any provisions of law or of the Commission’s rules that would prevent such ex parte communications and waive any claim or prejudice by the Commission based upon any communications by the staff with the Commission for the purpose set forth herein.

12. Pursuant to rules 8(b) and 16(b) of the Commission’s Rules of Practice, applicants hereby waive an initial determination by a hearing officer as to the matters set forth herein.

Temporary Order

The Commission has considered the matter and, without necessarily agreeing with all of the facts represented or all of the arguments asserted by applicants, finds that the issuance of a temporary order under section 9(c) of the Act, subject to the foregoing conditions, is not inconsistent with the public interest or the protection of investors.

Accordingly, It is hereby Ordered, under section 9(c) of the Act, that applicants be, and hereby are, granted a temporary exemption from the provisions of section 9(a) of the Act, solely with respect to the injunction entered by the United States District Court for the Southern District of New York enjoining applicants from violations of section 10(b) of, and rule 10b-5 under, the Exchange Act and section 17(a) of the Securities Act, subject to each of the conditions contained in the application, which conditions are expressly incorporated herein, until the earlier of the date on which the Commission takes final action...
on the application for a permanent order exempting applicants from the prohibitions of section 9(a), or one year from the date of this order.

By the Commission,
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 92-14403 Filed 6-18-92; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION
[Declaration of Disaster Loan Area #2559]
California, Amendment #2; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated June 6, 1992, to the President's major disaster declaration of May 2, to extend the deadline for filing applications for physical damage. The new deadline is July 15, 1992.

The termination date for filing applications for economic injury remains the close of business on February 2, 1993.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)
Bernard Kulik,
Assistant Administrator for Disaster Assistance.
[FR Doc. 92-14393 Filed 6-18-92; 8:45 am]
BILLING CODE 8010-01-M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Providence will hold a public meeting at 11 a.m. on Wednesday, August 5, 1992, at the Greenwood Inn Restaurant located on 1350 Jefferson Boulevard, Warwick, Rhode Island, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Joseph Loddo, District Director, U.S. Small Business Administration, 380 Westminster Street, Providence, Rhode Island 02903, (401) 528-4580.

Caroline J. Beezon,
Assistant Administrator Office of Advisory Councils
[FR Doc. 92-14395 Filed 6-18-92; 8:45 am]
BILLING CODE 8025-01-M

**Commencement of 3% Preferred Stock Repurchase Program**

**AGENCY:** U.S. Small Business Administration.

**ACTION:**
1. Notice of Commencement of 3% Preferred Stock Repurchase Pilot Program for Small Business Investment Companies Licensed under section 301(d) of the Small Business Investment Act of 1958, as Amended (Specialized SBICs); and,
2. Solicitation of Indications of Interest in the 3% Preferred Stock Repurchase Program from Specialized SBICs.

**SUMMARY:** This notice announces the implementation by the Small Business Administration (SBA) of the provisions of Public Law 101–162, enacted November 21, 1989. That law authorizes SBA to allow Specialized SBICs ("SBICs") to repurchase from SBA, at a price less than its par value, their outstanding 3% Preferred Stock held by SBA.

**INDICATIONS OF INTEREST:** With this notice, SBA is soliciting indications of interest from SBICs that wish to apply to SBA for the repurchase of their 3% Preferred Stock. Upon receipt of such indications of interest, SBA will notify the interested SBICs of the specific details of the Repurchase Program and the requirements for making an application and offer to SBA for the repurchase of 3% Preferred Stock.

Additionally, SBA will, at its sole discretion, select from the group of SBICs indicating interest in the program nine (9) such companies for a pilot program. The objective of the pilot program will be to test SBA's Repurchase Program procedures and to suggest changes to the procedures that might facilitate future transactions.

**PUBLIC NOTICE AND COMMENT:** SBA is also offering the public an opportunity for comments by interested parties.

**EFFECTIVE DATE:** This notice is effective on the date of its publication in the Federal Register.


**SUPPLEMENTARY INFORMATION:** Policy Statement, SBA's policy is to administer the Repurchase Program in such a way as to maximize the capacity of SBICs to provide financing to businesses owned by persons whose participation in the free enterprise system is hampered by social or economic disadvantage.

SBA will structure each transaction with the aim of:
1. Encouraging and facilitating the investment of new private capital into SBICs;
2. Conserving the cash resources of each participant;
3. Conserving the borrowing potential of each participant;
4. Conserving the direct and guaranty budget of the Specialized SBIC program;
5. Improving the financial status of the participating SBICs;
6. Rehabilitating (where necessary) weak SBICs to improve their financial and operating effectiveness without undue risk to SBA; and
7. Discouraging voluntary liquidations of SBICs and the premature surrender of licenses.

The methodology of computing the price at which the 3% preferred stock is sold back to an SBIC will be a function of four factors independent of any SBIC, and four factors that are variable with each SBIC. The independent factors are:
1. Average SBIC Treasury-based 10 Year rate.
2. Barron's Junk Bond Spread over Treasury.
3. Preferred stock dividend rate (3%).
4. The adjustment to the price for non-marketable status.
5. The four factors that are variable with each individual SBIC are:
   1. Number of years that dividends are in arrears.
   2. Financial Rating of SBIC as rated by SBA.
   3. Ability of SBIC to have paid dividends.
   4. Par value of stock to be purchased.

The above policy will be executed in such a way as to prevent windfall opportunities to SBICs, their managers, or owners; and, to avoid transfer of cash flows from SBICs into SBA to the detriment of the program's effectiveness and liquidity.

**Financial Impact on SBA.** At January 1, 1992, approximately $190 million of 3% preferred stock was outstanding to 105 SBICs, with accumulated unpaid and undeclared dividends of approximately $38.0 million.

It is estimated that 100 SBICs with $186.0 million of 3% preferred stock, and accumulated unpaid and undeclared dividends of $34.0 million, might be eligible to repurchase their preferred stock from SBA.
Impact on Specialized SBIC Program.
The net effect of the Repurchase Program will be to provide time for restructuring that segment of the industry that is presently financially weak, thus preserving the existence of these companies. Minority or disadvantaged business concerns will benefit since the source of financing that is available from SSBICs will be preserved and enhanced.

Impact on SSBICs. The impact on each SSBIC will be unique in that the effects on the financial status of each SSBIC will be a function of the amount of preferred stock being purchased in relation to its private capital size and its capital adequacy percentage, the purchase price, and the type of consideration being paid. The financial statements of the SSBICs will reflect the benefits of these transactions since the 3% preferred stock will no longer be outstanding, and the discount from par value will represent a permanent recapitalization. Any dividend arrearage on the 3% preferred stock will no longer be a claim on the future earnings.

Impact on Operations and Investment Plan. SBA, in considering whether to accept an SSBIC’s offer to repurchase 3% preferred stock, will require that the applicant submit plans demonstrating that the transaction will accomplish the intent and objectives of the repurchase program as set forth herein. Those plans in some cases may have the effect of requiring substantial changes in the SSBIC’s operations and investment practices, or in management practices.

In evaluating each SSBIC’s request, SBA will perform due diligence on each SSBIC applicant. Such due diligence will be analogous to that accomplished when an SSBIC seeks funding leverage, with SBA performing a regulatory, and a financial and management evaluation as directed in SOP 10.05.

Duration and Timing Elements of the Repurchase Program. The Repurchase Pilot Program will conclude upon completion of the nine transactions contemplated, or approximately three to six months. Subsequent to the Pilot Program, based upon feedback from comments received in response to this notice, and from experience gained through the Pilot Program, SBA will commence the balance of the Repurchase Program which would continue for a period of three calendar years from the effective date. SBA considers those years to be sufficient to effect the contemplated transactions without undue haste and processing burden on the SSBICs and SBA, and sufficient to permit SSBICs to solicit and acquire new private capital where necessary.

SBA may, based upon experience with the progress of this program, deem it necessary to extend the time period beyond three years if circumstances show such an extension is in the best interests of the minority or disadvantaged business constituents.

Processing Fee. The standing policy of SBA is to charge user fees, examination fees, and application fees in connection with the administration of its programs. Consistent with that standing policy, SBA is charging a non-refundable processing fee of $2,000, payable at the time an SSBIC applies to SBA for a repurchase transaction under the Repurchase Program described herein. The processing fee is to recover, in part, SBA’s administrative costs of each transaction.

PUBLIC COMMENT PERIOD: Interested parties are hereby invited and encouraged, in the public interest, to provide SBA comments and suggestions concerning the implementation of Public Law 101-162 11/21/89. All such comments will be considered by SBA in its decisions in connection with the policy, terms, and conditions of the aforementioned program. Such comment period shall begin with the date of this notice and end 60 days hence, provided however that SBA, in its discretion, may extend the comment period.

Written comments should be directed to: Wayne S. Foren, Associate Administrator for Investment, Small Business Administration, suite 6300, 409 Third Street SW, Washington, DC 20416.

Patricia Saiki, Administrator, U.S. Small Business Administration.

[Bill Doc. 92-14390 Filed 6-18-92; 8:45 am]

BILLING CODE 0225-01-M

[License No. 02/02-0547]

CIT Group/Venture Capital, Inc.; Issuance of a Small Business Investment Company License

On April 1, 1992 a notice was published in the Federal Register [57 FR 11131] stating that an application has been filed by CIT Group/Venture Capital, Inc., 650 CIT Drive, Livingston, NJ 07032, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1992)) for a license to operate as a small business investment company.

Interested parties were given until close of business on May 1, 1992 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 107.4 of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-0547 on June 1, 1992, to CIT Group/Venture Capital, Inc., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.01, Small Business Investment Companies)


Wayne S. Foren,
Associate Administrator for Investment.

[FR Doc. 92-14392 Filed 6-18-92; 8:45 am]

BILLING CODE 0225-01-M

[License No. 04/04-0258]

Sirrom Capital, L.P.; Issuance of a Small Business Investment Company License

On December 27, 1991 a notice was published in the Federal Register [56 FR 67112] stating that an application has been filed by Sirrom Capital, L.P., 511 Union Street, suite 900, Nashville, Tennessee 37219, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1992)) for a license to operate as a small business investment company.

Interested parties were given until close of business on January 26, 1992 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to § 107.4 of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04-0258 on May 14, 1992, to Sirrom Capital, L.P., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.01, Small Business Investment Companies)


Wayne S. Foren,
Associate Administrator for Investment.

[FR Doc. 92-14392 Filed 6-18-92; 8:45 am]

BILLING CODE 0225-01-M
DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration

[Summary Notice No. PE-92-18]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections.

The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 9, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. ________, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of the Chief Counsel, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 8QP.

This notice is published pursuant to FAA's practical test, in accordance with the provisions of 14 CFR part 11, subparagraph D of part 11 of the Federal Aviation Regulations.

Issued in Washington, DC, on June 15, 1992.

Denise D. Castaldo,
Manager, Program Management Staff, Office of the Chief Counsel.

Docket No.: 17145.

Petitioner: United Airlines.

Sections of the FAR Affected: 14 CFR 121.665 and 121.687(a) and (b).

Description of Relief Sought: To extend Exemption No. 2466G, which relieves United Airlines of the requirement that load manifests be signed by an actual employee responsible for loading the aircraft.

Docket No.: 28752.

Petitioner: Douglas Aircraft Company.

Sections of the FAR Affected: 14 CFR 43.1.

Description of Relief Sought: To allow minor aircraft damage or malfunction occurrences during the final delivery phase to be handled under the Douglas Quality System approved under Production Certificate No. 27, and not be treated as maintenance under FAR part 43.

Docket No.: 28773.

Petitioner: United Technologies Hamilton Standard.

Sections of the FAR Affected: 14 CFR 21.325(b)(1) and (2).

Description of Relief Sought: To allow United Technologies Hamilton Standard to issue export approvals for Class I, II, and III propeller products manufactured and located at Ratter-Figeac, Figeac, France.

Docket No.: 28803.

Petitioner: Twintown Leasing Company, Inc. and Embraer Aircraft Corporation.

Sections of the FAR Affected: 14 CFR 47.9.

Description of Relief Sought: To allow United States registration of two Embraer Bandeirante aircraft in the name of Embraer Aircraft Corporation, a non-U.S. citizen corporation, without meeting the requirement that the aircraft be based and primarily used in the United States when leased to and in the care, custody, and control of Twintown Leasing Company, Inc., a U.S. citizen corporation operating as an air carrier pursuant to FAR part 135.

Docket No.: 28894.

Petitioner: Mercy Medical Airlift.

Sections of the FAR Affected: 14 CFR 61.118(3)(1) and (6).

Description of Relief Sought: To permit Mercy Medical Airlift to: (1) Conduct its Bonanza 36 Operations without modifying the Federal Aviation Administration (FAA) Flight Standards District Office at least 7 days before flight, and (2) fly under IFR conditions.

Docket No.: 21780.

Petitioner: Civil Air Patrol.

Sections of the FAR Affected: 14 CFR 61.118.

Description of Relief Sought/Disposition: To extend Exemption No. 4042, as amended, which permits members of the Civil Air Patrol holding private pilot certificates to be reimbursed for fuel, oil, and maintenance expenses while serving on official Civil Air Patrol missions.

Grant, May 28, 1992, Exemption No. 4042D.

Docket No.: 21802.

Petitioner: Sowell Aviation Company, Inc.

Sections of the FAR Affected: 14 CFR 141.65.

Description of Relief Sought/Disposition: To extend Exemption No. 4551, as amended, which permits Sowell Aviation Company, Inc. to hold examining authority for flight instructor and airline transport pilot written tests.

Grant, June 5, 1992, Exemption No. 4551D.

Docket No.: 23990.

Petitioner: United States Hang Gliding Association, Inc.

Sections of the FAR Affected: 14 CFR 91.510 and 103.1(b).

Description of Relief Sought/Disposition: To extend Exemption No. 4144, as amended, which permits members of United States Hang Gliding Association, Inc., to tow unpowered ultralights with a powered ultralight.

Grant, June 3, 1992, Exemption No. 4144D.

Docket No.: 24805.


Sections of the FAR Affected: 14 CFR 91.511(a) and 135.165(b).

Description of Relief Sought/Disposition: To extend Exemption No. 4980, as amended, and add Falcon Jet DA50, Lear Jet 35, Falcon Jet DA10, and Hawkwer Siddeley 125-400 to the list of airplanes authorized by the exemption to operate using a single, long-range navigation system and a single, high-frequency communications system.

Grant, May 28, 1992, Exemption No. 4981B.

Docket No.: 28085.

Petitioner: Cochise Community College.

Sections of the FAR Affected: 14 CFR 141.65.

Description of Relief Sought/Disposition: To extend Exemption No. 5225 which permits Cochise Community College to recommend graduates of its approved certification course for flight instructor-airplane single engine certificates and associated rating without taking the Federal Aviation Administration's practical test, in accordance with the provisions of subpart D of part 141.

Grant, June 1, 1992, Exemption No. 5225A.
National Highway Traffic Safety Administration

[Docket No. 92-14; Notice 2]

Chrysler Corp.; Grant of Petition for Temporary Exemption From Seven Federal Motor Vehicle Safety Standards

This notice grants the petition by Chrysler Corporation of Highland Park, Michigan, for a temporary exemption from seven Federal motor vehicle safety standards, for multipurpose passenger vehicles that are electrically powered.

1. Standard No. 102, Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect. S3.1.2. The requirement for transmission braking effect is met by regenerative braking, which is the electric motor becoming a generator, recharging the batteries and dissipating energy in the process. Regenerative braking can be switched off at the option of the driver to restore steering control on slippery surfaces.

2. Standard No. 105, Hydraulic Brake Systems. S5.1. The performance of the service brake system is predicated on the use of the regenerative characteristic of the drive motor to augment the power-assisted hydraulic wheel brakes. The motor, driven through the transmission by the mass of the coasting vehicle, functions as a generator to dissipate energy through charging the drive batteries. In the performance tests of S5.1.1 Stopping distance, however, the transmission must be in neutral, and in the TEVan, that would preclude the contribution of regenerative braking.

Chrysler has not conducted tests using regenerative braking; however, in its opinion, the TEVan will meet the stopping distance requirements of S5.5.1 with regenerative braking. In the fade and recovery test, S5.1.4, the distance specified between the starting points of successive brake applications at 60 mph is 0.4 mile. The TEVan cannot accelerate to 60 mph in that distance, so the test cannot be conducted as prescribed, but Chrysler believes that the TEVan could comply, or nearly comply, with the fade and recovery tests, with regenerative braking, if the TEVan could accelerate as specified.

3. Standard No. 207, Seating Systems. S4.2(a)-(c) General performance requirements. The right end floor pan anchor sockets for the removable two-
passenger second seat have been reduced in height below the floor pan to provide space for a portion of the battery pack. The modified sockets are believed to be equivalent in strength to the original, but compliance tests have not been performed.


S4.2 Strength. The modified sockets discussed above must also transmit seat belt forces to the vehicle structure through seat-mounted anchorages. The modified sockets are believed to be equivalent in strength to the original, but compliance tests have not been performed.


Windshield mounting and zone intrusion performance are ultimately determined by vehicle front structure crush characteristics. The front structure of the base van, modified to support the electric drive train conformance is believed to be materially equivalent in strength to the original, but a 30 mph barrier test has not been performed to confirm compliance.

7. Standard No. 301, Fuel System Integrity.

S5.5 Fuel spillage: barrier crash, and S5.6 Fuel spillage: rollover. A 1.8 gallon tank has been provided just behind the rear axle for the fuel used in the diesel fuel-burning heater/defroster. The integrity of the diesel fuel system has not been evaluated with fixed and moving barrier impact tests; however, it is believed that the TEVans would comply with the spillage limitations if they were so tested.

The petitioner requested exemptions for a period of one year, during which it would title and sell one or more of the vehicles for ongoing endurance evaluation. According to the petitioner, an exemption would facilitate the development and field evaluation of a low-emission motor vehicle, that such exemption would not unduly degrade the safety of the vehicle, and that an exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act. Although only four vehicles are involved here, they represent Chrysler's first generation of conversions. Their sale will allow continued evaluation of electric vehicle propulsion and sub-systems with feedback to Chrysler on the performance of those systems. Therefore, it is found that an exemption would facilitate the development and field evaluation of a low-emission motor vehicle.

The agency notes that the requests for exemption affect more than the substance of the standards concerned. The vehicles initially met, and may still meet all applicable Federal motor vehicle safety standards, though their continuing compliance has not been conclusively demonstrated by tests. Thus, exemptions may have no, or at most minimal, effect upon motor vehicle safety. Therefore, it is also found that an exemption would not unduly degrade the safety of the vehicle.

An exemption would be desirable for environmental reasons as well as contributing to the goal of lessened dependence on foreign oil. Therefore, it is also found that an exemption is in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act.
Voyager multipurpose passenger vehicle. Modifications will be made to production 1991–1994 Dodge and Plymouth vans on and after September 1, 1992. The TEVan has been developed in cooperation with the Electric Power Research Institute, U.S. Advanced Battery Consortium, and the United States Department of Energy. The basis for the petition was that a temporary exemption would facilitate the development and field evaluation of a low-emission motor vehicle, as provided by 49 CFR 555.6(c). The vehicles will use electric motors powered by nickel-iron or other equivalent batteries that replace the internal combustion engine. According to Chrysler, the TEVan will meet the California Air Resource Board zero emission requirements, and are low-emission vehicles as defined by section 325(g) of the National Traffic and Motor Vehicle Safety Act.

The TEVan differs from regular production vans as follows: the internal combustion engine, transmission, coolant system, power brakes, gasoline fuel system, and power steering system have been replaced by an electric drive motor, a nickel-iron or equivalent battery pack, a micro-processor based battery management system, a controller-converter-charger unit, a two-speed manual/automatic transmission, and electric motor-driven pumps for the vacuum power brakes and the hydraulically assisted power steering. Finally, the hot water heater/defroster unit is replaced by an electric resistance type heating/defrosting system.

The TEVan is based on production vehicles certified as complying with all applicable Federal motor vehicle safety standards. However, it will not comply with the portions of the standards indicated below.


S5.1. The TEVan will be equipped with a state-of-charge gauge to serve as an indicator of reserve battery power, rather than the fuel gauge required by the standard.


S3.1.2. The requirement for transmission braking effect is met by regenerative braking, in which the electric motor becomes a generator, recharging the batteries and dissipating energy in the process. Regenerative braking can be switched off at the option of the driver to restore steering control on slippery surfaces.

S3.1.3. The starter interlock mechanism will be deleted since there will be no electric starting motor.

S3.1.4. The automatic transmission shift mechanism will be replaced with an electric switch control device that operates in a similar manner.


S5.1. The performance of the service brake system is predicated on the use of the regenerative characteristic of the drive motor to augment the power-assisted hydraulic wheel brakes. The motor, driven through the transmission by the mass of the coasting vehicle, functions as a generator to dissipate energy through charging the drive batteries. The petitioner has not conducted tests using regenerative braking, however, tests of a conventionally powered weighted simulation of the TEVan indicate that the TEVan will meet the stopping distance requirements of S5.1.1. In the fade and recovery test, S5.1.4, the distance specified between the starting points of successive brake applications at 60 mph is 100 feet, the TEVan cannot accelerate to 60 mph in that distance, so the test cannot be conducted as prescribed, but based on the performance of a simulated TEVan, the TEVan could comply if it could accelerate as specified.

On TEVans equipped with anti-lock brake systems, the regenerative braking will be disabled during hard stops that actuate the anti-lock feature of the brakes.

According to the petitioner, an exemption would facilitate the development and field evaluation of a low-emission motor vehicle by enabling the petitioner to develop the electric drive motor, battery controller, battery, and other subsystems to increase the efficiency and durability of future generations of electric vehicles.

The petitioner requested exemptions for a two-year period beginning September 1, 1992. It argued that the exemptions will not unduly degrade the safety of the vehicles because the vehicles from which the TEVan is adapted are certified as conforming to the standards. Initially, Chrysler stated that the vehicles would be used for developmental purposes only, and would be destroyed upon termination of the evaluation program. However, the petitioner has recently informed NHTSA that "The development vehicles are to be sold or otherwise titled to other organizations that may continue with development and/or vehicle testing.

Finally, petitioner argued that granting the exemption would be in the public interest and consistent with the National Traffic and Motor Vehicle Safety Act because it would accelerate the development of electrically-driven vehicles and related technology which could help to reduce the dependency on foreign oil.

No comments were received on the petition.

In order to grant a petition filed under 15 U.S.C. 1410(a)(1)(C), findings must be made that the temporary exemption would facilitate the development or field evaluation of a low-emission motor vehicle and would not unreasonably degrade the safety of the vehicle, and that the exemption is consistent with the public interest and the objectives of the National Traffic and Motor Vehicle Safety Act. Petitioner has argued that the exemption would enable it to develop the components of the vehicle to increase the efficiency and durability of future generations of electric vehicles. NHTSA concurs with this argument. In view of petitioner's recently-communicated desire to sell these vehicles, rather than destroy them, it is probable that an exemption would permit the use of the vehicles under varied conditions of climate and terrain, testing those components for durability and life.

Petitioner has also argued that safety is not compromised because the vehicles from which the TEVan is adapted are certified as conforming to the standards. The inability of the TEVan to meet two of the standards from which exemption is requested, Standards Nos. 101 and 102, appears only technical in nature, as systems and instruments are provided that are the equivalents of those in gasoline-powered vehicles. As for Standard No. 105, the petitioner on the basis of simulated tests of weighted vehicles, judges that the stopping distance requirements will be met. It is NHTSA’s experience that regenerative braking can provide a drag on the vehicle’s forward motion when the foot is removed from the accelerator; this, coupled with foot brake activation should ensure adequate stopping capability.

It is manifestly in the public interest to accelerate the development of electrically-driven vehicles, not only to reduce reliance on oil, no matter where it originates, but also to reduce the level of harmful emissions in the environment. Because of the minimal impact on safety of the grant of this petition, NHTSA considers that an exemption is consistent with the objectives of the Act.

Subsequent to filing its petition, Chrysler amended its original request for a 2-year exemption, and asked for a 2-year exemption to begin on September 1, 1992. In accordance with 49 CFR 555.7(f), the agency is granting this...
request. The exemption will cover modification of some vans that were manufactured during the 1991 and 1992 model years, but which were not sold, and modification of newly-manufactured 1993 and 1994 vans.

In consideration of the foregoing, it is hereby found that a 2-year exemption would facilitate the development or field evaluation of a low-emission vehicle, and would not unreasonably degrade the safety of such vehicle, and that such exemption would be in the public interest and consistent with the objectives of the Act. Accordingly, Chrysler Corporation is hereby granted NHTSA Temporary Exemption No. 92-1, beginning September 1, 1992, and expiring August 31, 1994, from providing a fuel gauge as required by paragraph S5.1 of 49 CFR 571.101 Motor Vehicle Safety Standard No. 101 Controls and Displays, from paragraphs S3.1.2, S3.1.3, and S3.1.4 of 49 CFR 571.102 Motor Vehicle Safety Standard No. 102 Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect, and from paragraph S5.1.4 of 49 CFR 571.105 Motor Vehicle Safety Standard No. 105 Hydraulic Brake Systems.


Issued on: June 15, 1992.
Frederick H. Grubbe,
Deputy Administrator.

[FR Doc. 92-14416 Filed 5-15-92; 8:45 am]
BILLING CODE 4919-59-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viera, Records Management Service (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3172.

Comments and questions about the items on the list should be directed to VA’s OMB Desk Officer, Joseph Lackey, NEOB; room 3002, Washington, DC 20503. (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before July 20, 1992.

Frank E. Lalley,
Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

Extension

1. Application of Service Representative for Placement on Mailing List, VA Form 70-3215.

2. The form is used by service organizations for placing their representatives on the mailing list to receive VA publications.

3. Individuals or households.

4. 25 hours.

5. 10 minutes.

6. On occasion.

7. 1.50 respondents.

[FR Doc. 92-14424 Filed 6-18-92; 8:45 am]
BILLING CODE 8320-01-M

Special Medical Advisory Group Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 that a meeting of the Special Medical Advisory Group will be held on July 30-31, 1992, at the Ramada Renaissance Hotel, 999 9th Street, NW., Washington, DC. The purpose of the Special Medical Advisory Group is to advise the Secretary of Veterans Affairs relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration. The session on July 30 will convene at 8:30 p.m. and the session on July 31 will convene at 8 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ginny Rassman, Office of the Chief Medical Director, Department of Veterans Affairs (phone 202/535-7605) prior to July 28, 1992.

Diane H. Landis,
Committee Management Officer.

[FR Doc. 92-14424 Filed 6-18-92; 8:45 am]
BILLING CODE 8320-01-M
Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 92-14517.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 25, 1992, 10:00 a.m., Meeting Open to the Public.

The Following Item Is Added to the Agenda:
DRAFT LETTER TO PRESIDENTIAL CAMPAIGN COMMITTEES

PERSON TO CONTACT FOR INFORMATION: Delores R. Harris, Administrative Assistant.

[FR Doc. 92-14578 Filed 6-17-92; 10:31 am]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, June 24, 1992, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
1. Proposed acquisition of currency processing equipment within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

[FR Doc. 92-14579 Filed 6-17-92; 10:31 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of June 22, 1992.

An open meeting will be held on Tuesday, June 23, 1992, at 5:30 a.m. A closed meeting will be held on Thursday, June 25, 1992, at 2:30 p.m.

The following item will be considered at an open meeting scheduled for June 23, 1992, at 9:30 a.m.:

Consideration of whether to repropose for public comment several amendments to the Commission's proxy rules under section 14(a) of the Securities Exchange Act of 1934 that would facilitate securityholder communications in furtherance of the goal of informed proxy voting, and would reduce the costs of compliance with the proxy rules for all persons engaged in a proxy solicitation. The amendments as initially proposed were issued for public comment on June 17, 1991 (Rel. Nos. 34-23915; IC-16201; File Nos. S-7; 1992-01). The Commission received more than 900 letters in response to its request for comment on the proposed amendments. The Commission also will consider whether to propose for public comment new disclosure requirements regarding executive compensation. FOR INFORMATION CONTACT: Catherine Dixon at (202) 272-2588 or David Sirignano at (202) 272-3097.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(e)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, June 25, 1992, at 2:30 p.m. will be:
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.

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: George Kramer at (202) 272-2000.

Dated: June 17, 1992.

Margaret H. McFarland, Deputy Secretary.

[FR Doc. 92-14622 Filed 6-17-92; 1:49 pm]

BILLING CODE 8010-01-M
Corrections

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 ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 33, 35, and 290

[Docket No. RM92-10-000]

Streamlining Electric Power Regulation

Correction

In proposed rule document 92-12818 beginning on page 23171 in the issue of Tuesday, June 2, 1992, make the following correction:

On page 23173, in the third column, in the second full paragraph, in the seventh line, "11" should read "2".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Service

[Program Announcement No. OCS-92-05]

Request for Applications Under the Office of Community Services' Fiscal Year 1992 Job Opportunities for Low-Income Individuals Program (Demonstration Projects)

Correction

In proposed rule document 92-9454 beginning on page 18266 in the issue of Wednesday, April 29, 1992, on page 18271, in the first column, under B. Application Submission, in the second line, "July 28, 1992" should read "June 29, 1992".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 602

[T.D. 8335]

RIN 1545-AO88

OMB Control Numbers Under the Paperwork Reduction Act; Correction

Correction

In rule document 92-5998 beginning on page 9050 in the issue of Monday, March 16, 1992, make the following corrections:

§ 602.101 [Corrected]

1. On page 9051 in § 602.101(c):
   a. In the 1st column, in the 22d line from the bottom, "1.913-12" should read "1.913.13".
   b. In the 2d column, in the 19th line from the bottom, "1.6050-1" should read "1.6051-1".
   c. In the 3d column, in the 17th line, "1545-0012" should read "1545-0112".

BILLING CODE 1505-01-D
Part II

Department of Transportation

Coast Guard

33 CFR Part 155
Vessel Response Plans; Proposed Rule
DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155  
(CGD 91-034)  
RIN 2115-AD81

Vessel Response Plans

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish regulations requiring response plans for certain vessels that carry oil in bulk as cargo, and additional requirements for such vessels operating in Prince William Sound, Alaska. These regulations are mandated by the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990. The purpose of these requirements is to improve response capabilities and minimize the impact of oil spills from these vessels.

DATES: Comments must be received on or before August 3, 1992.

ADDRESSES: Comments must be in writing and may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406), (CGD 91-034), 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments on collection of information requirements must also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503. Comments should be addressed to the Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at U.S. Coast Guard Headquarters, room 3406. For information concerning comments, the telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Glenn Wiltshire, Project Manager, Oil Pollution Act (OPA 90) Staff, (G-MS-1), (202) 267-6739. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 91-034) and the specific section of the proposal to which each comment applies, and give the basis for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period.

The Coast Guard plans no public hearing at this time. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." Requests should indicate why a public hearing is considered necessary. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Glenn Wiltshire, Project Manager, LCDR Robert Diaz, Project Manager (for Prince William Sound Section only), and Mary-Jo Cooney Spottwood, Project Counsel, Oil Pollution Act of 1990 (OPA 90) Staff (G-MS-1).

Background and Purpose

In recent years, several catastrophic oil spills have threatened the marine environment along the coastal areas of the United States. Among these spills were the EXXON VALDEZ in Prince William Sound, the AMERICAN TRADER in California's coastal waters, and the MEGA BORG in the Gulf of Mexico. These spills have resulted in extensive damage to the marine environment, including the loss of fish and wildlife. In response to these disasters and others, Congress passed the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380). OPA 90 requires owners and operators of certain vessels to submit individual response plans for approval. This notice of proposed rulemaking (NPRM) presents proposed rules to implement the OPA 90 requirements for vessel response plans, including additional requirements for certain vessels operating in Prince William Sound. This NPRM addresses sections 4202(a)(6), sections 4202(b)(4), and section 5005 of OPA 90. Section 4202(a)(6) of OPA 90 amended section 311(j) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321) and set out the requirements for vessel response plans in section 311(j)(5). Section 4202(b)(4) of OPA 90 set the implementation schedule for these provisions. Section 5005 of OPA 90 set oil spill removal requirements for Prince William Sound in addition to those imposed by section 4202(a)(6). These requirements include prepositioning oil spill containment equipment and establishing private oil spill removal organizations to protect property and economic interests, especially fish hatcheries.

This notice does not address the requirements of section 4202(a)(6) of OPA 90 for the carriage and inspection of discharge-removal equipment. These requirements will be the subject of a separate rulemaking.

"OPA 90 requires response plans for "oil or hazardous substance" spills. Section 4202(b)(4)(B) establishes an implementation schedule for submission and approval of oil spill response plans only; response plans for hazardous substance spills will be the subject of a separate rulemaking.

Regulations for facility response plans are being developed in concert with other Federal agencies, including the Environmental Protection Agency (EPA), the Minerals Management Service (MMS), and the Department of Transportation (DOT) Research and Special Programs Administration (RSPA). These will also be the subject of a separate rulemaking.

Vessel Response Plans

As amended, section 311(j)(5) of the FWPCA, requires owners and operators of all vessels that are constructed or adapted to carry, or that carry oil or hazardous substances in bulk as cargo or cargo residue prepare and submit individual response plans to the President for approval. This authority was delegated to the Secretary of Transportation by Executive Order 12777 (56 FR 54757) and subsequently to the Commandant of the Coast Guard in 46 CFR 1.46(m) (57 FR 8581).

These proposed rules would be applicable to all vessels certified under 46 CFR subchapter D, all other certificated vessels that are permitted to carry limited quantities of oil as defined in section 311(a)(1) of the FWPCA and any other uninspected vessel that carries oil in bulk as cargo or cargo residue. As used in these proposed rules, oil includes but is not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with waste other than dredge spoils. This includes animal and vegetable oils in addition to petroleum oil. Thus, vessels that carry these oils as secondary cargoes require response plans.

Section 311(j)(6)(C) of the FWPCA requires that response plans must: (1) Be consistent with the National Oil and
Hazardous Substances Pollution Contingency Plan (NCP) and any Area Contingency Plan (ACP) for the geographic area in which the vessel operates; (2) identify the qualified individual with full authority to implement response actions, including liaison with the Federal On-Scene Coordinator (OSC) and response contractors; (3) identify and ensure the availability of, by contract or other approved means, private personnel and equipment necessary to remove, to the maximum extent practicable, a worst case discharge and to mitigate or prevent a substantial threat of such a discharge from the vessel; (4) describe the training, equipment testing, periodic unannounced drills, and response actions that will be carried out under the response plan to ensure the safety of the vessel and mitigate the effects of an oil discharge; and (5) include procedures for periodically updating or resubmitting the response plan for approval when significant changes occur. Worst case discharge is defined in section 311(a) of the FWPCA as a discharge in adverse weather conditions of a vessel's entire cargo.

A major objective of the OPA 90 amendments to section 311(j)(5) of the FWPCA is to create a system in which private parties supply the bulk of equipment and personnel needed for an oil spill response in a given area. For example, response plans must identify and ensure the availability of private personnel and equipment necessary to remove, to the maximum extent practicable, a worst case discharge, including a discharge resulting from fire or explosion aboard the vessel. Such a discharge will likely require the use of both private and public resources. However, the vessel response plan is required to only identify private resources. The integration and coordination of public and private response resources will be addressed in the applicable Area Contingency Plans.

Section 311(j)(5)(D) of the FWPCA requires the Coast Guard to review vessel response plans; require amendments to any plan that does not meet the requirements set forth under the provisions of section 311(j)(5)(C) of the FWPCA; and approve any plan that does comply with those provisions.

After February 18, 1993, a vessel required to have a response plan may not handle, store, or transport oil unless a plan has been submitted for approval. After August 18, 1993, a vessel requiring a response plan may not perform any of these functions unless it is operating in compliance with that plan. After submission of a plan, but prior to its approval, a vessel may continue operations for up to 2 years if the owner or operator of the vessel has certified the availability of private personnel and equipment sufficient to respond to a worst case discharge.

Section 5005 of OPA 90 establishes requirements for vessel response plans above and beyond the requirements of section 311(j) of the FWPCA. Through the requirements of section 5005 of OPA 90, an owner or operator of a vessel that carries oil in bulk as cargo that operates on Prince William Sound, Alaska, is required to submit a response plan that provides an additional level of preparedness over and above those identified in section 311(j)(5) of the FWPCA. The response plan requirements of section 311(j)(5) of the FWPCA are intended to ensure an effective and immediate response to an oil spill nationwide. The additional requirements of section 5005 of OPA 90 are intended to provide a greater margin of safety in Prince William Sound by: providing for response equipment to be prepositioned; establishing an oil spill removal organization; requiring special training for residents in Prince William Sound; performing periodic inspection, testing and certification of response equipment; and exercising of the required trained personnel and spill removal equipment.

Advance Notice of Proposed Rulemaking

The Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) on this project in the August 30, 1991 Federal Register (56 FR 43534). The ANPRM discussed the background, statutory requirements of section 311(j) of the FWPCA, and possible regulatory approaches. In addition, the ANPRM raised 59 questions for the public comment. The Coast Guard received 172 comments. Each of the comment letters was considered in developing this NPRM.

Public Comments at Response Plan Workshop

In addition to accepting written comments concerning the development of regulations for vessels response plans, a public workshop was held in Washington, DC on November 14, 1991. A total of 196 persons participated in the workshop. During the workshop, the Coast Guard summarized the written comments received in response to the ANPRM and solicited additional input on specific issues.

The workshop focused on four specific issues identified in advance by the Coast Guard. These issues were: (1) Defining Response to the "Maximum Extent Practicable" and "Adverse Weather"; (2) Response Resource Capability Assessment; (3) Tank Vessel-Carried Equipment; and (4) Prince William Sound Equipment and Personnel Requirements under Tank Vessel and Facility Response Plans. The recommendations from this workshop were considered when developing this NPRM.

Audio tapes, a transcript of the public sessions, and a summary of the proceedings of the workshop are available for review and copying in the public docket as described under "ADDRESSES."

Recommendations of Oil Spill Response Plan Negotiated Rulemaking Committee

Because of the need for additional information to assist with the development of this proposed rule, the Coast Guard published a Notice of Intent to Form a Negotiated Rulemaking Committee on November 18, 1991 (56 FR 58202). Based on the comments received on this notice, the Coast Guard established the Oil Spill Response Plan Negotiated Rulemaking Committee. A Notice announcing the establishment of the Committee was published on January 10, 1992 (57 FR 1339). Twenty-six organizations participated on the Committee. The Coast Guard was a member of the Committee.

Committee sessions were held between January 8th and March 27th, 1992. The Committee was charged with considering five issues: Definition of "maximum extent practicable"; definition of "adverse weather" for purposes of determining recovery capacity of removal equipment; applicability of regulations to various categories of vessels that carry oil in bulk as cargo, contractor certification; and carriage of discharge removal equipment. The Committee considered a number of options and alternatives during its discussions that were not included in their final recommendations. The consensus recommendations included in the final report of the Committee reflects the agreement of all Committee members and were used when drafting the proposed rule. Contractor certification and discharge removal equipment carriage will be the subject of separate NPRMs.

In establishing the Committee, the Coast Guard agreed to use any consensus recommendations of the Committee as the basis for the NPRM to the maximum extent possible consistent with its legal obligations. The Coast Guard also agreed to draft the proposed regulation and preamble having the same substance and effect as the
Committee's recommendations. The Committee will reconvene after the close of the public comment period to review comments on their recommendations.

Recommendations of the Committee are identified in the preamble discussion of the proposed rule. Copies of the final Committee report of all documents considered by the Committee during its meetings are available in the public docket.

Discussion of Proposed Amendments

To ensure that all vessels subject to the requirements of the Federal Water Pollution Control Act (FWPCA) section 311(j)(5), as amended, are prepared to respond to a discharge of oil, the Coast Guard is proposing requirements that certain vessels prepare and submit oil spill response plans. These plans are necessary to identify the availability of sufficient spill response resources. The following is a section-by-section summary of the proposed amendments.

Section 155.140 Incorporation by Reference

This section incorporates by reference four standard test methods developed by the American Society for Testing and Materials (ASTM). These test methods are acceptable means to evaluate the performance capabilities of oil booms and recovery devices for purposes of § 155.1045 as discussed below. ASTM is in the process of updating these standards as well as developing new standards for response equipment performance evaluation. The Coast Guard is an active participant in this process and will revise this section as necessary to reflect any applicable standard subsequently adopted by ASTM.

This section incorporates IMO Resolution A.649(16), “General Principles for Ship Reporting Systems and Ship Reporting Requirements, including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances, and/or Marine Pollutants.” This resolution includes standard reporting formats and lists information to be included in reports made concerning pollution incidents.

This section also incorporates the “Ship to Ship Transfer Guide (Petroleum)” published jointly by the International Chamber of Shipping and the Oil Companies International Marine Forum (OCIMF) for use in developing the lightering plan required plan required by §§ 155.1035 and 155.1040. The Coast Guard solicits comments on any other appropriate standards, test procedures, or guidelines that should be considered for incorporation by reference.

Subpart D—Response Plans

Section 155.1010 Purpose

This section describes the purpose and notes that the requirements set forth in the rule are for planning purposes only and are not intended as performance standards. These criteria are to be used by a vessel owner or operator to develop a plan for the response to the vessel’s worst case discharge to the maximum extent practicable.

Section 155.1015 Applicability

With certain exceptions, the requirements of this proposed subpart apply to all vessels that handle, store, or transport oil in bulk as cargo that operate on the navigable waters of the United States, or that transfer oil in a port or place subject to the jurisdiction of the United States. This includes vessels transferring oil at deepwater ports or other offshore facilities located outside the navigable waters of the United States as defined in 33 CFR 2.05-25. It includes vessels that transit in innocent passage through the navigable waters. The public should be aware that legislation is pending that would extend the seaward boundary of the navigable waters from the current 3 miles to 12 miles. Vessels in innocent passage through the exclusive economic zone are not covered. The requirements apply to vessels that carry oil in bulk as their primary cargo, as well as vessels that carry oil in bulk as a secondary cargo in any quantity. The requirements also apply to vessels carrying non-petroleum oil as cargo.

Vessels involved in oil cargo lightering operations whose cargo is destined for a port or place subject to the jurisdiction of the United States must operate in compliance with FWPCA section 311(j) and must conform to the response plan requirements in the proposed rule. This includes both the delivering and receiving vessel.

The Coast Guard proposes to exclude certain vessels from response plan requirements. The definition of vessel in section 311(a) of the FWPCA excludes public vessels. Also excluded are vessels that, although designed or constructed to carry oil in bulk as cargo, are not carrying oil as cargo or cargo residue. The Coast Guard proposes to apply the requirements for response plans only to those vessels actually engaged in oil carriage. Thus, vessels that are in lay-up status in U.S. waters, vessels carrying cargoes other than oil, or vessels that enter U.S. waters without oil cargo or cargo residue aboard for repairs or reconstruction at a shipyard or other location will not be required to have response plans. While vessels that are not transporting oil as cargo are exempt, these vessels will require response plans if they are used for oil storage.

The proposed rule excludes dedicated oil spill response vessels when operating in a response area from response plan requirements. The Coast Guard proposes to exclude these vessels because their operations involving the carriage of oil occur only in conjunction with spill response activities. Oil spill removal organizations that commit resources to dedicated service as response vessels enhance the nation’s ability to respond to spills. Excluding them from response plan requirements when operating within a response area provides an incentive to develop and maintain this specialized capability.

Requiring such vessels to have their own response plans could result in fewer such resources being available and would be contrary to the purpose and intent of OPA 90 to encourage capability. Such vessels will be subject to response plan requirements when these vessels are engaged in transportation of oil outside of the response area.

Vessels of opportunity will not be required to have response plans while engaged in oil spill response activities. Requiring response plans would discourage their participation and reduce the number of vessels available to respond to a spill. Even if exempted from these proposed rules, a vessel with an oil capacity exceeding 250 barrels is still subject to the applicable pollution prevention and oil transfer requirements of 33 CFR parts 155 and 156.

This subpart also applies to a U.S. flag vessel that always operates outside the Exclusive Economic Zone of the United States. Although not required by section 311(j)(5) of the FWPCA to have a response plan, regulation 26 of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 related thereto, as amended (MARPOL), requires these vessels to have approved shipboard emergency plans. The Act to Prevent Pollution From Ships (33 U.S.C. 1901 et seq.) provides the authority to implement the MARPOL requirements for these vessels. As noted in the preamble discussion for § 155.1030, the Coast Guard is proposing to implement the MARPOL Annex I, Regulation 26 requirements through this rulemaking. The proposed rule would apply the requirements of this subpart, except for identification and contracting of response resources, to such vessels.
Section 155.1020 Definitions

This section would add definitions that are based on the FWPCA, other regulations, recommendations made by the Negotiated Rulemaking Committee, or devised by the Coast Guard to cover other terms used in this subpart. The definitions are only applicable to this subpart.

Adverse Weather: The proposed definition was recommended by the Negotiated Rulemaking Committee. Adverse weather means the weather conditions to be used for planning purposes when identifying equipment and systems in a response plan. The specific requirements for planning are found in § 155.1050.

Bulk: The proposed definition includes any volume of oil carried aboard a vessel in integral tanks, and marine portable tanks or independent tanks if they are filled or discharged while aboard the vessel.

Cargo: The proposed definition covers any volume of oil transferred in bulk aboard a vessel that is off-loaded at a destination, including transfers of oil from fuel tanks to other vessels or facilities. This includes vessels that are not certificated under 46 CFR subchapter D that transfer oil from their fuel tanks. The definition excludes oil carried aboard the vessel for use as fuel for any equipment, machinery, or boats transported aboard the vessel. Also excluded is oil transferred from a towing vessel's fuel tanks to a vessel in its tow for use in operating machinery. This transfer is not deemed cargo since it is essentially ship stores for the operation of the tow rather than being transported for off-loading at a destination. A towing vessel that transfers fuel to a vessel that is not in its tow, such as a midstream refueling operation, is subject to response plan requirements for vessels carrying oil as a secondary cargo. As proposed, the definition applies to any quantity of oil off-loaded at a destination. The Coast Guard solicits comments on whether there should be a minimum quantity of oil that should be excluded from the definition of cargo.

Contract or Other Approved Means: The proposed definition provides four methods that a vessel owner or operator can use to establish evidence of compliance. These are a written contractual agreement, self-certification, or active membership in a local or regional spill removal organization. A memorandum of understanding or basic ordering agreement that does not bind the response contractor or spill removal organization to a specified level of planned performance does not meet this requirement. Finally, the identification of such an organization without a formal contract is acceptable, but only if authorized by a specific section of this proposed regulation and consented to by the response organization.

Operator: The proposed definition is derived from 33 CFR part 130. The operator of a towing vessel is not considered the operator of a vessel being towed.

Owner: The proposed definition is derived from 33 CFR part 130.

Qualified Individual: The proposed definition describes the specific requirements that this individual must meet. Section 311 (j)(5) of the FWPCA specifies that this individual must have full authority of the vessel owner or operator to implement the response plan, and if necessary, contract with the responsible response identified in the plan, and serve as liaison with the Federal On-Scene Coordinator. This individual must speak and understand English, be located in the United States, and be available on a 24-hour basis. This excludes persons aboard the vessel. While the term qualified individual is used, the vessel's owner or operator may designate an organization to carry out these responsibilities.

Oil Spill Removal Organization: The proposed definition includes any for-profit or not-for-profit contractors, cooperatives, or in-house resources established in a geographic area to provide required response resources.

Spill Management Team: The proposed definition describes the personnel that will staff the organizational structure that a vessel or operator must designate in their response plan. This team will manage the response actions of the vessel owner or operator and the oil spill removal organizations identified in a plan.

Response Area: The proposed definition, based on a recommendation by the Negotiated Rulemaking Committee, was included because it indicates where a dedicated response vessel can operate during a spill response activity without a response plan. It covers any COTP zones or smaller planning area, as applicable, in which spill response activities are occurring.

Dedicated Response Vessel: The proposed definition, recommended by the Negotiated Rulemaking Committee, describes a vessel whose service is limited exclusively to oil spill response activities and response-related escorting. Vessels meeting this definition are excluded from this proposed rule or are subject to reduced requirements.

Vessel of Opportunity: The proposed definition is based on a recommendation by the Negotiated Rulemaking Committee. These vessels are used during a spill response to provide platforms for skimmers and other response equipment. These vessels will be exempted from response plan requirements while engaged in spill response activities in the response area.

Higher Volume Port Area: The Negotiated Rulemaking Committee recommended that the Coast Guard identify those ports where greater response capability is necessary. This is fully explained in § 5.1050.

Maximum Extent Practicable: The proposed definition was based on a recommendation drafted by the Negotiated Rulemaking Committee. The definition serves as a cross reference to proposed § 155.1050 which contains the detailed criteria.

Average Most Probable Discharge: The proposed definition was recommended by the Negotiated Rulemaking Committee based on a review of Coast Guard historical spill data from tank ships and tank barges. From 1985 to 1988, approximately 90 percent of the petroleum oil spills from each of these vessels were 2500 barrels or less. This includes both cargo and fuel spills occurring during routine vessel operations as well as casualties.

Maximum Most Probable Discharge: The proposed definition, based on a recommendation by the Negotiated Rulemaking Committee, is based on a review of Coast Guard historical spill data from tank ships and tank barges. From 1985 to 1988, approximately 90 percent of the petroleum oil spills from these vessels were 2500 barrels or less. This includes both cargo and fuel spills occurring during routine vessel operations as well as casualties. Thus the proposed rule establishes the maximum most probable discharge volume as 2500 barrels or 10 percent of the oil cargo capacity of the vessel, whichever is less.

Substantial Threat of Such a Discharge: The proposed definition is included because vessel owners and operators are required to plan for incidents that may not result in an oil discharge. This definition is consistent with the International Maritime Organization guidelines for the development of shipboard oil pollution emergency plans.

Non-Persistent Oil: The proposed definition is based on a recommendation by the Negotiated Rulemaking Committee. The definition is drawn from the International Oil Pollution Compensation Fund guidelines, which uses distillation percentages at time of shipment to distinguish between persistent and non-persistent oils. It differentiates between the physical
Persistent Oils: The proposed definition is based on a recommendation by the Negotiated Rulemaking Committee. It differentiates between the physical characteristics of oils.

Persistent oils tend to emulsify and do not dissipate as rapidly as non-persistent oils. This affects the equipment and methods required to respond to the discharge. The definition covers all oils that do not meet the criteria for classification as non-persistent oils. Persistent oil includes marine diesel, number 4 and 6 oils, lubricating oils, asphalt, other residual fuel oils, and crude. The International Tanker Owners Pollution Federation (ITOPF) classifies these as Group 1 as indicated in appendix B to part 155. Certain non-petroleum oils would also be classified as non-persistent based on specific gravity.

Non-persistent Oils: Non-persistent oils tend to be more volatile and evaporate very rapidly. The response equipment and methods required are typically different than those for persistent oils. While each oil must be evaluated, generally gasolines, naphtha, kerosene, jet fuel, gas oil, automotive diesel, and number 2 diesel fuel would meet this definition. The International Tanker Owners Pollution Federation (ITOPF) classifies non-persistent oils as Group 1 as noted in appendix B to part 155. Certain non-petroleum oils would also be classified as non-persistent based on their specific gravity.

Persistent Oils: The proposed definition is based on a recommendation by the Negotiated Rulemaking Committee. It differentiates between the physical characteristics of oils.

Persistent oils tend to emulsify and do not dissipate as rapidly as non-persistent oils. This affects the equipment and methods required to respond to the discharge. The definition covers all oils that do not meet the criteria for classification as non-persistent oils. Persistent oil includes marine diesel, number 4 and 6 oils, lubricating oils, asphalt, other residual fuel oils, and crude. The International Tanker Owners Pollution Federation (ITOPF) classifies these as Group 1 as indicated in appendix B to part 155. Certain non-petroleum oils would also be classified as non-persistent based on specific gravity.

Vessels Carrying Oil as a Primary Cargo: The proposed definition is based on a recommendation by the Negotiated Rulemaking Committee to vary the response plan requirements based on the principal purpose of a vessel. It includes all vessels having a Certificate of Inspection under 46 CFR subchapter D (except for dedicated response vessels), a Certificate of Compliance, or a Tank Vessel Examination Letter. These vessels would be subject to the most stringent response plan requirements.

Vessels Carrying Oil as a Secondary Cargo: The proposed definition is based on a recommendation by the Negotiated Rulemaking Committee to vary the response plan requirements by the purpose of a vessel. It covers inspected vessels that are not certified under 46 CFR subchapter D, but have been authorized to carry certain types and quantities of oil or oil-based products under other authorities. It also covers foreign vessels carrying these oils as a secondary cargo as authorized by an International Oil Pollution Prevention (IOPP) or Noxious Liquid Substance (NLS) certificate required by 33 CFR 151.33 or 151.35. The definition would also apply to any other uninspected vessel that carries oil in bulk as cargo as defined by this subpart.

Inland Area: The proposed definition is based on a recommendation by the Negotiated Rulemaking Committee and is included to define the geographic boundaries of an area for identifying response times and equipment operating capability criteria. The existing boundaries used in 33 CFR part 80 and 46 CFR part 7 are the basis for the seaward limit of this area.

Nearshore Area: The proposed definition is based on a recommendation by the Negotiated Rulemaking Committee, defines the geographic boundaries of an area generally located between 50 and 200 nautical miles from shore. This area is far from shore, thus the risk to the shoreline is reduced. This reduced risk is reflected in the planning criteria required for vessels operating in this area.

Open Ocean: The proposed definition is based on a recommendation by the Negotiated Rulemaking Committee, defines the geographic boundaries of an area generally located between 50 and 200 nautical miles from shore. This area is used for identifying response times and equipment operating capability criteria. It extends out to the seaward limit of the United States Exclusive Economic Zone. This area is far from shore, thus the risk to the shoreline is reduced. This reduced risk is reflected in the planning criteria required for vessels operating in this area.

Exclusive Economic Zone: The proposed definition is based on the one in section 1001 (8) of OPA 90. It describes this zone as defined in Presidential Proclamation 5930 of March 10, 1983. This zone extends 200 miles from the territorial sea baseline unless a maritime boundary with another country is closer than 200 miles.
Section 155.1025 Operating Restrictions and Interim Operating Authorization

Vessel owners or operators covered by this subpart shall submit a response plan and have it approved by the Coast Guard before they may handle, store, or transport oil. Section 4202(b)(4) of OPA 90 phases in this requirement. Response plans must be submitted no later than February 18, 1993, for vessels operating prior to that date. Such vessels must be operating in full compliance with a plan approved by the Coast Guard by August 18, 1993. A vessel entering service after February 18, 1993, must submit a response plan prior to handling, storing, or transporting oil, and must also be operating in compliance with an approved plan by August 18, 1993. Vessels entering service after August 18, 1993, must submit a response plan prior to handling, storing, or transporting oil. While the above dates implement the statutory requirements for vessels to operate with approved response plans, section 311(j)(6)(F) of the FWPMA allows the Coast Guard to authorize a vessel to operate for up to 2 years after a plan is submitted for approval if the owner or operator certifies that they have identified and ensured the availability of, through contract or other approved means, the necessary private personnel and equipment to respond to the maximum extent practicable to a worst case discharge. This provides an interim period in which the vessel may continue to operate before the approval process is completed, recognizing that the Coast Guard may be unable to complete the plan review and approval process before approved plans are required.

The proposed rule would provide a 2 year authorization for vessels to operate pending plan approval if they certify that they have identified and ensured the availability of through contract or other approved means, the response resources required by this subpart. This certification would normally occur as part of the initial plan submission. Since plans must be submitted for existing vessels by February 18, 1993, 6 months before the date for compliance with the plan, all of the required response resources may not be in place. Such vessel owners or operators may submit this certification separately prior to August 18, 1993, or they may note the resources that are in place when they submit their plan in February. All response resources must be in place by August 18, 1993, for the vessel to continue to operate past that date.

The required certification can be included either in a letter accompanying the plan or in a separate request. In either case, the request must identify the same information on these resources that is required to be submitted with the response plan. Information contained in the plan does not need to be repeated.

Under the proposed rule, a vessel’s authorization to operate is void if: The Coast Guard determines that the response resources included in the certification do not meet the requirements of this subpart; the identified resources are no longer covered by a contract or other approved agreement with the vessel owner or operator; the vessel is not operating in compliance with the submitted plan; or the 2 year period expires. Measures taken for vessels not operating in compliance with a plan are described in 33 CFR 155.1065.

Section 155.1025 would also allow the Captain of the Port (COTP) to authorize vessels without an approved response plan to make a single voyage to a port or geographic area. This authorization could be requested for vessels whose plans do not cover a particular port or vessels making an initial visit to a U.S. port. This authorization is intended for vessels in the spot charter market whose destination may change en route, not for use by vessels on planned voyages or in liner service.

To qualify for this single voyage authorization, a vessel must have aboard either: A response plan that meets all of the requirements of this subpart, except for the geographic-specific information for the port; or a shipboard emergency plan that has been approved by the flag state of the vessel as meeting the requirements of MARPOL Annex I, Regulation 26. The MARPOL Annex I, Regulation 26 plan contains most of the shipboard elements of the vessel response plan required in this proposed rule. The vessel owner or operator shall also identify and inform the vessel crew and COTP of the designated qualified individual, and certify that they have identified and ensured the availability of, through contract or other approved means, the response resources required by this subpart for the applicable port or geographic area in which the vessel intends to operate. This request may be submitted to the COTP via telex; however, the response resources must be specifically identified.

155.1030 General Response Plan Requirements

This section of the proposed rule lists the general requirements for all response plans. These requirements differentiate between vessels that carry oil in bulk as a primary cargo, vessels carrying oil in bulk as a secondary cargo, and unmanned tank barges. There are separate sections in the proposed rule that address the detailed requirements to be met by each type of vessel.

The proposed rule sets out the requirements for these vessels separately so that commenters can focus on the proposed requirements for each type of vessel. The Coast Guard may reorganize the format of the final rule to include common components of the plans in one section, only listing the requirements unique to unmanned tank barges or secondary cargo carriers in a separate section, as opposed to restating the entire list of requirements. The Coast Guard solicits comments on this format.

Response plans must be prepared in English, and if applicable, in a language understood by crew members with responsibilities under the plan. This will most often be the officers aboard the vessel.

The general response plan requirements include 10 sections: General information and introduction; notification procedures; shipboard spill mitigation procedures; shore-based response activities; list of contacts; training procedures; drill procedures; plan review and update procedures; vessel-specific appendices; and geographic-specific appendices for each COTP zone in which the vessel stores, handles, or transports oil. Vessel owners or operators are encouraged to use checklists, flowcharts, and other methods to facilitate the use of response plans in an emergency.

The proposed requirements are based on the “Guidelines for the Development of Shipboard Oil Pollution Emergency Plans” adopted by IMO at the Marine Environment Protection Committee meeting in London in March 1992, implementing MARPOL, Annex I, Regulation 26. This regulation requires oil tankers of 150 gross tons or over and every other ship of 400 gross tons or over to carry an approved oil pollution emergency plan on board. This requirement is effective on April 4, 1995 for existing vessels and any new vessels delivered prior to April 4, 1993. New vessels delivered after April 3, 1993, must have an approved plan onboard prior to entering service. The MARPOL requirements apply to all such vessels regardless of whether they carry oil in bulk as cargo. These requirements are also based on the “Guidelines for the Preparation of Shipboard Oil Spill Contingency Plans” published in 1990 by OCIMF and the International Tanker Owners Pollution Federation (ITOPF).
Most comments to the ANPRM recommended that these documents form the basis for the response plan regulations. The format in the proposed rule is intended to implement the requirements of MARPOL Annex I, Regulation 26, as authorized by section 3 of the Act to Prevent Pollution From Ships (33 U.S.C. 1903), and section 311(j)(5)(C) of the FWPCA for vessels carrying oil in bulk as cargo. Regulations implementing MARPOL Annex I, Regulation 26 requirements for vessels not subject to this proposed rule will be published at a later date. The Coast Guard solicits comments on this approach for implementing the MARPOL Annex I, Regulation 26 requirements.

A number of comments recommended that the response plan requirements include other topics such as identification of sensitive areas and detailed geographic-specific response strategies. These topics will be addressed in the Area Contingency Plans. The vessel response plan addresses the responsibilities of the vessel crew to notify appropriate government and company officials and to minimize or mitigate an oil discharge from the vessel; management of the response by the vessel owner or operator; and response resources that have been identified in advance by the vessel owner or operator. The proposed rule also requires that an owner or operator of unmanned tank barges prepare a separate notification and emergency action plan to be carried aboard the barge. These requirements are discussed under § 155.1040.

The proposed rule notes that a response plan for a dedicated response vessel that operates outside of the response area as defined in this proposed rule must be in the same format as a vessel carrying oil as a secondary cargo. Response plans must be submitted in a specific format. This format is consistent with that required by MARPOL 73/78 Annex I, Regulation 26. Since many vessel owners or operators already have response plans, or will be preparing them before the final rule is published, the proposed rule provides for acceptance of existing plans in a different format until the next required resubmission date. Required resubmission dates are contained in § 155.1070. Response plans that qualify for this acceptance must include a cross-reference that shows the location of required plan sections to facilitate review and use in an emergency. A response plan must be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) and applicable Area Contingency Plans (ACP). The Coast Guard will review the plan for consistency. Section 155.1050 requires the vessel owner or operator to identify and ensure the availability of, by March 1998, through contract or other approved means, certain response resources listed in the ACP.

155.1035  Response Plan Requirements for Vessels Carrying Oil as a Primary Cargo

These requirements apply to all vessels that carry oil as a primary cargo, except for unmanned tank barges. Unmanned tank barges and vessels that carry oil as a secondary cargo are covered by separate sections. This section would also apply to vessels that carry non-petroleum oils as their primary cargo.

The general information and introduction section of a response plan contains information on the vessel, its owner or operator, a listing of the geographic areas covered, a table of contents, and record of changes page.

The notification procedures section contains information on notifications that must be made in the event of a vessel casualty. While some of the notifications should be in geographic-specific appendices, this section should: summarize notification requirements, identify responsibilities, procedures, and communication methods to be used, and information to be provided. Notification information should follow the recommendations of IMO Resolution A48(18). This section contains procedures for notifying the qualified individual designated to represent the vessel's owner or operator. Much of this information can be provided in checklist format. It is not necessary to provide individual information, if already provided in the list of contacts section of the response plan or in a geographic-specific appendix.

The shipboard spill mitigation procedures section of a response plan summarizes the actions to be taken by the vessel's crew in the case of an actual or substantial threat of an oil discharge. This section must address potential and actual discharges of both oil cargo and fuel. Although section 311(j)(6) of the FWPCA focuses primarily on oil carried in bulk as cargo, MARPOL Annex I, Regulation 26 applies to both oil cargo and fuel. The plan must address discharges that may result from onboard operations (i.e., internal or external cargo or fuel transfers) as well as those resulting from casualties or emergencies. The proposed rule lists specific situations that must be covered in the plan. Checklists or other simple procedures are appropriate for this section.

The response plan must identify crew actions necessary for the assessment of damage stability and hull stress, as well as information to be collected for use by shore-based personnel. Crew training for these actions may vary greatly, and the response plan must take this into account. The response plan must identify the location of the information necessary for damage assessment and stability calculations. A copy of this information must be maintained ashore by either the vessel owner or operator or the vessel's recognized classification society, unless the applicable information is available in a shore-based damage stability and residual strength calculation program that can be accessed 24 hours per day. This is to ensure that information is available if the information aboard the vessel is destroyed or inaccessible.

The Negotiated Rulemaking Committee recommended that tankers have: A lightering plan with operational checklists, a station bill, and identified sources of specific equipment required for vessel-to-vessel lightering. The proposed rule would require procedures for both internal and ship-to-ship transfers. The Ship-to-Ship Transfer Guide (Petroleum) published jointly by the International Chamber of Shipping and OCIMF is proposed for incorporation by reference. This guide covers ship-to-ship transfers using cargo systems and contains numerous checklists and procedures to be followed for such transfers. The plan requires transfer procedures followed in any of the cargo systems are damaged, including the use of over-the-top pumping, gravity shifting of cargo, emergency use of void spaces or ballast tanks, etc. The plan must also identify the sources of fendering equipment, transfer hoses, portable pumps, lightering or mooring masters, and vessel or barge brokers. Section 155.1060 specifies which equipment must be contractored for in advance. Lightering plans may be maintained separately from the response plan; however, at a minimum the response plan must address the safety considerations. Emergency lightering or cargo transfer must be done only by trained personnel who are capable of evaluating effects on the vessel's stability, hull stress, potential flammability of the cargo, and other factors. The Coast Guard solicits comments on any reference guide for internal vessel transfers that may be considered for incorporation by reference in the final rule.

The plan must identify the location, crew responsibilities, and procedures for...
The response plan section on shore-based response activities must address actions to be taken by the vessel owner or operator, to manage the response to an actual or threatened discharge. The plan must address: any crew responsibilities to initiate response actions; responsibilities and authorities of the designated qualified individual; and procedures for coordinating response actions with those of the predisagned Federal On-Scene Coordinator.

The response plan must also identify the organizational structure that will be used to manage response efforts. Recognizing the need for an organizational structure, the Coast Guard proposes that each response plan contain certain organizational elements that are essential to the successful management of a response operation. A number of comments on the ANPRM requested that the proposed rule require the use of the Incident Command System (ICS) under the National Interagency Incident Management System (NIIMS). The proposed rule does not require the use of ICS. It allows the vessel owner or operator to develop their own organizational structure provided that the organization elements listed are addressed. The structure must be compatible with the organization embodied in the ICP. Some large vessel owners or operators will be able to staff their organizational structure with in-house resources; others will rely on contracted support. Either method is acceptable. The proposed rule would also require identification of the personnel necessary to staff this organizational structure for the first 7 days of a response.

The plan must identify and ensure the availability of resources, through contract or other approved means, necessary to respond to the average most probable discharge, and to the vessel’s maximum most probable and worst case discharges. Section 155.1060 of the proposed rule describes the procedures for determining these resources. Resources must be identified for each COTP zone in which a vessel operates. Since most resources will vary based on location, this information should be maintained in a geographic specific appendix.

The proposed rule requires identification of the location of equipment, personnel, and support services available to meet the response resource requirements. One of the recommendations of the Negotiated Rulemaking Committee was to establish a process for response contractor approval that would allow the response plan to identify “approved” response resource providers in lieu of listing all of the response resources. The Coast Guard will be publishing a separate rulemaking that addresses acceptability of response resource providers, and will incorporate any provisions that affect these requirements in the final rule.

The proposed rule would require a section listing contacts available 24 hours a day to assist during a response. This should be a separate section of the plan since it is most likely to require routine revisions. This section will not be required if the same information is included in each geographic-specific appendix. The list of contacts includes: the vessel owner, operator, or charterer; insurance representatives; local agents; marine surveyors; the qualified individual; and the providers of the identified response resources.

Response plans must include a section to address the training program and procedures to ensure that all personnel with responsibilities under the plan are trained as specified in § 155.1055.

Response plans must include a section to address the drill program of the vessel owner or operator to ensure that the plan will function in an emergency as specified in § 155.1060. The response plan must include a section addressing the procedures for review and update of the plan by the vessel owner or operator. This includes meeting the requirements of § 155.1070, as well as describing the procedures for review after plan use to evaluate effectiveness.

The response plan must contain a geographic-specific appendix for each COTP zone in which the vessel operates. This includes transit areas within the Exclusive Economic Zone. This appendix must contain information on notifications, identify the qualified individual, and identify the response resources required to meet the average most probable discharge, maximum most probable discharge, and worst case discharge scenario for the applicable geographic area. A geographic-specific appendix allows for easy updating of information and facilitates review of the plan by the appropriate COTP.

The response plan must contain an appendix for vessel-specific information. This information covers ship systems; oil cargo and fuel type, stowage, and safety information; and certain vessel plans. Much of this information can be maintained on the vessel separately from the response plan, provided there is a cross-reference to the location of this information.

Section 155.1040 Requirements for Unmanned Tank Barges

This section of the proposed rule contains detailed response plan requirements for unmanned tank barges. While most of the components of the plan are similar to those required of other vessels that carry oil as a primary cargo, there are significant differences. Since unmanned tank barges have personnel aboard only during transfer operations, sections of the plan that address actions of the vessel’s crew do not generally apply. In addition, the nature of operation of these vessels is different. Barges are moved by towing vessels that are operated by the barge owner, part of a fleeting operation, or contracted through an independent towing vessel operator. They may have a dedicated towing vessel or move as part of a multiple-barge tow. Because of this, the proposed rule would require response plans for unmanned tank barges to contain two parts: An abbreviated notification and emergency action plan carried aboard the barge, and a core response plan maintained by the owner or operator of the barge. The Coast Guard considered including all tank barges under this proposed section, but is of the opinion that personnel aboard manned tank barges may be able to carry out a number of responsibilities (i.e., internal cargo transfer, damage assessment, etc.) not covered by this section. The Coast Guard also solicits comments on whether this section should apply to all tank barges. The Coast Guard solicits comments on this two part formatting option.

The notification and emergency action part of the response plan carried aboard the unmanned tank barge covers notification procedures for the tank barge owner or operator, qualified individual, and the National Response Center. It would specify information necessary for notification and identify the responsibilities of the personnel of the towing vessel, fleeting area, or facility at which the barge is moored after an actual or threatened oil discharge. The tank barge owner or operator would be responsible for ensuring that the necessary information for notification and initial action is available. It is the tank barge owners responsibility to ensure that the notification component of the response plan can be implemented in an...
emergency by the towing vessel. Custody of a tank barge by a towing vessel does not transfer responsibility for meeting the requirements of this proposed subpart. It must be noted that nothing in this section modifies the existing responsibility of the towing vessel operator to notify the National Response Center of an oil discharge as the person in charge of the barge.

The part of the plan carried aboard the tank barge would be stowed in the documentation container. The Coast Guard considered requiring the towing vessel to maintain a copy of this plan component, but concluded that the nature of unmanned tank barge operations would make this impractical. Responsibility for the handling of a tank barge may shift numerous times during transit between multiple towing vessels, fleeting areas, and facilities. The likelihood is high that a plan that had to be passed from vessel to vessel would be easily misplaced. While it may be prudent for the tank barge owner or operator to provide copies of the tank barge plan to the towing vessel to ensure that plan responsibilities are carried out, the proposed rule does not require this.

The part of the response plan retained by the tank barge owner or operator follows the same general format as that required for primary oil carriers. The primary differences are: The plan can cover multiple tank barges; notification procedures must identify the respective responsibilities of the persons having custody of the barge vessel, the tank barge owner or operator, and the qualified individual; the identification of responsibilities of the tankerman to mitigate or prevent discharges resulting from operations aboard the barge; and identification of responsibilities of the custodians pending the arrival of the qualified individual or other representative of the tank barge's owner or operator. The plan must have separate appendices for each type of tank barge covered by the plan, as well as a geographic-specific appendix for each COTP zone in which tank barges covered by the plan operate.

Section 155.1045 Requirements for Vessels That Carry Oil as a Secondary Cargo

These requirements apply to all vessels that carry oil as a secondary cargo as defined in 33 CFR 155.1020. The Negotiated Rulemaking Committee recommended that the Coast Guard take into account the relative risk of harm to the environment that may result from the discharge of a vessel's oil cargo when setting response plan requirements. This risk of harm is affected by the type and quantity of oil being carried as cargo. The Committee recognized that vessels carrying oil as a primary cargo posed a much greater risk than those carrying oil as a secondary cargo. Most of the vessels carrying oil in bulk as a secondary cargo, such as fish processing vessels, offshore supply vessels, cargo vessels, and some towing vessels, carry limited quantities of mostly non-persistent oils. These oils tend to dissipate rapidly into the environment.

The Committee recommended that, if covered by the response plan requirements of OPA 90, these vessels be required to maintain response plans that reflect the reduced risk posed by such vessels. The statute requires their inclusion if they carry oil in bulk as cargo. While it is difficult to estimate the actual number of vessels, estimates of approximately 1,800 oil field supply vessels may be involved in the carriage of oil in bulk as a secondary cargo as defined in this subpart. This includes transfers of a portion of their fuel to offshore platforms and the carriage of oil-based drilling fluids. Coast Guard spill data for both oil cargo and fuel from 1981 to 1986 reports 503 spill incidents involving such vessels, with 88 percent being less than 100 gallons.

Fishing vessels that carry oil in bulk as cargo are also included. Although there are an estimated 28,000 documented fishing vessels and 90,000 state-registered fishing vessels, the Coast Guard estimates that only 80–100 are engaged in the carriage of oil in bulk as a secondary cargo. Coast Guard spill data for both oil cargo and fuel from 1981 to 1986 reports 3,106 spill incidents involving all fishing vessels, with 90 percent being less than 100 gallons. There is no way to identify which of these spills involve vessels potentially subject to this rule.

With regard to towing vessels, the Coast Guard estimates that only a small number of towing vessels are involved in the carriage of oil in bulk as cargo. While up to 25 percent of the 5,703 towing vessels may be involved in non-routine transfers of small quantities of fuel to other vessels, most of these transfers are to barges within their tow and the oil transferred would not be deemed cargo under the proposed rule.

The Coast Guard has little information on the number of cargo vessels that carry oil in bulk as a secondary cargo. Vessels in this trade carry primarily non-petroleum oils. The Coast Guard solicits information on these and any other vessels that would be subject to the requirements of this section.

This section would also apply to dedicated response vessels when operating outside of the response area. As discussed earlier, they have been excluded from the regulations when operating inside the response area. The Coast Guard does not believe of recovered oil outside of the response area would generally not be managed as part of the primary spill response, thus requiring a response plan to address the spills.

The Committee recommended that requirements for secondary cargo carriers be based on the volume of oil carried as cargo to differentiate the relative risk of these vessels: 100 barrels, 1,000 barrels, and 5,000 barrels of cargo are proposed as the categories. Each vessel that is subject to this subpart must prepare a response plan that covers the requirements applicable to the volume of cargo carried.

Some of the vessels covered under this section transfer a portion of the oil in their fuel tanks as cargo. The proposed rule requires that vessels transferring cargo from their fuel tanks use 50 percent of their fuel tank capacity to determine the level of response requirements that will apply. This is a conservative estimate of the quantity of fuel that may be transferred as cargo during a voyage. The Coast Guard solicits information on the volumes and frequencies of oil transfers from such vessels and the percentage of fuel capacity that may be transferred as cargo during a voyage.

The response plan format required for secondary cargo carriers is similar to that required for vessels carrying oil as a primary cargo. It includes: General information; notification procedures; shipboard spill mitigation procedures; shore-based response activities; a list of contacts; training procedures; drill procedures; plan review and update procedures; and geographic-specific appendices.

The requirements for the general information and notification section of the plan are the same as those for primary oil carriers.

The requirements for shipboard spill mitigation procedures vary based on the volume of oil cargo. Vessels carrying 100 barrels or less of oil cargo would only be required to have a basic emergency action checklist covering notification and emergency actions. Vessels carrying over 100 but less than 1,000 barrels of oil cargo are required to have procedures for actions of the vessel's crew, damage control procedures, emergency transfer procedures, and the use of on board equipment. Vessels carrying between
1000 and 5000 barrels of oil cargo would need to have more detailed procedures. Vessels that carry over 5000 barrels of oil cargo have the same response plan requirements as primary oil carriers.

The requirements for addressing shore-based response activities primarily cover: Initial action by the crew to supervise response actions; responsibilities of the qualified individual; and coordination with the Federal OSC. A significant difference from the primary carriers is the identification of response resources. The Negotiated Rulemaking Committee recommended that vessels carrying oil as a secondary cargo be required only to identify qualified spill response resources and/or contractors in their plan, without contracts. The Coast Guard considered this recommendation when drafting the proposed rule. However, in order to comply with the statutory mandate that the availability of resources be ensured by contract or other approved means, the Notice proposes that a vessel owner or operator obtain the written consent of a response organization to be identified in a response plan. The Coast Guard recognizes that this does not create a contract between the vessel owner or operator and the response organization. The Coast Guard solicits comments in whether this type of agreement is sufficient to meet the requirements of section 311(j)(5)(C)(iii) of the FWPCA that the plan "identify, and ensure by contract or other means approved by the President the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge", and whether other alternatives should be considered to meet this requirement.

The Coast Guard anticipates that there will be no additional costs associated with the need to obtain the written consent of a response organization before they may be identified in a plan. The Coast Guard considers that the cost of contracting for such services in advance would be inordinate given the minimal risk these vessels pose. The identification of available resources that have provided written consent to be listed will be sufficient to meet the requirements.

The list of contacts section and information in the geographic-specific appendices would be the same as for other vessels except that detailed information on available response resources are required.

The training section of the plan requires that personnel aboard the vessel be trained on initial assignment to the vessel and as necessary thereafter. Participation in required drills should provide sufficient refresher training.

The requirements for drills vary by oil cargo capacity. For vessels carrying 100 barrels or less of oil cargo, annual vessel drills and biennial drills of the shore-based response organization are required. Vessels carrying between 100 and 5000 barrels of oil cargo would need to have quarterly vessel drills and annual drills of the shore-based response organization. Drills required for vessels that carry over 5000 barrels of oil cargo would be at the same frequency as primary oil carriers.

Owners or operators of vessels carrying oil as a secondary cargo would be required to resubmit their plan for review and approval every 5 years, when there is a change in cargo capacity, or a change in vessel configuration. They must provide updates to the Coast Guard and other plan holders for all other changes that occur between resubmissions. Annual review is not required.

Section 155.1050 Response Plan Development and Evaluation Criteria

This section describes response resource requirements for the average most probable discharge, maximum most probable discharge, and worst case discharge to the maximum extent practicable. Appendix B of the proposed rule contains a detailed explanation of requirements.

Section 311(j)(5) of the FWPCA requires planning for the worst case discharge only. The Negotiated Rulemaking Committee recommended that the proposed rule address operational discharges as well. The Coast Guard agrees that the response plan should also address the more common spills of accidental and casualty-related discharges which are less than the entire cargo capacity of the vessel. Section 311(j)(1)(C) of the FWPCA, which addresses prevention or containment of oil discharges from vessels, authorizes the Coast Guard to require planning also for the average most probable and maximum most probable discharge volumes.

The Committee also recommended an approach for planning requirements for the worst case discharge cargo volume to the maximum extent practicable. The Committee recommended that the following factors be considered: Loss of some oil to the environment due to evaporation and natural dissipation based on the type of oil; emulsification which may effect the quantity of material to be recovered; provision of close-to-shore response, shoreline protection, and shoreline cleanup capabilities, and limits of available response technologies and private removal capability for worst case discharges for larger vessels.

The Committee recommended placing a cap on the quantity of resources which individual vessel owners or operators are required to contract for in advance. This recognizes the limits of currently available technology and private removal capabilities. The Committee recognized the importance of early equipment arrival at the scene of a discharge and the need for tiering of equipment requirements to reflect local, regional, and national response capability. The Committee recommended that equipment mobilization occur within the first 3 days of a discharge, when oil recovery is most likely. The Committee also recommended that the owner or operator be required to identify additional resources above the cap when the worst case discharge planning volume for a vessel exceeded the caps for the contracted resources.

The Committee recommended that the caps for required contracting of response resources be increased at appropriate intervals that roughly correspond with response plan review periods. This would take into account: increased availability of mechanical recovery devices; improved equipment efficiencies or design; improved ability to track and encounter spills; improved technology to address large spill volumes; high rate response techniques such as dispersants and in situ burning, when approved by the Regional Response Team; and other techniques, such as bioremediation, if quantifiable.

The Committee acknowledged that some areas of the country are more prone to spills for a variety of reasons including, but not limited to: the amount of traffic through an area and the volume of persistent oil moved. Such areas require more rapid response.

The Committee recommended different requirements for vessels operating in the open ocean, offshore, nearshore and inland, and rivers as previously discussed. This recommendation was based on the variability of vessel traffic, proximity to shoreline, and size of vessels. The Committee recommended that deepwater ports be considered separately.

The Committee recommended that the Coast Guard consider the difference in risk posed by small vessels that carry oil in bulk as cargo, as well as recognize that a worst case discharge from any vessel is likely to occur over time and not instantaneously.
The Coast Guard has used the Committee's recommendations in drafting this section of the proposed rule; however, except when specifically noted, the proposed rule approach was developed by the Coast Guard and was not part of the Committee's final recommendations. The proposed rule describes the approach to be followed to determine the response resources that must be identified for response to a vessel's worst case discharge to the maximum extent practicable.

The proposed rule requires that vessel owners and operators consider weather conditions during preparation of a plan. Many of these conditions are area-specific and require the vessel owner or operator to refer to the applicable Area Contingency Plan for information on ice conditions, debris, temperature ranges, and weather-related visibility in which response resources must function. The proposed rule refers to Table 1 of Appendix B to part 155 for evaluating operability of booms and oil recovery devices. These criteria are based on information from the "World Catalog of Oil Spill Response Products—Third Edition." Table 1 uses significant wave height criteria as the primary criteria for evaluating operability of recovery equipment in different environments. Additional design criteria are included for booms. The criteria are used to evaluate equipment operability under specified conditions. They reflect conditions that may limit mechanical recovery, but would not necessarily limit other response methods or affect normal operations of a vessel.

Identified equipment must be capable of operating safely in the significant wave height criteria in Table 1. The criteria reflect limitations of equipment design, rather than limitations imposed by the specific operating environment. Because these criteria may not reflect the actual conditions in a given geographic area, the COTP may reclassify specific bodies of water within their COTP zone to a more or less stringent operating environment to reflect actual conditions. A body of water may be reclassified as a more stringent operating environment when prevailing wave conditions exceed the significant wave height criteria over 35 percent of the year. A body of water may be reclassified as a less stringent operating environment if prevailing wave conditions do not exceed the significant wave height criteria for the less stringent operating environment over 35 percent of the year.

Reclassifications would be identified in the Area Contingency Plan. The classification for a given water body affects requirements for response equipment. The COTPs will evaluate water bodies within their COTP zones and will respond to specific inquiries not later than 90 days. The Coast Guard solicits comments on the use of 35 percent as the standard for determining an operating environment.

The proposed rule requires all vessel owners and operators to identify response resources for the average most probable discharge as defined by the Committee. Vessels that carry oil in bulk as their primary cargo must identify sufficient boom and a means of deployment in the area of any oil transfer. Response plans must also identify the availability of oil recovery equipment and sufficient storage capacity capable of arriving at the transfer area within 2 hours of discovery of a discharge. Appendix B to part 155 contains procedures for determining these resources. The proposed rule would require vessel owners or operators to have response resources under contract to meet the 2-hour response time. This would ensure the prompt availability of equipment where it is most commonly needed, at the point of transfer.

The proposed rule would allow the vessel owner or operator to rely on equipment available at a facility, provided its use for vessel spills has been arranged by contract or other approved means. The proposed rule also permits vessels involved in vessel-to-vessel lightering to rely on common equipment.

This section sets the level of response resources that must be identified and ensured available, through contract or other approved means, to respond to spills up to a vessel's maximum most probable discharge volume. While the Committee recommendation specifically addressed planning for the maximum most probable discharge volume, the Coast Guard has modified this in the proposed rule to cover discharges of lesser volumes as well. The Coast Guard's opinion is that the Committee intended this to be the case, since approximately 98 percent of the spills from tank ships and tank barges are below this volume. In high volume port areas and the Great Lakes, these resources must be capable of arriving at the scene of a discharge within 12 hours of its discovery.

Response plans must identify sufficient containment boom, oil recovery devices, and oil storage capacity for this planning volume. Appendix B to part 155 contains procedures for determining resource requirements. The response plan must specify the location, type, and quantity of equipment available. As noted, this requirement will be modified in the final rule to account for any response contractor "approval" process adopted by the Coast Guard. Response resources for a maximum most probable discharge must be prepositioned to meet the required response times. The Committee recommended that this minimum capability be maintained within the general geographic area at all times. The proposed rule would authorize the COTP to approve the temporary movement of select items of equipment to a spill outside the area.

Equipment movements authorized by the COTP outside the area would not affect a vessel's ability to operate in that area. A response plan would remain valid.

The proposed rule would require vessel owners and operators to identify sufficient resources to respond to a worst case discharge to the maximum extent practicable. Appendix B to part 155 contains detailed information for calculating the planning volume for each response tier, as discussed below, and for determining the response resources which must be identified to meet these requirements. Response plans must specify the location, type, and quantity of resources. As noted, this requirement will be modified in the final rule to account for any response contractor "approval" process adopted by the Coast Guard.

The requirements for response to a worst case discharge to the maximum extent practicable are based on tiering of resources. The rule proposes three tiers which would allow for identifying of resources from outside the area to meet the requirements. On scene arrival times for these tiers reflect a Committee recommendation that resources be concentrated in areas with the highest potential for spills. These are identified as higher volume port areas. The first tier of resources must be capable of arriving at the scene of a discharge within 12 hours of its discovery. Resources for tiers 2 and 3 must be capable of arriving in 24 hour increments thereafter.

The Coast Guard proposes that the same time limits apply to the Great Lakes because of their unique environment. The rule excludes Prince William Sound because § 155.1135 of this proposed rule establishes different times for this area.

Tier 1 response resources for all locations not within a higher volume of...
A port area must be capable of arriving on scene within 24 hours from the time a spill is discovered. Resources for tiers 2 and 3 must be capable of arriving in 24-hour increments thereafter. The times take into account the outer most boundaries of these areas: a plan must account for notification, mobilization, and travel time when identifying resources capable of arriving within the required time. For open ocean areas, planners must identify equipment that can reach 50 miles from shore in the specified time. Under this proposed rule, open ocean extends up to 200 miles from shore. The Coast Guard's opinion is that it is inappropriate to set one time limit for such a large area. Using the boundary between the offshore and open ocean operating environments as proposed would provide sufficient information to identify resources without speculating where they will need to respond. A vessel owner or operator must include planned travel time beyond 50 miles in determining on scene arrival times in the open ocean. For example, the owner or operator of a vessel involved in lightering operations 70 miles from shore must identify tier 1 response resources capable of arriving at that location within 28 hours of notification (assumes 10 knot transit speed). The Coast Guard solicits comments on this approach.

The Committee recommended that the Coast Guard recognize the value of planning for rapid arrival of response resources to the scene. The tiers discussed above set maximum times for these arrivals. Thus, resources that are capable of arriving early are treated the same as those arriving just before the required maximum. The Coast Guard solicits comments on methods to recognize the early arrival of oil recovery devices and other response equipment when determining overall capability required to be planned for arrival on scene.

The Committee recommended more rapid response times in higher volume port areas, but did not identify specific ports. The higher volume port areas in the proposed rule were determined by the Coast Guard based on a study of persistent and non-persistent oil movement by vessels, tank ship and tank barge transits, and overall vessel transits in a port area. The Coast Guard's "Port Needs Study (Vessel Traffic Services Benefits)" published in March 1992 as required by section 4107 of OPA 90, and the 1987 and 1988 U.S. Army Corps of Engineers reports on "Waterborne Commerce of the United States" provided statistics for the 34 port areas evaluated. Analysis of this data indicated that 15 port areas had oil movements significantly greater than others. These port areas were determined using two methods: total oil volume (persistent and non-persistent) transported by water, and a weighted index with oil volumes and vessel traffic. The port areas were first ranked based on total oil volume. Figure 1 displays the results of this information. The second method listed the port areas using a relative weighting of persistent oil movement (50 percent); non-persistent oil movement (30 percent), tank ship and tank barge transits (10 percent), and overall vessel transits (10 percent). The volumes and transits were indexed to normalize the data for comparison between ports. The relative weightings were based on an assessment of the importance that each factor should have in the ranking of port areas. Figure 2 displays the results of this indexing. The port areas are listed in the same order as in Figure 1 for comparison. The decision to choose 15 port areas was based on the distinct break that occurs between the port areas at that point, both when listed by volume and by index. The higher volume port area to be used for response planning includes the area within 50 nautical miles seaward of the port entrance to reflect the increased probability of vessel casualties within port approaches. A report describing the methodology used for this determination is in the public docket indicated under "ADDRESSES."
34 PORTS RELATIVE TO VOLUME OF PERSISTENT AND NON-PERSISTENT OIL

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U.S. ARMY CORPS OF ENGINEERS 1987

FIGURE 1.
OIL MOVEMENT INDEX
OF 34 PORTS IN ORDER
OF TOTAL VOLUME

PORT

NEW YORK, NY
PRINCE WILLIAM SOUND, AK
HOUSTON/GAL, TX
DELAWARE BAY
LALONG BEACH, CA
SABINE-NECHES, TX
SAN FRANCISCO, CA
NEW ORLEANS, LA
ST. CROIX, V. I.
L.O.O.P
CORPUS CHRISTI, TX
LAKE CHARLES, LA
PASCAGOULA, MS
BOSTON, MA
PUGET SOUND, WA
SAN JUAN, P. R.
PORT EVERGLADES, FL
HAMPTON RDS, VA
TAMPA, FL
MOBILE, AL
PORTLAND, ME
NEW HAVEN, CT
FREEPORT, TX
BARBERS POINT, HI
BALTIMORE, MD
PROVIDENCE, RI
JACKSONVILLE, FL
COOK INLET, AK
COLUMBIA RIVER, OR
SAVANNAH, GA
MOREHEAD CITY, NC
CHARLESTON, SC
WILMINGTON, NC
HONOLULU, HI

FIGURE 2.
Although the Louisiana Offshore Oil Port (LOOP) was classified as a higher mobilized within that period, the plan 2-hour period after notification. While be capable of being mobilized within a planning criteria. port areas subject to more stringent poses by deepwater ports be considered recommended that the reduced risk port areas included in the proposed rule. Many areas have been identified by the Regional Response Team for the use of dispersants with approval from the Federal OSC under certain conditions.

Under certain circumstances, the dispersant capability may be used as credit against worst case discharge resource requirements. Appendix B to part 155 contains information on circumstances under which plan credit may occur.

The Committee considered salvage and firefighting capabilities, but did not make any recommendations. The Coast Guard considers these capabilities to be essential to deal with a worst case discharge. The proposed rule requires vessel owners or operators to identify and ensure the availability of, through contract or other approved means, both private salvage and firefighting capability for areas in which the vessel operates. It does not establish specific response times or equipment requirements. This requirement should ensure the availability of sufficient capability in the United States. The Coast Guard intends that this proposed requirement create an incentive to maintain or expand existing capabilities. The Coast Guard solicits comments on whether specific levels of resources or capabilities should be identified, as well as the estimated costs of providing this capability.

The Committee recommended that the proposed rule require a vessel owner or operator to identify and ensure the availability of, through contract or other approved means, equipment necessary to protect shoreline areas is generally the same regardless of the size of the vessel that may be the source of the discharge. Although an oil discharge from a larger vessel has the potential to affect more shoreline area than one from a smaller vessel, the purpose of this requirement is to ensure that there is a minimum quantity of equipment available for spills of any quantity. The Coast Guard solicits comments on the quantities of equipment necessary to protect shoreline areas is generally the same regardless of the size of the vessel that may be the source of the discharge. Although an oil discharge from a larger vessel has the potential to affect more shoreline area than one from a smaller vessel, the purpose of this requirement is to ensure that there is a minimum quantity of equipment available for spills of any quantity. The Coast Guard solicits comments on the quantities of equipment necessary to protect shoreline areas is generally the same regardless of the size of the vessel that may be the source of the discharge. Although an oil discharge from a larger vessel has the potential to affect more shoreline area than one from a smaller vessel, the purpose of this requirement is to ensure that there is a minimum quantity of equipment available for spills of any quantity. The Coast Guard solicits comments on the quantities of equipment necessary to protect shoreline areas is generally the same regardless of the size of the vessel that
offshore areas to identify and ensure the availability of, through contract or other approved means, response resources capable of carrying out shoreline cleanup operations. Vessels that operate in the open ocean (if more than 50 miles from shore) are not required to identify or contract for them in advance. This reflects the reduced likelihood that oil discharged from a vessel greater than 50 miles from shore will impact shorelines. Because the level of required resources cannot be quantified in advance, the Coast Guard proposes instead to use a qualitative evaluation based on a planning volume of oil that could reach the shoreline. This evaluation method takes into account the area in which a vessel operates and the type and volume of oil carried as cargo. Table 3 of appendix B to part 155 includes factors to be considered for potential shoreline impact that are used in determining the planning volume.

The Coasts Guard solicits comments on alternative methods to evaluate the quantity of required shoreline cleanup capability. The requirement to identify or contract for specified quantities of boom, support equipment, and shoreline cleanup capability that becomes effective in March 1993 serves as an interim requirement until March 1998. As noted, accurate identification of response resources required to perform shoreline protection or cleanup must be based on the area potentially affected. This information will be developed in the ACPs required by OPA 90. These area plans will not likely be in place in March 1993 when response plans must be submitted. In March 1996, the 5-year anniversary proposed for response plan resubmission will occur for many vessels. By this time, the ACP will be in place and will identify the response capability necessary to implement these geographic-specific response strategies. A vessel owner or operator is required to identify and ensure the availability of, through contract or other approved means, response resources necessary to provide the capability identified in the applicable ACP. Although the proposed rule indicates that this requirement must be met by March 1998, the Coast Guard solicit comments on whether inclusion of these area plan requirements should instead be required if better than whenever a vessel owner or operator resubmits a plan after its initial approval.

As noted earlier, the Committee recognized that there should be a limit, or cap, to the resources that a vessel owner or operator must contract for in advance. The intent of contracting in advance is to ensure that adequate capability exists to respond to oil spills. In many areas of the country, adequate capability may not currently exist. Requiring contracts provides incentives for the private sector to expand and capabilities in these areas. On the other hand, there are areas of the country, primarily the larger ports, where the total capability may exceed the proposed caps. It is not practicable to require vessel owners and operators to contract in advance with every response resource that exists in a given area. It must be recognized that these contracts guarantee baseline capability, but do not limit the resources that will be brought to bear during an actual oil discharge. Vessel owners or operators will be expected to activate the response resources necessary for the particular circumstances of the spill, regardless of what has been contracted for in advance.

The proposed rule lists the caps for 1993, 1998, and 2003. These caps are based on the effective daily recovery rate (as calculated using the procedure in appendix B to part 155) of response resources that must be identified in a response plan. They are based on an assessment of response capability that in the Coast Guard's opinion can be provided nationwide by 1993. Setting nationwide criteria as opposed to geographic-specific criteria provides an incentive to improve overall response capability in the United States. While some areas of the country may have capability that exceeds the caps, the 25 percent increase in these caps every 5 years will provide an incentive for those areas to expand capability. The 5-year interval is proposed to correspond with required resubmittal interval for response plans. The Coast Guard solicits comments on whether fixed dates should be established for this increase to be in place, or whether it should be tied to the date when an individual vessel owner must resubmit their plan after the effective date of the cap increase. The Coast Guard solicits comments on the specific caps proposed for 1993, 1998, and 2003.

As indicated, the caps would increase at 5-year intervals. The Committee recommends that the Coast Guard conduct an evaluation of these cap increases before they become effective to determine if they remain practicable. The Committee recommended taking into account advances in: skimming efficiency and design technology; oil tracking technology; high rate response techniques; and other applicable response technologies. The Coast Guard agrees and would anticipate conducting such evaluations approximately 2 years before the cap increase would be effective. The increase would occur unless the Coast Guard determined that the increase was not practicable. Any change in the caps would occur through a public notice and comment process.

Section 155.1055 Training

This section of the proposed rule describes the training requirements that a vessel owner or operator of a vessel carrying oil as a primary cargo or an unmanned tank barge must identify in their plan. The proposed rule does not require training in specific subjects or minimum training periods. Rather, it requires a vessel owner or operator to identify in their plan the training programs they will establish or adopt to train any persons with responsibilities in the response plan. The training will vary widely based on the responsibilities. For example, a vessel's master will need different training than the engineer responsible for internal cargo transfers, just as the qualified individual will need different training than the cleanup manager in the vessel owner or operator's shore-based spill management team. The Coast Guard solicits comments on whether there should be more specific requirements for training programs.

The proposed rule requires a vessel owner or operator to ensure that records of this training are maintained. Records on the vessel crew's training must be maintained aboard the vessel. Records for shore-based personnel trained must be maintained either by the qualified individual or, if applicable, by the spill response team included in the plan to carry out some or all of the vessel owner's or operator's shore-based responsibilities. This recognizes that a vessel owner or operator may rely on a private contractor or cooperative to meet their responsibilities. There is no need to maintain duplicate records. All records must be available for inspection by the Coast Guard.

The proposed rule also clearly indicates that a vessel owner or operator is not relieved from complying with applicable training standards issued by the U.S. Occupational Safety and Health Administration (OSHA). OSHA has issued regulations in 29 CFR 1910.120 that set minimum training requirements based on the task that a responder carries out. These requirements vary from 8 hours to 48 hours of classroom training, plus added requirements for field training. These requirements do not apply to the
vessel's crew, but would apply to shore-based personnel and should be taken into account in the training program of the vessel owner or operator.

Section 155.1060 Drills

The proposed rule requires that a vessel owner or operator identify a planned drill program in the response plan. This must include both announced and unannounced drills conducted by the vessel owner or operator as necessary to ensure that a response plan will function in an emergency. The proposed rule specifies a minimum frequency for drills to be held for both the vessel's crew and for the shore-based personnel with responsibilities under the plan. The Coast Guard solicits comments on the frequency of these drills.

The proposed rule does not require drills to cover specific sections of a response plan. Instead, it allows the vessel owner or operator to tailor drills conducted by the vessel owner or operator as necessary to ensure that a response plan will function in an emergency. The proposed rule specifies a minimum frequency for drills to be held for both the vessel's crew and for the shore-based personnel with responsibilities under the plan. The Coast Guard solicits comments on the frequency of these drills.

The proposed rule requires that any drills conducted to exercise the vessel's crew be documented in the vessel's log. Records of drills involving the shore-based spill management team or oil spill removal organizations identified in an approved response plan must be maintained by the qualified individual.

The proposed rule also requires that vessel owners or operators participate in unannounced drills conducted by the COTP or Area Committee. Section 311[j]7 of the FWPCA requires that the Coast Guard periodically conduct unannounced drills of removal capabilities in areas designated for development of Area Contingency Plans. The Coast Guard will involve vessels and facilities in these drills. These drills will be infrequent. A vessel owner or operator selected to participate in such a drill will be expected to activate the spill management team and oil spill removal organizations identified in the plan to the extent required by the COTP. The cost of activating these resources must be borne by the vessel owner or operator. The Coast Guard anticipates holding up to 12 such drills per year throughout the country. The probability of any vessel being involved in a drill is low.

Finally, the proposed rule allows vessel owners or operators to take credit for drills in which their spill management team or identified oil spill response organization(s) participate for the areas in which the vessel operates. The Coast Guard recognizes that many vessel owners and operators will rely on the same response resources. There is no need for these resources to be exercised continually to meet the requirements of individual owners and operators. Documented drills involving identified response resources can be used to meet the requirements of this section. This would also apply to vessel owners of vessels with multiple vessels. Participation in one drill held by a common spill management team will meet the requirement for all vessels utilizing that team.

Section 155.1065 Submission and Approval Procedures

This section of the proposed rule outlines the procedures for submission and approval of response plans. The vessel owner or operator is required to submit two English-language copies for review.

The Coast Guard is studying alternatives for plan review and approval. Consideration is being given to review at a central location for the initial submission of a plan. Since these regulations will result in the submission of more than 5,000 plans in February 1993, a centralized submission, review, and approval process during this phase will both facilitate review and ensure consistency. Geographic-specific appendices will be sent to the appropriate COTP for review and comment. After this initial submission, the system would be modified: plans for new vessels entering service would go directly to the COTP where the vessel's Certificate of Inspection is issued. Plans for foreign flag vessels would go either to a central location or to the COTP who issues the Tank Vessel Examination letter or Certificate of Compliance. Vessel-specific information would be reviewed by the single Coast Guard office and the geographic-specific appendices would be reviewed by the appropriate COTP. COTPs will have the discretion to include members of the Area Committee in plan review if necessary. Area Committee involvement should be minimal, since appendices will contain primarily notification and response resource information.

Once a plan is approved, the Coast Guard will return one copy with an approval letter. Plan approvals will be valid for up to 5 years. Plans submitted before the required response resources are in place may receive conditional approval subject to availability of the required resources. The Coast Guard will retain one copy for use, if necessary, during a response involving the vessel.

If a plan is not approved, the Coast Guard will explain the deficiencies. The vessel owner or operator will have 30 days to submit a revised plan. The vessel may continue to handle, store, or transport oil as cargo during this period provided that the certification of the availability of the required response resources remains valid.

Copies of an approved response plan must be maintained aboard the vessel, by the qualified individual, and by the vessel owner or operator.

Section 155.1070 Plan Revision and Amendment Procedures

This section of the proposed rule requires that vessel response plans be reviewed annually by the vessel owner or operator to ensure that plan information is current. A letter documenting this review must be submitted to the Coast Guard.

Changes in vessel operations require plan resubmission for approval. These include: addition of an operating area not previously covered by the vessel's plan; a change in the vessel's configuration that significantly affects the plan information, such as a reconstruction or major tank or piping reconfiguration; a change in the type of oil carried as cargo (differing cargo groups have different resource requirements); a change in the identity or capability of the response resources, identified and ensured available by contract or other approved means, that affects their availability; a change in the vessel's emergency response procedures; other changes that significantly affect plan implementation. If no other revisions occur, plans must be submitted for reapproval within 5 years of the previous approval.

Plan revisions that affect only names or phone numbers do not require resubmission for approval. However, all plan holders, including the Coast Guard, must receive such revisions as they occur.

Vessel owners or operators must revise a plan whenever the Coast Guard determines that it does not meet the requirements of this subpart. Vessel owners or operators will receive a written notice of deficiencies requiring revision. Deficiencies in the identification of a qualified individual or required response resources must be corrected within 3 days. All other deficiencies must be corrected within 30 days. Vessels may continue to handle, store, or transport oil during the relevant period.

The proposed rule provides appeal procedures for a vessel owner who disputes a plan's deficiency. These...
Section 155.1110 Purpose and Applicability

The proposed requirements of this subpart provide a greater level of preparedness above and beyond the requirements of proposed subpart D. These additional requirements will ensure that adequate response equipment is readily on scene in the event of a future oil spill, and that the residents in Prince William Sound are appropriately trained in oil spill removal and containment techniques.

This subpart provides requirements and criteria for use in response plan development and in identifying response resources. The requirements are not intended to establish performance standards to be met during an oil spill. These requirements are in addition to the ones found in proposed subpart D of 33 CFR part 155.

Section 155.1120 Additional Response Plan Requirements

This section describes what must be included in the geographic-specific response plan appendix for Prince William Sound. The appendix is required to identify: The oil spill removal organization; drill procedures for the required response resources; procedures for testing and certifying of response equipment; and type and location of prepositioned equipment. The oil spill removal organization will consist of trained personnel capable of responding to a worst case discharge, to the maximum extent practicable.

The oil spill removal organization must identify personnel to be trained in the communities and hatcheries specified in the rule. General training is to be provided in oil spill removal and containment techniques and specific training is required for the individual response resources provided. The training will allow local residents to assist in the cleanup and containment of oil spills and provide a means of protecting their property and economic interests.

The oil spill removal organization must evaluate each of the communities and hatcheries listed in § 155.1125 to determine the personnel necessary to be trained as well as the property and sensitive areas requiring protection. Response strategies and assumptions then need to be developed. These strategies need to reflect the practicable limitations of personnel and response equipment available.

The majority of the vessels that carry non-crude oil products are small tank barges. These barges typically carry between 30,000 to 70,000 barrels of products. It would appear economically infeasible for these vessels to establish an oil spill removal organization capable of responding to a 200,000 barrel spill, an amount much greater than the vessel's cargo capacity. The language in the statute is clear: Response plans for all tank vessels operating on Prince William Sound shall provide for the establishment of an oil spill removal organization consisting of trained personnel to immediately remove, to the maximum extent practicable, a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater. The statute does not allow for the Coast Guard to set lower limits for vessels with a capacity less than 200,000 barrels. The proposed rule reflects the requirements of the statute. It is also clear that providing for this response organization will severely increase transportation costs to the consumer.

One way that these vessels could satisfy this requirement without incurring major costs would be to join the existing oil spill removal organization. The Coast Guard solicits comments on the feasibility of this alternative and associated costs and on our interpretation of the statutory requirements.

The term “immediately remove” is used in OPA 90 to assess the number of trained personnel needed by an oil spill removal organization to respond to a worst case discharge or a discharge of 200,000 barrels, whichever is greater, to the maximum extent practicable. The Coast Guard solicits comments on the feasibility of this alternative and associated costs and on our interpretation of the statutory requirements.

This additional tier requires prepositioned on-water recovery equipment and storage capacity to be on scene within 6 hours for all vessels carrying crude oil and for non-crude oil carriers greater than 15,000 deadweight tons (DWT). This section also reduces response times proposed in § 155.1060. The additional tier for certain vessels and the reduced response time for the on-water recovery equipment provide for an effective recovery capacity of up to 70,000 barrels/day to be on scene within 36 hours. The 70,000 barrel/day response capacity provides the additional capability required by section 5005 of OPA 90.

Non-crude oil traffic in Prince William Sound consists mostly of small tank barges and tankers. The tankers are presently only loading and discharging at Whittier, Alaska: tank barges are serving the various communities, military sites, and hatcheries located around Prince William Sound. The supplemental on-water recovery and storage capabilities for these vessels reflects the high volatility of their cargo. Much of the spilled oil from a non-crude oil carrier will evaporate or disperse soon after a discharge. Recovery operations are likely to proceed more cautiously due to the higher flammability of the cargo. This required equipment must be prepositioned along the vessel's intended route of operation.
Vessels less than 15,000 DWT will have to provide the response resources required by §§ 155.1035, 155.1040, or 155.1045. The reduced response times for this equipment reflects the statutory mandate of section 5005 of OPA 90 to provide more rapid response capability. However, it is not necessary to provide an additional tier or response equipment due to the type of cargo carried and the costs of providing and maintaining this equipment. The equipment required by §§ 155.1035, 155.1040, and 155.1045 will be sufficient to meet the intent of section 5005 of OPA 90.

The additional response equipment for communities and hatcheries identified in proposed § 155.1125 will enhance the ability of the local residents to contain and remove oil and to protect their property. The prepositioning of equipment improves the effectiveness of a cleanup operation. The requirement for permanent buoys at strategic locations will provide midchannel anchor points for protective booming of property and environmentally sensitive areas. Prepositioned equipment resources allows for a more rapid response.

Section 5005(a)(1) and 4116(c) of OPA 90 both address requirements for escort vessels. Section 5005(a)(1) requires that response plans for all vessels to which this subpart applies to provide for escort vessels with skimming capability. This includes all non-crude oil carrying vessels. Escort vessels with skimming capability are considered dedicated response vessels as defined in proposed § 155.1015. Section 4116(c), "Escorts for Certain Tankers," requires at least two towing vessels to escort all single hulled tankers over 5,000 gross tons transporting oil in bulk in Prince William Sound.

When section 5005(a)(1) is read in conjunction with 4116(c) it appears that two escort vessels with skimming capability are required. Costs associated with providing escort vessels with skimming capabilities would likely be prohibitive for the small fleet of vessels operating in Prince William Sound carrying non-crude oil products.

It is also unclear whether the escort vessel required by section 5005 should only provide skimming capability or also the capability of the towing assistance.

The Coast Guard solicits comments on the following issues: Whether all vessels carrying oil in bulk as cargo should be escorted by vessels with skimming capability; the number of escort vessels required for each vessel; the feasibility of reducing skimming capabilities for each of the required escort vessels; and the necessity of requiring an escort vessel to provide towing capabilities.

Section 155.1135 Response Plan Development and Evaluation Criteria

This section of the proposed rule provides response times for the response resources required by §§ 155.1035, 155.1040, and 155.1045. More rapid response times reflect the statutory requirements of section 5005 of OPA 90. In accordance with these response times, a vessel owner or operator of a large crude oil carrier that exceeds the response capability caps in proposed § 155.1050, is required to plan for 70,000 barrels/day of on-water recovery capability to be on scene within 36 hours. In any other port in the United States, the planning requirement would be effective recovery capacity of up to 40,000 barrels/day to arrive on scene within 60 hours in a higher volume port area, and within 72 hours in all other areas.

The same applies to vessels carrying non-crude oil products. Response times have been reduced and/or additional response resources have been required, so that spilled oil will be removed from the environment more rapidly.

Section 155.1140 Special Consideration for Vessels Contracting With a Facility Permitted Under the Trans-Alaska Pipeline Authorization Act

This section of the proposed rule allows the owner or operator of a vessel to contract with a facility authorized under the Trans-Alaska Pipeline Authorization Act to meet some or all of the requirements of this subpart. This provision has been provided to reflect the present arrangement that crude oil carriers have with the Alyeska Pipeline Service Company. The COTP will review the vessel's geographic-specific appendix for Prince William Sound to ensure that any contractual arrangements meet the requirements of this subpart. The owner or operator of a vessel that has entered into a contractual relationship to provide response resources is not absolved from their responsibility to meet the requirements of this subpart.

Appendix B to Part 155—Guidelines for Determining and Evaluating Required Response Resources for Vessel Response Plans

This appendix contains the procedure for a vessel's owner or operator to determine the response resources that must be identified and ensured available, by contract or other approved means. The procedures are based on the general recommendations of the Negotiated Rulemaking Committee for determining resources necessary to respond to the average most probable discharge, maximum most probable discharge, and worst case discharge to the maximum extent practicable. The specific approach and proposed factors were discussed by the Committee, but were not part of the final Committee recommendation except as noted.

The procedures described in the appendix are used to determine the planning volumes that a vessel owner or operator must use for response resource identification. A number of assumptions are used to determine this volume. This appendix does not establish a performance standard.

The procedures used for these calculations are based on the vessel's operating area and type of oil (persistent or non-persistent) carried. Non-petroleum oils would be classified using the applicable persistent or non-persistent oil cargo group. The Coast Guard solicits comments on this classification for non-petroleum oils.

The appendix describes the procedures to determine: Whether equipment identified in a response plan is acceptable to meet the requirements of this proposed rule; resource requirements to plan for the average most probable discharge; resource requirements to plan for the maximum most probable discharge; resource requirements to plan for the worst case discharge; effective daily recovery rates for oil recovery devices; the calculation of the worst case discharge planning volume; availability of high-rate response methods; and additional equipment necessary to sustain response operations. Each of these procedures provides further detail on the requirements in § 155.1050. The Coast Guard solicits comments on these procedures.

The proposed method for evaluating the effective daily recovery rate for an oil recovery device was recommended by the Committee. While the Committee recognized that actual recovery rates were affected by a number of variables, the proposed approach allows for the use of either of two methods to determine the rating of equipment identified to meet the planning capabilities required by this proposed rule. The differentiation between rope and belt-type devices and other designs was not part of the Committee recommendation, but was added by the Coast Guard to reflect the difference in these devices from others when determining recovery rates.

The appendix includes tables providing the factors necessary to determine the resource requirements. Table 1 lists the operating criteria for oil recovery devices and booms. It uses
significant wave height for classifying equipment identified in a response plan. Such equipment must be designed to function in the conditions listed for the applicable operating environment. During plan evaluation, the Coast Guard will assess whether equipment identified in a plan meets these criteria.

Table 2 lists the amount of boom that must be contracted for or identified by vessel owners or operators and the response time requirements for shoreline protection. The requirement is based on the area in which the vessel operates, not the size of the vessel. All boom must meet the applicable design criteria in Table 1. The Coast Guard solicits comments on this approach.

Table 3 provides factors needed to calculate the planning volumes for response resource identification. The table is divided into four geographic areas and four oil types. Because loss to the environment, potential for shoreline impact, and potential for on water recovery varies by the oil type and location, a factor is included for each. The factors are based on estimates of the oil behavior when it enters the environment: A percentage will be lost due to natural dispersion; a percentage will reach the shoreline; and a percentage that will remain for on water recovery. In the inland/nearshore and offshore portions of the table, the percentages do not add up to 100 percent. This reflects an adjustment in the on water percentage to increase the quantity of resources that are planned for mobilization within the first 3 days of the response. Because the oil may rapidly impact the shoreline in these areas, quick mobilization is essential. The table also includes a sustainability period. This was used to calculate the resource mobilization factors in Table 5. It does not reflect how long it will take to complete a clean-up. During an actual response, vessel owners and operators will be required to sustain the clean-up operation until release by the Federal OSC. The Coast Guard solicits comments on the specific factors in this table.

Table 4 lists emulsification factors for the four oil groups. The factors represent the increase in volume expected due to emulsification. This increase must be considered when planning for response resources, oil storage and disposal capacity, etc. Oil emulsification affects both the weathering rate and the volume of oily material that must be planned for during the recovery operations. The tendency for certain oils to form an emulsion is based primarily on its viscosity at the ambient temperature and its chemical composition. Because this varies widely, the table uses cargo groups based on specific gravity. Some oils form very stable emulsions: Others emulsify then naturally separate. The individual factors reflect the general behavior of oils in a given group, and do not reflect any one particular oil. The Coast Guard solicits comments on the factors proposed, as well whether there is an alternative method for determining these factors.

Table 5 lists the response resource mobilization factors for the geographic areas where response planning is required. These factors reflect the tiering of on water oil recovery capacity that must be mobilized within the first 3 days of an incident to maximize the potential for oil recovery. These factors were derived using the sustainability periods in Table 3 for the respective geographic area. Each factor reflects a percentage of the total on water recovery requirement. To recover the oil planned for on water recovery within the sustainability period, this capacity must be on scene within the time specified for the applicable tier.

Table 6 lists the proposed caps on response resources that vessel owners or operators must identify and ensure available, through contract or other approved means. The cap reflects an estimate of capability that is considered a practical nationwide target to be met in 1993. Providing the resources necessary to meet these caps will require a significant expansion of response capabilities in most areas of the country. Some areas may currently have resources in place or planned that will exceed these caps. The caps serve as a minimum capability that must be available throughout the United States. The cap for rivers is lower to reflect the significantly lower impact, and potential for on water recovery, in river areas and a practical limit on response capability available in those areas in 1993. The caps listed in Table 6 increase 25 percent every 5 years to create incentives for both an increase in the quantity of equipment available and improvements in spill response technology. The Coast Guard solicits comments on the effective daily recovery rates that have been proposed as nationwide minimums.

### Regulatory Evaluation

Executive Order 12291 (46 FR 13197, February 19, 1981) requires that agencies develop a regulatory analysis for any rule having major economic consequences on the national economy, individual industries, geographic regions, or levels of government. To assist with making this determination, a series of questions was asked in the ANP RM to solicit information from the public on the potential economic impact of these regulations.

The Coast Guard considers these proposed regulations to be major under Executive Order 12291. It is a significant rule using a number of criteria under the Department of Transportation Regulatory Policies and Procedures (44 FR 11020, February 26, 1979). This rulemaking will cost the oil transportation industry and the general public more than $100 million annually. It may also affect domestic and international shipments of oil to and from the United States and may generate substantial public interest and controversy. These regulations will also impact cleanup contractors, oil spill cooperatives, and other not-for-profit cleanup organizations.

The proposed rule contains requirements for vessel response plans, as well as additional requirements for certain vessels operating in Prince William Sound, Alaska. The impact of these requirements has been analyzed separately and is summarized below.

A draft Regulatory Impact Analysis (RIA) for vessel response plans, and a draft Regulatory Evaluation (RE) for Prince William Sound are available in the docket for inspection or copying, as indicated under "ADRESSES." It also has been placed in a separate document (CGD 90-051A) established to facilitate review of the programmatic RIA for titles IV and V of OPA 90. Any public comments received on the RIA will also be placed in that docket.

### Vessel Response Plans

In performing the regulatory impact analysis, the following four response plan alternatives were considered:

1. **No requirements.**
2. **Comprehensive requirements for all vessels.**
3. **Reduced requirements for vessels carrying oil as a secondary cargo.**
4. **Reduced requirements for inland barges only.**

### Industry Profile

The vessels that are subject to these requirements are divided into four distinct groupings: (1) Oil tankships in international trade, (2) coastal trading U.S. tankships and tank barges, (3) inland tank barges, and (4) other vessels not certificated under 46 CFR subchapter D, which carry oil in bulk as a secondary cargo. Three distinct industry groups comprise the majority of these other vessels. They are oil field supply vessels, fishing vessels and towing vessels.
Approximately 363 companies owning 1,050 vessels constitute the international tankship sector. The number of vessels held by any one company varies from 1 to over 50 vessels. The assets of the publicly held tankship operating firms vary from $28 million to $95 billion.

The coastal fleet consists of U.S. owned tankships and coastal trading tank barges. The coastal fleet is comprised of 147 tankships owned by 28 companies and 190 tank barges owned by 52 companies. The number of vessels owned by any one company varies from 1 to over 10 vessels. The assets of the independent, publicly-held companies engaged in operating the coastal fleet vary from $50 million to over $1 billion.

The inland barge fleet is comprised of 409 companies with 3,461 active barges. Of these, 219 companies own only 1 vessel or 6 percent of the fleet. The assets of publicly traded firms in this industry vary from $23 million to $13 billion.

The oil field supply vessel industry constitutes the largest group of vessels that carry oil as a secondary cargo covered by this proposed rule. The number of these vessels covered by this proposed rule is estimated to exceed 1,000. The number of these vessels owned by any one company varies from 1 to over 50.

The fishing vessel industry consists of 5,422 vessels owned by 4,587 companies. In addition, 22,371 documented fishing vessels are owned by individuals. The vast majority of these are owners or operators of one vessel. Approximately 80 to 100 of these vessels or 0.4 percent will potentially be impacted by this regulation because they carry oil as a secondary cargo. Virtually all of these vessels are privately owned.

The towing vessel industry consists of 5,703 vessels owned by 2,156 companies. Of these, two companies own over 50 vessels while 1,357 owners have only one vessel. Approximately 2.5 percent of the fleet or 150 vessels are engaged in the transfer oil to other vessels. This proposed rule would not be applicable to the majority of these vessels because the oil carried would not be considered cargo due to the nature of their operation.

Costs
In the aggregate, the requirement for vessel response plans will result in substantial costs to the industries affected. The present value cost of this regulation for the period 1992 through 2015 is estimated at $1.277 billion. The bulk of this cost entails large capital and operating expenditures to ensure adequate shore-based response capability. This accounts for 86 percent of the total incremental cost, or $1.123 billion. The next most costly items are drills and training with costs of $122 million for the 24-year period examined, or 10 percent of the total cost. The incremental cost of the entire regulation is $187 million for 1992, but declines to $155 million annually for the period 1995 through 2015.

For individual tankship or coastal trading tank barge owners or operators, the cost of compliance will vary widely. The owners or operators of large fleets can spread the costs of the response plan development over many vessels. The annual cost per vessel to major oil companies is estimated to be $3,400 per vessel. The cost to small independent vessels owners or operators is estimated to be $26,000-$30,800 per vessel.

For individual inland tank barge owners or operators, the cost per tank barge will also vary widely according to the number of barges owned. For companies with more than 100 barges, the annual cost is estimated to be approximately $75 per barge annually for the development of the plan, plus $825 per barge annually for the development and maintenance of inland response capability ($2 million per year divided by 2,424 inland barges), for a total of $800 per barge per year. By contrast, the cost for companies with 1 to 9 barges is estimated between $195 and $1,750 for the development of the plan, plus $825 for the contractor retainer per barge per year.

The costs for oil field supply vessel, fishing vessel, and towing vessel owners or operators are estimated to be as high as $1,000 per year. As with other vessels, there would be economies of scale for owners or operators of multiple vessels.

The Coast Guard is particularly interested in comments about its estimates of the costs and the effectiveness of the measures mandated by this part of the rule. Are there concerns that the Coast Guard has either underestimated or overestimated the costs of specific provisions of the rule? If so, what steps could be taken to strengthen the analysis which supports these estimates? Are there any additional data not considered by this analysis that would shed light on the cost-effectiveness of the proposed requirements compared with alternative requirements not proposed? Will these provisions place an undue hardship on small entities? Given the relatively higher costs which will be borne by smaller firms, is there any evidence that regulating them will yield higher benefits than regulating larger firms? The Coast Guard solicits comments on these questions and on the cost estimates and will consider all comments in preparing the final rule, to the maximum extent allowed by law.

Summary of Benefits
The principal benefit of the vessel response plan requirement is a potential reduction in oil spilled with a corresponding reduction in natural resource damages and cleanup costs. Vessel response plans are expected to influence: The frequency of and spill occurrence; oil outflow volumes when an incident occurs; spill preparedness; and risk management. The requirements of the proposed rule should improve spill response such as: Improved notification and communications; quicker mobilization and reduced response times; and clearer procedures and guidelines for onboard transfers, lightering, and towing. The potential benefits of vessel response plans were calculated by conducting detailed analyses of historical cases and by assessing the effectiveness they might have had in reducing outflows, cleanup costs, and damages.

To quantify benefits of avoided natural resource damages associated with the vessel response plan regulations and to justify the investment in oil spill abatement, the ideal methodology would be to conduct a multiple case study of historical spill data that included resource damage assessments. The results would represent the range of benefits from avoided natural resource damages. This could not be done due to the limited number of claims actually settled since OPA 90 established a clear statutory basis for national resource damage restoration claims and the lack of standardized models to perform damage assessments.

Present models provide a glimpse of potential benefit ranges associated with the reduction of oil spilled in the marine environment. Other models and methodologies, which may better quantify natural resource damage, are under development. The monetary value of natural resource damages avoided was calculated based on historical spill unit values. The RIA estimates that vessel response plans will lead to an average 15 percent reduction in total costs of clean-up, third-party claims, and natural resource damage.

Additional Response Plans
Requirements for Certain Vessels Operating in Prince William Sound, Alaska Industry Profile

Vessel traffic in Prince William Sound is dominated by large crude carriers calling at the Trans-Alaska Pipeline...
Prepositioned response equipment; establishment of oil spill removal organizations; training of local citizens and fish hatchery employees in oil spill removal techniques; periodic testing and certification of equipment; and exercises to test the capability of the equipment and trained personnel.

Prepositioned equipment, training, drills, and escort vessels improve the efficiency of offensive response operations. Quick recovery of oil from the environment reduces the net impact of the spill. The regulations for Prince William Sound are estimated to increase the volume of recovered oil by 15 percent for crude oil, and 10 percent for non-persistent oils.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal 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).

An Initial Regulatory Flexibility Analysis discussing the impact of this proposal on small entities is available in the docket for inspection or copying where indicated under ADDRESSES.

Vessel Response Plans

The impact of vessel response plan requirements will be distributed differently among various sectors of the U.S. waterborne oil transportation industry. Some small owners or operators of international flag tankers, which call infrequently in U.S. waters, may choose to discontinue U.S. trade. However, they will be able to use their vessels in other trades. Small operators of coastal tankers and tank barges will incur a minor competitive disadvantage versus larger operators. The requirement for a response plan, by itself, should not force these companies to exit the business. However, this proposed regulation may have a detrimental impact on small barge operators. The combined effects of the requirements of the OPA 90 may force a number of these companies to sell their vessels for subcontract due to the cost of meeting all OPA 90 requirements.

Fishing vessels, towing vessels, and oil field supply vessels that carry oil in bulk as a secondary cargo could also be adversely impacted by this regulation. For example, if the annual cost of compliance for an oil field supply vessel is $1,000 for a response plan, it is estimated the cost per gallon of oil carried is between 2/100¢ and 4/100¢ per gallon. The cost for a 90,000 DWT ton tanker is only 3/1000¢ per gallon, a lower cost. For towing vessels and fishing vessels, the cost per gallon of oil carried as cargo is estimated to be 38¢ and $1.00 respectively. The impact of this rule on vessels that occasionally carry oil in bulk as a secondary cargo will be significantly disproportionate. The proposed rule subjects these vessels to reduced requirements in accordance with the recommendations of the Negotiated Rulemaking Committee. It is estimated that the costs to meet these reduced response plan requirements for secondary carriers is 10 percent of the cost to meet the comprehensive standards if that was required.

Additional Response Plan Requirements for Certain Vessels Operating in Prince William Sound, Alaska

The increase in the unit cost of transporting crude petroleum to comply with section 5005 of OPA 90 is relatively minor. This can easily be absorbed by the large oil companies transporting TAPS oil. For the products transported in the non-TAPS trade, the unit cost will be considerably higher. Vessels operated under charter to the Military Sealift Command are not considered a small entities. Only one small entity was identified in the non-TAPS trade.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) reviews each proposed regulation that contains collection of information requirements to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other similar requirements. The collection of information requirements for each subpart of the proposed rule are discussed separately.

Subpart D Vessel Response Plans

This proposal contains collections of information requirements in the following sections: §§ 155.1025 (Operating restrictions and interim operating requirements); 155.1045 (Requirements for vessels carrying oil as secondary cargo); 155.1055 (Training); 155.1060 (Drills); 155.1065 (Submission and approval procedures); and 155.1070 (Plan revision and amendment procedures). The reporting and recordkeeping requirements associated with this proposed rule are being submitted to
OMB for approval in accordance with 44 U.S.C. chapter 35. The following particulars apply:

**DOT No:** 2115; OMB CONTROL NO XXXX.

**Administration:** U.S. Coast Guard.

**Title:** Vessel Response Plans.

**Need for Information:** This information is necessary to ensure that vessels carrying oil in bulk as cargo entering U.S. waters are adequately prepared to respond to an oil spill.

**Proposed Use:** The purpose of the OPA 90 amendments to section 311 of the FWPCA was to reduce the number of oil spills when they do occur in U.S. waters. Without the proposed requirements for vessel response plans, it is probable that some operators will not maintain the necessary internal resources (effective planning, training, drills, etc.) or external resources (adequate shore-based response capability) to meet the requirements of these amendments. The proposed collection of information requirements help ensure and monitor, through the submission and recurring update of response plans, that vessels entering U.S. waters have appropriate response plans and shore-based resources.

Submission of vessel response plans to the U.S. Coast Guard for approval, the onboard verification of an approved plan during routine boarding procedures, and the maintenance of training and drill records is believed to be the most efficacious way to ensure compliance.

**Frequency:** Response plan submitted every 5 years; notice of reviews completed annually; updates as necessary.

**Burden Estimate:** A one-time burden for industry of 286,400 hours for reporting and an annual recordkeeping burden of 82,500 hours.

**Respondents:** 902.

**Average Burden Hours per Respondent:** One-time reporting burden of 319.73 hours and an annual recordkeeping burden of 91.52 hours.

Subpart E Additional Requirements for Certain Vessels Operating in Prince William Sound, Alaska

This proposal contains collection of information requirements in the following section: §§ 155.1125 (Additional response plan requirements); and 155.1130 (Requirements for prepositioned response plan equipment).

The reporting and recordkeeping requirements associated with this rule are being submitted to OMB for approval in accordance with 44 U.S.C. chapter 35. The following particulars apply:

**DOT No:** 2115; OMB CONTROL NO XXXX.

**Administration:** U.S. Coast Guard.

**Title:** Additional Response Plan Requirements for Certain Vessels Operating in Prince William Sound, Alaska.

**Need for Information:** This proposed rule ensures that a vessel owner or operator will provide a geographic-specific response plan appendix that addresses: Prepositioned oil spill containment and removal equipment; oil spill removal organizations; training of local residents in oil spill containment and removal techniques; drills; and periodic testing and certification of equipment.

**Proposed Use:** The purpose of the OPA 90 is to reduce the number of oil spills in U.S. waters and minimize the impact when they do occur. The additional requirements in section 5005 of OPA 90 for trained personnel and prepositioned response equipment reflect the particular environmental sensitivity of Prince William Sound. Without the proposed requirements for vessels carrying oil in bulk as cargo that operate in Prince William Sound, it is unlikely that sufficient response resources would be available or properly maintained to clean up a spill. The proposed requirement establishes oil and spill removal organizations and requires prepositioned response equipment to ensure a greater level of preparedness and rapid response in the event of a spill.

**Frequency:** Records of personnel training and equipment maintenance, inspection, and testing would be maintained as necessary. Training and drill plans would be submitted yearly. Drills would occur once a year.

**Burden Estimate:** 1460 hours a year for reporting and 400 hours a year for recordkeeping.

**Respondents:** 2.

**Average Burden Hours per Respondent:** 740 hours reporting and 200 hours of recordkeeping per year.

**The Coast Guard has submitted the requirements to OMB for review, as required by the Paperwork Reduction Act. Persons commenting on the collection of information requirements should submit their comment both to OMB and to the Coast Guard, as indicated under ADDRESSES.**

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12812 (October 26, 1987), and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

During the discussions of the Negotiated Rulemaking Committee, several States expressed concern about the issue of preemption. Some States, including Alaska, Washington, and Florida, have already issued regulations requiring oil spill response plans for vessels. The Coast Guard has evaluated the federalism issue in light of the statutory requirement for vessel response plans and the accompanying provision which dictates that State law shall not be preempted. These regulations establish minimum requirements which may be supplemented by the States. However, a State may not adopt regulations inconsistent with Federal regulations. State law would be preempted by these regulations only to the extent that compliance with the State law would preclude owners or operators of vessels from complying with these requirements.

Section 311(o)(2) of the FWPCA explicitly preserves the authority of any State to impose its own requirements or standards with respect to the liability of persons involved in the removal of oil. Further, section 311(o)(3) of the FWPCA indicates that nothing in section 311 shall affect any State or local law not in conflict with anything therein.

The Supreme Court has held that a state may not issue a regulation which actually conflicts with a Federal statute or regulation. A conflict will be found "where compliance with Federal and State regulations is a physical impossibility." Florida Lime and Avocado Growers v. Paul, 373 U.S. 132.

Impossibility of compliance must be distinguished from inconsistency in Federal and State laws. For example, if a Federal regulation indicates several ways in which a requirement may be satisfied, a State may limit, but not preclude the method of compliance in its regulations.

Executive Order 12812 and sections 311(o)(2) and (3) of the FWPCA emphasize the goal of preserving the authority of the States in pollution prevention and response. In Askev v. American Waterways Operators, Inc., 93 S.Ct. 1590 (1973), the Supreme Court stated that "sea-to-shore pollution {is} historically within the reach of the police power of the States." (Id at 1601.) Hence, the Court has clearly preserved the authority of the States to regulate in this area, as long as State law is not in direct conflict with Federal law.

Section 311(z)(5) of the FWPCA specifically directs the President to issue these regulations. It is certified that the policies contained herein have been
assessed in light of the principles of the Federalism Executive Order. Because this proposal is being issued in response to a statutory mandate, the Coast Guard has determined that this action accords fully with the Executive Order.

Environment

The Coast Guard has prepared a preliminary Environmental Assessment (EA) for this action in accordance with the Council on Environmental Quality regulations (40 CFR parts 1500–1508) and Coast Guard policy (COMDTINST M16475.1B) implementing the procedural provisions of the National Environmental Policy Act (NEPA). The EA discusses the environmental consequences of the proposed action and alternatives, including the no-action alternative. The preliminary EA is available in the public docket as noted under “ADDRESS.” After receipt of all comments to this NPRM and the EA, the Coast Guard will make a final decision on the need to draft an Environmental Impact Statement (EIS) for this rulemaking.

List of Subjects in 33 CFR Part 155

Oil pollution, Hazardous substances, Reporting and recordkeeping requirements, Incorporation by reference.

For the reasons discussed in the preamble, the U.S. Coast Guard proposes to amend 33 CFR part 155 as follows:

PART 155—(REVISED)

1. The authority citation for part 155 is revised to read as follows:


2. Section 155.140 is added to read as follows:

§ 155.140 Incorporation by reference.

(a) Certain material is incorporated by reference in this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the U.S. Coast Guard must publish notice of the change in the Federal Register and make the materials available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Environmental Protection Division (G–MEP), Room 2100, 2100 Second Street, SW., Washington, DC, 20593-0001, and is available from the sources identified in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

- American Society for Testing and Materials (ASTM)
  - 1916 Race Street, Philadelphia, PA 19103
  - ASTM Standard F 631–80, Appendix B.
  - ASTM Standard F 715–81, Appendix B.
  - ASTM Standard F 808–83, Appendix B.
  - ASTM Standard F 988–86, Appendix B.

- International maritime Organization (IMO)
  - IMO Sales, New York Nautical Instrument and Service Center, 140W. Broadway, New York, NY 10013
  - IMO Resolution A.649(16).
  - Guidelines for Reporting Incidents Involving Dangerous Goods.
  - Guidelines for Reporting Incidents Involving Harmful Substances, and/or Marine Pollutants.

International marine Organization (IMO)

IMO Sales, New York Nautical Instrument and Service Center, 140W. Broadway, New York, NY 10013

IMO Resolution A.649(16).


3. Part 155 is amended by adding new subparts D and E and Appendix B to read as follows:

PART 155—OIL POLLUTION PREVENTION REGULATIONS FOR VESSELS

Subpart D—Response Plans

§ 155.1010 Purpose.

The purpose of this subpart is to establish requirements for oil spill response plans for certain vessels. The planning criteria identified are intended for use in response plan development and the identification of resources required to respond to the scenarios prescribed during the planning process. The specific criteria are not meant to be performance standards. They are planning criteria based on a set of assumptions that may not exist during an actual oil spill incident.
§ 155.1015 Applicability.
(a) Except as provided in paragraph (c) of this section, this subpart applies to each vessel that handles, stores, or transports oil in bulk as cargo or cargo residue, and that—
(1) Is a vessel of the United States;
(2) Operates on the navigable waters of the United States; or
(3) Transfers oil in bulk as cargo in a port or place subject to the jurisdiction of the United States.
(b) This subpart also applies to both the delivering and receiving vessels conducting bulk oil cargo lightering operations within the exclusive economic zone of the United States as defined in 33 U.S.C. 2701(8) where the cargo is destined for any port or place subject to the jurisdiction of the United States.
(c) This subpart does not apply to the following types of vessels:
(1) Public vessels and vessels deemed public vessels under 14 U.S.C. 827;
(2) Vessels that, although designed to carry oil in bulk as cargo, are not storing or carrying oil in bulk as cargo or cargo residue;
(3) Dedicated response vessels when conducting response operations in a response area.
(4) Vessels of opportunity.
(d) Vessels of the United States covered by this subpart that do not operate within the navigable waters or the exclusive economic zone of the United States must meet all requirements of this subpart except for identifying and ensuring the availability of, through contract or other approved means, response resources as required in § 155.1035.

§ 155.1020 Definitions.
In addition to the terms defined in this section, the definitions in § 155.110 apply to this subpart.

Adverse weather means the weather conditions that will be considered when identifying response systems and equipment in a response plan for the applicable operating environment. Factors to consider include significant wave height as specified in § 155.1050, and ice, temperature, weather-related visibility, and currents within the Captain of the Port (COTP) zone in which the systems or equipment are intended to function.

Average most probable discharge means a discharge of 50 barrels of oil from the vessel.

Bulk means any volume of oil carried in an integral tank of the vessel and oil transferred to or from a marine portable tank or independent tank while on board a vessel.

Cargo means oil that is transported to and off-loaded at a destination by a vessel. It does not include:
(1) Oil carried in integral tanks, marine portable tanks, or independent tanks for use as fuel for machinery and boats carried aboard the vessel;
(2) Oil transferred from a towing vessel's fuel tanks to a vessel in its tow to operate installed machinery; or
(3) Oil temporarily handled, stored, or transported within the response area by a dedicated response vessel or vessel or opportunity used for the emergency recovery of oil from the surface of the water.

Contract or other approved means includes—
(1) A written contractual agreement with a response contractor identifying and ensuring the availability of the necessary personnel and equipment available within stipulated response times in specified geographic areas;
(2) Certification that the necessary personnel and equipment resources are owned or operated by the vessel owner or operator and are available within stipulated response times in specified geographic areas;
(3) Active membership in a local or regional oil spill removal organization that has identified necessary personnel and equipment to be available within stipulated response times in specified geographic areas; or
(4) When specifically authorized in this subpart and with the consent of the response contractor or oil spill removal organization, the identification of a response contractor or oil spill removal organization with necessary equipment and personnel which are available within stipulated response times in specified geographic areas.

Dedicated response vessel means a vessel whose service is limited exclusively to oil and hazardous substance spill response-related activities, including spill recovery and transport, response-related escorting, deployment of spill response equipment, supplies, and personnel, and spill response-related training, testing, drills, and research.

Exclusive economic zone means the zone contiguous to the territorial sea of the United States extending to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

Great Lakes means the Great Lakes and their connecting and tributary waters including the Calumet River as far as the Thomas J. O'Brien Lock and Controlling Works (between mile 326 and 327), the Chicago River as far as the east side of the Ashland Avenue Bridge (between mile 321 and 322), and the Saint Lawrence River as far east as the lower exit of Saint Lambert Lock.

Higher volume port area means an area specified in § 155.1050 (g).

Inland area means the area shoreward of the boundary lines defined in 46 CFR part 7, except that in the Gulf of Mexico, it means the area shoreward of the area of demarcation (COLREG lines) defined in §§ 80.740–80.850 of this chapter. The inland area does not include the Great Lakes or rivers and canals.

Maximum extent practicable means the planning criteria used to evaluate the response resource required to provide the on-water recovery capability and the shoreline protection and cleanup capability to conduct response activities for a worst case discharge from a vessel in adverse weather, limited by available technology and the practical and technical limits on an individual vessel owner or operator. Specific criteria for defining this term as it relates to response plan development and evaluation are described in § 155.1050.

Maximum most probable discharge means a discharge of up to:
(1) 2,500 barrels of oil for vessels with an oil cargo capacity greater than 25,000 barrels; or
(2) 10% of the vessel's oil cargo capacity for vessels with a capacity of less than 25,000 barrels.

Nearshore area means the area extending seaward 12 miles from the boundary lines defined in 46 CFR part 7, except that in the Gulf of Mexico it means the area extending seaward 12 miles from the line of demarcation (COLREG lines) defined in §§ 80.740–80.850 of this chapter.

Non-persistent or Group 1 oil means:
(1) A petroleum-based oil that, at the time of shipment, consists of hydrocarbon fractions:
(i) At least 50% of which by volume, distill at a temperature of 340 degrees C (645 degrees F); and
(ii) At least 95% of which by volume, distill at a temperature of 370 degrees C (700 degrees F); or
(2) A non-petroleum oil with a specific gravity less than 0.8.

Non-petroleum oil means oil of any kind that is not petroleum-based. It includes, but is not limited to, animal and vegetable oils.

Ocean means the open ocean, offshore area, and nearshore area as defined in this subpart.

Offshore area means the area up to 38 nautical miles seaward of the outer boundary of the nearshore area.

Oil spill removal organization means an entity established in a given
geographic area to provide response resources required in this subpart.

Open ocean means the area from 38 nautical miles seaward to the outer boundary of the nearshore area to the seaward boundary of the exclusive economic zone.

Operator or vessel operator means any person, including, but not limited to, an owner or a demise charterer, responsible for the operation of a vessel. The operator of a towing vessel is not considered the operator of a vessel being towed.

Owner of vessel owner means any person holding legal or equitable title to a vessel; provided, however, that a person holding legal or equitable title to a vessel solely as security is not the owner. In a case where a Certificate of Documentation has been issued, the owner is the person or persons whose name or names appear on the vessel’s Certificate of Documentation provided, however, that where a Certificate of Documentation has been issued in the name of a president or secretary of an incorporated company under 46 U.S.C. 15, such incorporated company is the owner.

Persistent oil means:

(1) A petroleum-based oil that does not meet the distillation criteria for a non-persistent oil. For the purposes of this subpart, persistent oils are further classified based on specific gravity as follows:

- Group II—specific gravity less than .85.
- Group III—specific gravity between .85 and less than .95.
- Group IV—specific gravity .95 or greater.

(2) A non-petroleum oil with a specific gravity of .8 or greater. For the purposes of this subpart, these oils are further classified based on specific gravity as follows:

- Group II—specific gravity between .8 and less than .85.
- Group III—specific gravity between .85 and less than .95.
- Group IV—specific gravity .95 or greater.

Qualified individual means an English-speaking shore-based representative of a vessel owner or operator, located in the United States, available on a 24-hour basis, with unconditional written authority to implement the vessel’s response plan.

This includes—

(1) Activating and engaging in contracting with required oil spill removal organization(s);

(2) Acting as liaison with the predesignated Federal On-Scene Coordinator (OSC); and

(3) Obligating, either directly or through prearranged contracts, any funds required to carry out all required or directed oil response activities.

Response activities means the containment and removal of oil from the water and shorelines, the temporary storage and disposal of recovered oil, or the taking of other actions as necessary to minimize or mitigate damage to the environment.

Response area means the Captain of the Port (COTP) zone(s) as specified in part 3 of this title, or the planning area within that zone designated under section 311(h)(4) of the Federal Water Pollution Control Act (FWPCA), whichever is smaller, in which spill response activities are occurring.

Response resources means the personnel, equipment, supplies, and other capability necessary to perform the response activities identified in a response plan.

Rivers and canals means bodies of water confined within the inland area that have a controlled navigable depth of 12 feet or less, including the Intracoastal Waterway and other waterways artificially created for navigation.

Spill management team means the personnel identified to staff the organizational structure identified in a response plan to manage response plan implementation.

Substantial threat of such a discharge means any incident involving a vessel that may create a significant risk of discharge of fuel or cargo oil. Such incidents include, but are not limited to, groundings, strandings, collisions, hull damage, fire, explosion, loss of propulsion, flooding, on-deck spills, or other similar occurrences.

Vessel of opportunity means a vessel engaged in spill response activities that is normally and substantially involved in activities other than spill response, and not normally involved in the carriage of oil in bulk as primary cargo.

Vessels carrying oil as a primary cargo means all vessels engaged in the carriage of oil that have a Certificate of Inspection issued under 46 CFR subchapter D (except for dedicated response vessels), Certificate of Compliance, or Tank Vessel Examination Letter.

Vessels carrying oil as a secondary cargo means vessels carrying oil pursuant to a permit issued under 46 CFR subchapter D (30.01–5), 46 CFR subchapter H (70.05–35), or 46 CFR subchapter I (90.05–35), an International Oil Pollution Prevention (IOPP) or Noxious Liquid Substance (NLS) certificate required by 33 CFR 151.33 or 151.35, or any uninspected vessel that carries oil in bulk as cargo.

Worst case discharge means a discharge in adverse weather conditions of a vessel’s entire oil cargo.

§ 155.1025 Operating restrictions and interim operating authorization.

(a) After February 18, 1993, the owner or operator of each vessel to which this subpart applies shall submit a response plan meeting the requirements of § 155.1030 prior to—

(1) Handling, storing, or transporting oil on the navigable waters of the United States;

(2) Transferring oil in any other port or place subject to U.S. jurisdiction; or

(3) Performing vessel-to-vessel lightering operations within the exclusive economic zone.

(b) After August 18, 1993, vessels subject to this subpart may not perform the functions listed in paragraph (a) of this section unless operating in full compliance with a plan approved under § 155.1065.

Notwithstanding the requirements of paragraph (b) of this section, a vessel may continue to handle, store, transport, transfer, or lighter oil for two years after the date of submission of a response plan, pending approval of that plan, if the vessel owner or operator certifies to the U.S. Coast Guard that the owner or operator has identified and ensured the availability of, through contract or other approved means, the necessary private personnel and equipment to respond, to the maximum extent practicable, to a worst case discharge or substantial threat of such a discharge from their vessel (as described in § 155.1050).

(d) With respect to paragraph (c) of this section, a vessel may not continue to handle, store, transport, transfer, or lighter oil if—

(1) The U.S. Coast Guard determines that the response resources identified in the vessel’s certification statement do not meet the requirements of this subpart;

(2) The contracts or agreements cited in the vessel’s certification statement are no longer valid;

(3) The vessel is not operating in compliance with the submitted plan; or

(4) The period of this authorization expires.

(e) A vessel may be authorized by the applicable COTP to make one voyage to transport or handle oil in port or geographic area not covered by an approved response plan. All requirements of this subpart must be met for any subsequent voyages to that port or geographic area. To be authorized, the vessel owner or operator shall certify to the COTP that—

(1) A response plan meeting the requirements of this subpart, except for
The applicable geographic specific appendix, or a shipboard oil pollution emergency plan approved by the flag state that meets the requirements of Regulation 26 of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 relating thereto, as amended (MARPOL 73/78), is aboard the vessel;

(2) The vessel owner or operator has identified and informed the vessel crew and COTP of the designated qualified individual prior to the vessel’s entry to the port of geographic area; and

(3) The vessel owner or operator has identified and ensured the availability of, through contract or other approved means, the private personnel and equipment necessary to respond, to the maximum extent practicable (under the criteria in §155.1050), to a worst case discharge or substantial threat of discharge from the vessel in the applicable port or geographic area.

§155.1030 General response plan requirements.

(a) The plan must be written in English and, if applicable, in a language that is understood by the crew members responsible for carrying out the plan. The plan must be divided into the following sections in the order listed below unless noted otherwise:

(1) General information and introduction.
(2) Notification procedures.
(3) Shipboard spill mitigation procedures.
(4) Shore-based response activities.
(5) List of contacts.
(6) Training procedures.
(7) Drill procedures.
(8) Plan review and update procedures.
(9) Geographic-specific appendix for each zone in which the vessel operates.

(b) Appendix for vessel-specific information for each vessel covered by the plan (for vessels carrying oil as a primary cargo and unmanned tank barges).

(c) In addition to the core plan, unmanned tank barges must have an onboard notification checklist and emergency procedures.

(d) The required contents for each section of the plan are contained in §§155.1035, 155.1040, and 155.1045 as applicable to the type or service of the vessel.

(e) The response plan for a dedicated response vessel operating outside the response area must follow the same format as that for a vessel carrying oil as a secondary cargo under §155.1045.

(f) A response plan must be in the format described in paragraph (b) of this section unless the plan was completed prior to [the effective date of this subpart]. A plan completed prior to [the effective date of this subpart] that does not follow this format must be supplemented with a cross-reference section to identify the location of the applicable sections required by this subpart and must be submitted in the required format at the next required resubmission date specified in §155.1070.

(g) The information contained in a response plan must be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) and the Area Contingency Plan(s) (ACP) covering areas in which the vessel operates.

§155.1035 Response plan requirements for vessels carrying oil as a primary cargo.

(a) General information and introduction. This section of the response plan must include—

(1) The vessel’s name, country of registry, and official number;
(2) The name, address, and procedures for contacting the vessel’s owner or operator on a 24-hours basis;
(3) Identification of the geographic areas covered by the plan. The plan must identify the COTP zones, as defined in part 3 of this title, covered by the plan. The plan must cover all areas in which the vessel intends to handle, store, or transport oil, including port areas and offshore transit areas within the exclusive economic zone. A geographic-specific appendix must be included for each COTP zone identified:

(b) Notification procedures. This section of the response plan must include—

(1) A checklist with all notifications in order of priority to be made by shipboard or shore-based personnel and the information required for those notifications;
(2) A discussion of the notification requirements that apply in the vessel’s area of operation including—

(i) The requirements of MARPOL 73/78 and the FWPCA (33 U.S.C. 1321) as amended; and
(ii) Any applicable State or local notification requirements. These may be included in the geographic-specific appendix;
(3) Identification of the person(s) to be notified of a discharge or substantial threat of a discharge of oil. If these notifications vary due to vessel location, they must be included in a geographic-specific appendix. This section must separately identify—

(i) The individual(s) or organization(s) to be notified by shipboard personnel;
(ii) The individual(s) or organization(s) to be notified by shore-based personnel;
(iii) The procedures for notifying the qualified individual(s) designated by the vessel’s owner or operator; and
(4) Descriptions of the primary and secondary communications methods by which the notifications will be made;
(5) The information to be provided in the initial and follow-up notifications. Notification information must include the information identified in IMO Resolution A848(16) “General Principles for Ship Reporting Systems and Ship Reporting Requirements, including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances, and/or Marine Pollution.” The initial notification must include—

(i) Vessel name, country of registry, and official number;
(ii) Date and time of the incident;
(iii) Location of the incident;
(iv) Course, speed, and intended track of vessel;
(v) Type of oil involved;
(vi) Nature of the incident (e.g., grounding, collision, etc.);
(vii) Estimate of oil discharged or threat of discharge;
(viii) Weather conditions on scene; and
(ix) Actions taken or planned by persons on scene;
(6) Identification of the person(s) to be notified of a vessel casualty potentially affecting the seaworthiness of a vessel and the information to be provided by the vessel’s crew to shore-based personnel to facilitate the assessment of damage stability and stress.
(c) Shipboard spill mitigation procedures. This section of the response plan must include—

(1) The total volumes of oil cargo and fuel that would be involved in the—

(i) Maximum most probable discharge; and
(ii) Worst case discharge;
(2) Procedures for the crew to mitigate or prevent any discharge or a substantial threat of such discharge of oil resulting from shipboard operational activities associated with internal or external cargo or fuel transfers.

Responsibilities of vessel personnel
should be identified by job title. These procedures must address personnel actions in the event of a —

(i) Transfer system leak;
(ii) Tank overflow; or
(iii) Suspected cargo tank, fuel tank, or hull leak;

(3) Procedures in the order of priority for the crew to mitigate or prevent any discharge or a substantial threat of such a discharge in the event of the following emergencies:

(i) Grounding or stranding;
(ii) Explosion and/or fire;
(iii) Hull failure;
(iv) Excessive list; and
(v) Equipment failure (e.g. main propulsion, steering gear, etc.);

(4) Damage stability and hull stress considerations when performing shipboard mitigation procedures. This section must identify—

(i) Activities in which the crew is trained and qualified to execute absent shore-based support or advice; and
(ii) The information to be collected by the vessel’s crew to facilitate shore-based assistance;

(5) The location of vessel plans necessary to perform salvage, stability, and hull stress assessments. A copy of these plans must be maintained ashore by either the vessel owner or operator or the vessel’s recognized classification society unless the vessel has prearranged for a shore-based damage stability and residual strength calculation program with the vessel’s baseline strength and stability characteristics pre-entered. The response plan must indicate the local identification of these plans or calculation program and 24-hour access procedures. The plan must identify the location of the —

(i) General arrangement plan;
(ii) Midship section plan;
(iii) Lines plan or table of offsets;
(iv) Tank tables;
(v) Load line assignment; and
(vi) Light ship characteristics;

(8) The procedures for both internal and ship-to-ship transfers of cargo or fuel in an emergency;

(9) The format and content of the ship-to-ship transfer procedures must be consistent with the Ship-to-Ship Transfer Guide (Petroleum) published jointly by the International Chamber of Shipping and the Oil Companies International Marine Forum (OCIMF);

(ii) The oil spill organization(s) and the spill management team identified in paragraph (d)(6)(i) of this section must provide the following response resources:

(A) Equipment and supplies to meet the requirements of § 155.1050; and
(B) Trained personnel necessary to continue operation of the equipment and staff the oil spill removal organization and spill management team for the first seven days of the response;

(2) Identification of the qualified individual(s) for the vessel’s area of operation. The plan must identify a primary and an alternate contact located in the United States with the full authority to act as the qualified individual;

(3) Identification of the vessel’s Protection and Indemnity (P&I) Club representatives for the vessel’s area of operation;

(4) Identification of the vessel’s local agent(s) for the vessel’s area of operation;

(5) Identification of other applicable insurance representatives or surveyors for the vessel’s area of operation; and

(6) Identification of the contact(s) to notify for activation of the response resources identified in paragraph (d)(6)(i) of this section for the vessel’s area of operation.

(f) Training procedures. This section must address the training procedures and programs of the vessel owner or operator to meet the requirements of § 155.1055.

(g) Drill procedures. This section must address the drill program to be carried out by the vessel owner or operator to meet the requirements in § 155.1060.

(h) Plan review and update procedures. This section must address—

(1) The procedures to be followed by the vessel owner or operator to meet the requirements of § 155.1070; and

(2) The procedures to be followed for any post-discharge review of the plan to evaluate and validate its effectiveness;
(i) Geographic-specific appendices for each COTP zone in which a vessel operates. These appendices must include—

(1) Any required Federal or State notifications for the areas in which a vessel operates;

(2) Identification of the qualified individual;

(3) Identification of the oil spill removal organization and the spill management team that are identified and ensured available, through contract or other approved means, to respond to the following spill scenarios to the maximum extent practicable, including equipment and supplies to meet the requirements of § 155.1050, and trained personnel to continue operation of the equipment and staff the oil spill removal organization and spill management team identified for the first seven days of the response:

(i) Average most probable discharge;

(ii) Maximum most probable discharge; and

(iii) Worst case discharge.

(j) Appendices for vessel-specific information. This section must include the—

(1) List of the vessel's principal characteristics;

(2) Capacities of all cargo, fuel, lube oil, baulk, and fresh water tanks;

(3) Diagrams showing location of all tanks;

(4) General arrangement plan (can be maintained separately aboard vessel providing the plan identifies the location);

(5) Midships section plan (can be maintained separately aboard vessel providing the plan identifies the location);

(6) Cargo and fuel piping diagrams and pumping plan, as applicable (can be maintained separately aboard vessel providing the plan identifies the location);

(7) Damage stability data;

(8) Cargo and fuel stowage plan for vessel (can be maintained separately aboard vessel providing the plan identifies the location); and

(9) Information on the oil cargo and fuel aboard the vessel. A material safety data sheet meeting the requirements of 29 CFR 1910.1200, (cargo information required by 46 CFR 154.310), or equivalent will meet this requirement (can be maintained separately aboard vessel providing the plan identifies the location). This information must include the—

(i) Name;

(ii) Description;

(iii) Physical and chemical characteristics;

(iv) Health and safety hazards; and

(v) Spill and firefighting procedures.

§ 155.1040 Requirements for unmanned tank barges.

(a) Onboard notification checklist and emergency procedures. This portion of the response plan is the only portion that must be maintained aboard the vessel. The remaining portion of the response plan as described in paragraphs (b)-(k) of this section (core plan) may be maintained elsewhere. The owner or operator of an unmanned tank barge subject to this section shall provide the personnel of the towing vessel, fleeting area, or facility that the barge may be moored at with the information required by this paragraph and the responsibilities that the plan indicates will be carried out by them. This information must be carried in the appropriate documentation container aboard the barge. This portion of the response plan must include—

(1) The name, address, and procedure for contacting the vessel's owner or operator on a 24-hour basis;

(2) The name and procedures for contacting a primary qualified individual and at least one alternate on a 24-hour basis;

(3) The toll-free number of the National Response Center;

(4) A list of information to be provided in the notification by the reporting personnel; and

(5) A statement of responsibilities of and actions to be taken by reporting personnel after an oil discharge or substantial threat of such discharge.

(b) General information and introduction. This section of the core response plan must include—

(1) A list of tank barges covered by the plan;

(2) The name, address, and procedure for contacting the barge owner or operator on a 24-hour basis;

(3) Identification of the geographic areas covered by the plan (The plan must identify COTP zones, as defined in part 3 of this title, covered by the plan. The plan must cover all areas in which the tank barges covered by the plan intend to handle, store, or transport oil, including port areas and offshore transit areas in the exclusive economic zone. A geographic-specific appendix must be included for each COTP zone identified);

(4) A table of contents and index identifying specific sections of the plan; and

(5) A record of change(s) page used to record information on plan updates or revisions.

(c) Notification procedures. This section of the core response plan must include—

(1) A checklist of the notifications in the order of priority and the information required for those notifications to be made by the—

(i) Towing vessel;

(ii) Vessel owner or operator; or

(iii) Qualified individual;

(2) A discussion of the notification requirements that apply in the area(s) of operation of the barges covered by the plan. This must include—

(i) The requirements of section 311 of the FWPCA (33 U.S.C. 1321); and

(ii) Any applicable State and local notification requirements. These must be included in the geographic-specific appendices;

(3) Identification of the persons to be notified of a discharge. The notifications that vary due to the location of the barge must be included in the appropriate geographic-specific appendix. This section must separately identify—

(i) The individual(s) or organization(s) to be notified by the towing vessel;

(ii) The individual(s) or organization(s) to be notified by the barge owner or operator; and

(iii) The procedures for notification of the qualified individual(s);

(4) Identification of the primary and secondary communications methods by which the notifications will be made;

(5) The information that is to be provided in the initial and any follow-up notifications. Notification information must include the—

(i) Towing vessel name;

(ii) Tank barge name and official number;

(iii) Time of the incident;

(iv) Location of the incident;

(v) Course, speed, and intended track of towing vessel;

(vi) Type of oil involved;

(vii) Nature of the incident (e.g. grounding, collision, etc.);

(viii) Estimate of oil discharged or threat of discharge;

(ix) Weather conditions; and

(x) Actions taken or planned by persons on scene;

(d) Shipboard spill mitigation procedures. This section of the core response plan must include—

(1) Identification of procedures to be followed by the tankerman, as defined in 46 CFR 35.35-01, to mitigate or prevent any discharge or a substantial threat of such a discharge of oil resulting from operational activities associated with internal or external cargo or fuel transfers. These procedures must address personnel actions in the event of a—

(i) Transfer system leak;

(ii) Tank overflow; or
portant, this information may be in a geographic-specific appendix and referenced in this section. The following information must be included—

(1) A list of contacts for the barge owner, operator, and the applicable charterer;

(2) Primary and alternate individual(s) for the barge’s area(s) of operation, located in the United States, with full authority to act as the qualified individual;

(3) Other applicable insurance requirements of operators for the barge’s area(s) of operation; and

(4) Contact(s) to notify for activation of the response resources identified in paragraph (e)(6) of this section for the barge’s area(s) of operation.

(g) Training procedures. This section of the core response plan must address the training procedures and programs of the barge owner or operator to meet the requirements in § 155.1060.

(h) Drill procedures. This section of the core response plan must address the drill program carried out by the barge owner or operator to meet the requirements in § 155.1060.

(i) Plan review and update procedures. This section of the core response plan must address—

(1) The procedures to be followed by the barge owner or operator to meet the requirements in § 155.1050, and

(2) The procedures to be followed for any post-drill review of the plan to evaluate and validate its effectiveness.

(i) Geographic-specific appendices for each COTP zone in which the tank barge will operate. These appendices in the core response plan must include—

(1) A list of contacts for the barge owner, operator, and the applicable

Charterer;

(2) Identification of the qualified individual(s); and

(3) Identification of the oil spill removal organization and spill management team available, through contract or other approved means, to respond to the spill scenarios listed below. This must include both the equipment and supplies necessary to meet the requirements of § 155.1050, and the trained personnel necessary to sustain operation of the equipment and staff the oil spill removal organization and spill management team for the first seven days of the response to an:

(i) Average most probable discharge; and

(ii) Maximum most probable discharge; and

(iii) Worst case discharge to the maximum extent practicable.

(6) The information required under paragraph (e)(5) of this section must also be separately identified in the applicable geographic-specific appendix for each COTP zone in which the barge will handle, store, or transport oil as cargo.

(f) List of contacts. This section of the core response plan must contain information on 24-hour contact of key individuals or organizations. If more appropriate, this information may be in a geographic-specific appendix and referenced in this section. The following information must be included—

(i) A list of contacts for the barge owner, operator, and the applicable charterer;

(2) Primary and alternate individual(s) for the barge’s area(s) of operation, located in the United States, with full authority to act as the qualified individual;

(3) Other applicable insurance requirements of operators for the barge’s area(s) of operation; and

(4) Contact(s) to notify for activation of the response resources identified in paragraph (e)(6) of this section for the barge’s area(s) of operation.

Training procedures. This section of the core response plan must address the training procedures and programs of the barge owner or operator to meet the requirements in § 155.1060.

Drill procedures. This section of the core response plan must address the drill program carried out by the barge owner or operator to meet the requirements in § 155.1060.

Plan review and update procedures. This section of the core response plan must address—

(1) The procedures to be followed by the barge owner or operator to meet the requirements in § 155.1050, and

(2) The procedures to be followed for any post-drill review of the plan to evaluate and validate its effectiveness.

Geographic-specific appendices for each COTP zone in which the tank barge will operate. These appendices in the core response plan must include—

(i) A list of contacts for the barge owner, operator, and the applicable

Charterer;

(ii) Identification of the qualified individual(s); and

(iii) Identification of the oil spill removal organization and spill management team available, through contract or other approved means, to respond to the spill scenarios listed below. This must include both the equipment and supplies necessary to meet the requirements of § 155.1050, and the trained personnel necessary to sustain operation of the equipment and staff the oil spill removal organization and spill management team for the first seven days of the response to an:

(i) Average most probable discharge; and

(ii) Maximum most probable discharge; and

(iii) Worst case discharge to the maximum extent practicable.

Appendices for barge-specific information. Because many of the tank barges covered by a core response plan...
may be of the same design, this information does not need to be repeated.

The plan identifies the tank barges to which the same information would apply. The information must be part of the core response plan unless specifically noted. This section must include the following barge-specific information:

1. For each tank barge covered by the plan, identification of the total volumes of oil cargo that would be involved in the

2. Average most probable discharge;
3. Maximum most probable discharge; and
4. Worst case discharge;
5. Capacities of all cargo, fuel, lube oil, and ballast tanks;
6. Diagrams showing location of all tanks aboard barge;
7. General arrangement plan (can be maintained separately providing that the location is identified);
8. Midships section plan (can be maintained separately providing that the location is identified);
9. Cargo and fuel piping diagrams and pumping plan (can be maintained separately providing that the location is identified);
10. Damage stability data;
11. Cargo and fuel stowage plan for barge (can be maintained separately providing that the location is identified);
12. Information on the name, description, physical and chemical characteristics, health and safety hazards, and spill and firefighting procedures for the oil cargo and fuel aboard the barge. A material safety data sheet meeting the requirements of 29 CFR 1910.1200, cargo information required by 33 CFR 154.310, or equivalent will meet this requirement and can be maintained separately.

§ 155.1045 Requirements for vessels carrying oil as a secondary cargo.

(a) For vessels that transfer a portion of their fuel as cargo, 50% of the fuel capacity of the vessel in addition to the volume of any oil cargo tank is assumed to be the cargo volume for determining response plan requirements.

(b) General information and introduction. This section of the response plan must include—

1. The vessel's name, country of registry, and official number;
2. The name, address, and procedures for contacting the vessel's owner or operator on a 24-hour basis;
3. Identification of the geographic areas covered by the plan. The plan must identify the COTP zones that it covers, as defined in 33 CFR part 3. The plan must cover all areas in which the vessel intends to handle, store, or transport oil, including port areas and offshore transit areas within the exclusive economic zone. A geographic-specific appendix must be included for each COTP zone identified if the vessel operates in more than one zone.
4. A table of contents and index identifying specific sections of the plan;
5. A record of change(s) page used to record information on plan updates or revisions;
6. Notification procedures. This section of the response plan must include—
   1. A checklist of all notifications in the order of priority to be made by shipboard or shore-based personnel and the information required for those notifications;
   2. A discussion of the notification requirements that apply in the vessel's area of operation. This must include—
      1. The requirements of MARPOL 73/78 and the FWPCA (33 U.S.C. 1321) as amended; and
      2. Any applicable State or local notification requirements. These must be included in the geographic-specific appendix;
6. Identification of the person(s) or organization(s) to be notified of a discharge or substantial threat of discharge of oil from the vessel. If notifications vary due to vessel location they must be included in a geographic-specific appendix. This section must separately identify—
      1. The individual(s) or organization(s) to be notified by shipboard personnel;
      2. The individual(s) or organization(s) to be notified by shore-based personnel; and
      3. The procedures for notifying the qualified individual(s);
7. Identification of the primary and secondary communication methods by which the notifications will be made;
8. The information to be provided in the initial and any follow-up notifications. Notification information must include that identified in IMO Resolution A/49(16) covering “General Principles for Ship Reporting Systems and Ship Reporting Requirements, including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances and/or Marine Pollution.” The initial notification must include—
   1. Vessel name, country of registry, and official number;
   2. Date and time of the incident;
   3. Location of the incident;
   4. Course, speed, and intended track of vessel;
   5. Type of oil involved;
   6. Nature of the incident (e.g. grounding, collision, etc.);
   7. Estimate of oil discharged or threat of discharge;
   8. Weather conditions on scene; and
   9. Actions taken or planned by persons on scene.

(d) Shipboard spill mitigation procedures. This section of the response plan must identify the total volumes of oil cargo that would be involved in the maximum most probable discharge and the worst case discharge, and meet the applicable requirements of this paragraph.

(e) Shore-based response activities. This section of the response plan must include—
(1) Responsibilities and actions to be taken by vessel personnel to initiate and supervise shore-based response pending the arrival of the qualified individual; and

(2) The qualified individual’s responsibilities and authority, including notification of the oil spill removal organization(s) identified in the plan;

(3) The procedures for coordinating the actions of the vessel owner or operator with the actions of the designated Federal OSC responsible for monitoring or directing those actions;

(4) The spill management team to be used by the vessel owner or operator to manage response plan implementation; and

(5) Oil spill removal organization(s) available to respond to an oil discharge in the vessel’s area of operation. A response organization may not be identified in the plan unless the response organization has provided written consent to being identified in the plan as an available resource.

(5) List of contacts. This section of the response plan must contain information on contacting key individuals or organizations on a 24-hour basis. If more appropriate, this information may be by a geographic-specific appendix and referenced in this section. The following information must be included—

(1) A list of contacts for the vessel owner, operator, and if applicable, charterer;

(2) Primary and alternate individual(s), located in the United States, with full authority to act as the qualified individual;

(3) Identification of the vessel’s local agent(s), if applicable, for the vessel’s area of operation;

(4) Identification of applicable insurers, representative or surveyors for the vessel’s area of operation; and

(5) Identification of the contact(s) to notify for activation of the oil spill removal organization(s) identified in paragraph (e)(4) of this section for the vessel’s area of operation.

(g) Training procedures. This section of the response plan must address the training procedures and programs of the vessel owner or operator. The vessel owner or operator shall ensure that—

(1) All personnel with responsibilities under the plan receive training in their assignments and refresher training as necessary, and participate in any drills required under paragraph (h) of this section;

(2) Records of this training are maintained aboard the vessel.

(h) Drill procedures. This section of the response plan must address the drill program carried out by the vessel owner or operator to evaluate the ability of vessel and shore-based personnel to perform their identified functions in the plan. The required drill frequency for each category of vessel is as follows:

(1) For vessels carrying 100 barrels or less of oil as cargo—

(i) Vessel crew’s onboard spill mitigation procedures and qualified individual notification drills must be conducted annually; and

(ii) Shore-based oil spill removal organization drills must be conducted biennially;

(2) For vessels carrying over 100 barrels up to 5,000 barrels of oil as cargo—

(i) Vessel crew’s onboard emergency procedures and qualified individual notification drills must be conducted quarterly; and

(ii) Shore-based oil spill removal organization drills must be conducted annually;

(3) Vessels carrying over 5,000 barrels of oil as cargo must meet the drill requirements of §155.1060.

(i) Plan review and update procedures. (1) The owner or operator of a vessel covered by this section shall submit the plan to the U.S. Coast Guard for approval—

(l) Whenever there is a change in the cargo capacity or layout of the vessel;

(ii) Whenever there is a change in the vessel’s configuration affecting the overall capability of the vessel; or

(iii) Within five years of the date of U.S. Coast Guard approval;

(2) The owner or operator of a vessel covered by this section shall notify the U.S. Coast Guard and other plan holders, and provide updated information as appropriate when changes occur in any of the following:

(i) Cargo systems;

(ii) Operating area;

(iii) Qualified individual;

(iv) Identified response resources;

(v) Emergency response procedure; and

(vi) Nature of vessel’s operations.

(j) Geographic-specific appendices for each COTP zone in which the vessel will operate. This section must include—

(1) Any required Federal or State notifications for the area that the vessel will operate;

(2) Identification of the qualified individual; and

(3) A list of response resources identified in paragraph (e)(4) of this section for the vessel’s area of operation.
The required response resources may be contracted from a facility involved in the oil transfer operation.

The response plan must identify and ensure the availability of the response resources, through contract or other approved means, to respond to a discharge up to the vessel’s maximum most probable discharge volume.

These resources must be prepositioned such that they can arrive at the scene of a discharge within—

(i) 12 hours of the discovery of an oil discharge in higher volume port areas and the Great Lakes;

(ii) 24 hours in all river, inland, nearshore and offshore areas; and

(iii) 24 hours plus travel time beyond 50 miles from shore for open ocean areas.

The response resources include sufficient containment boom, oil recovery devices, and storage capacity for any recovery of up to the maximum most probable discharge planning volume.

The response resources must be appropriate for the group(s) of oil carried.

The location of storage, make, model, and effective daily recovery rate of each oil recovery device that is identified for plan credit must be included.

The response resources identified for responding to up to a maximum most probable discharge must always be prepositioned in the area. These resources may not be mobilized to respond to a spill outside the area without the approval of the COTP.

These resources must include credit for the applicable Area Contingency Plan. These resources must be capable of being on-scene within 24 hours of a discharge. Note: Identification of these resources does not imply that they will be authorized for use. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable Area Contingency Plan.

Response plans must identify and ensure the availability of, through contract or other approved means, the following resources—

(1) A salvage company with expertise and equipment;

(2) Private vessel with firefighting capability that will respond to casualties in the area(s) in which the vessel will operate.

Response plans must identify and ensure the availability of, through contract or other approved means, resources required by §§ 155.1035(c)(6) and 155.1040(d)(5).

These resources must include—

(i) Fendering equipment;

(ii) Transfer hoses and connection equipment; and

(iii) Portable pumps and ancillary equipment.

These resources must be capable of reaching the locations in which the vessel operates within the stated times following notification:

(i) Inland, nearshore, and Great Lakes waters—12 hours.

(ii) Offshore waters—19 hours.

(iii) Open ocean waters—36 hours.

The response plan must identify and ensure the availability of, through contract or other approved means, response resources necessary to perform shoreline protection operations.

Until March 1, 1998, the response resources must include the quantities of boom specified in Table 2 of Appendix B of this part, based on the areas in which the vessel operates.
(2) After March 1, 1998, the shoreline protection resources must be those identified in the appropriate Area Contingency Plan.

(a) For a vessel operating in offshore, nearshore, inland, or river areas the response plan must identify and ensure the availability of, through contract or other approved means, an oil spill removal organization capable of effecting a shoreline cleanup operation commensurate with the quantity of emulsified oil to be planned for in shoreline cleanup operations.

(1) Until March 1, 1998, the shoreline cleanup resources required must be determined as described in appendix B of this part. For a vessel operating in the open ocean area, the response plan must identify an oil spill removal organization capable of effecting a shoreline cleanup operation commensurate with the quantity of emulsified oil to be planned for in shoreline cleanup operations, but there is no requirement to contract for those resources in advance.

(2) After March 1, 1998, the applicable shoreline cleanup resources must be those identified in the appropriate Area Contingency Plan.

(c) Appendix B of this part describes the procedures to determine the maximum extent practicable quantity of resources that must be identified and ensured available, through contract or other approved means, for each response tier. Included in appendix B of this part procedure is a cap that recognizes the practical and technical limits of response capabilities that an individual vessel owner or operator can contract for in advance. Table 6 in appendix B lists the caps that will apply in March 1993. March 1993, and March 2003. Depending on the quantity and type of oil carried as cargo and vessel geographic area of operations, the resource capability caps in this table may be reached.

§ 155.1050 Drills.

(a) A vessel owner or operator required by §§ 155.1035 and 155.1040 to have a response plan shall conduct drills as necessary to ensure that the plan will function in an emergency. The drills must be both announced and unannounced. The response plan submitted to meet the requirements of this subpart must identify the planned drill program. The following are the required drill frequencies for vessels covered by this section:

(1) Manned vessel onboard emergency procedures and qualified individual notification drills must be conducted monthly.

(2) Unmanned barge emergency actions by the towing vessel crew and notification of the qualified individual drills must be conducted quarterly.

(3) Shore-based spill management team tabletop drills must be conducted yearly.

(4) Oil Spill removal organization field equipment deploying drills must be conducted yearly.

(b) Drills may be designed by the vessel owner or operator to exercise either components of or the entire response plan. The vessel owner or operator shall conduct a drill that exercises the entire plan at least once every three years.

(c) The vessel owner or operator shall ensure that records of drills are maintained in accordance with this paragraph.

(1) All drills conducted aboard the vessel must be documented in the ship’s log.

(2) Records of any off-vessel drills of the response organization and resources identified in the response plan must be maintained by the qualified individual designated in the response plan.

(3) Records must be maintained for three years following completion of the drills.

(d) A vessel owner or operator shall participate in any announced drills conducted by the applicable COTP. During these drills, the oil spill removal organizational and spill management team identified in the vessel’s response plan shall be activated to the extent required by the COTP.

(e) The requirements in paragraphs (a) and (b) of this section are met if the oil spill removal organization identified in the response plan are drilled during the period required to conduct such drills. The qualified individual shall maintain records of these drills and make them available to the U.S. Coast Guard.

§ 155.1065 Submission and approval procedures.

(a) An owner or operator of a vessel to which this subpart applies shall submit two English language copies of a vessel response plan meeting the requirements of §§ 155.1035, 155.1040, or 155.1045, as applicable, to the U.S. Coast Guard for review and approval.

(b) If the U.S. Coast Guard determines that the plan meets all requirements of this subpart, the U.S. Coast Guard will notify the vessel owner or operator and return one copy of the approved plan along with an approval letter. The plan will be valid for a period of up to five years from the date of approval.

(c) If the U.S. Coast Guard reviews the plan and determines that it does not meet all of the requirements, the U.S. Coast Guard will return one copy to the vessel owner or operator along with an explanation of the response plan’s deficiencies. A revised plan must be resubmitted to the U.S. Coast Guard within 30 days of receipt of the letter describing the deficiencies.

(d) Copies of an approved response plan must be available as follows:

(1) The vessel owner or operator shall ensure that one English language copy of the approved response plan and the U.S. Coast Guard approval letter are maintained aboard the vessel. If applicable, an additional copy in the language understood by crew members with responsibilities under the plan must be carried.

(2) The vessel owner or operator and each person identified as a qualified individual in the plan shall maintain a copy of the plan.

§ 155.1070 Plan revision and amendment procedures.

(a) A vessel response plan must be reviewed annually by the owner or operator.

(1) This review must occur within one month of the anniversary date of U.S. Coast Guard approval of the plan.

(2) The owner or operator shall submit any required amendments to the U.S. Coast Guard for information or approval. If no changes are required, the owner or operator shall send a letter to the U.S. Coast Guard indicating that the plan remains valid with no changes. A
copy of this letter must be included in the front of each copy of the response plan and indicated in the record of changes page.

(3) Any required changes must be entered in the plan and noted on the record of changes page.

(b) Revisions or amendments to an approved response plan must be submitted for approval by the vessel’s owner or operator whenever there is—

(1) A change in the vessel’s operating area that includes ports or geographic area(s) not covered by the previously approved plan. A vessel may not operate in an area not covered in a previously approved plan unless the revised plan is approved or interim operating approval is received under § 155.1023;

(2) A change in the vessel’s configuration that significantly affects the information included in the response plan;

(3) A change in the type of oil cargo carried aboard (oil group) that affects § 155.1025;

(4) A change in the name(s) and/or capabilities of the oil spill removal organization required by § 155.1050;

(5) A change in the vessel’s emergency response procedures;

(6) Any other changes that significantly affect the implementation of the plan; or

(7) Five years from the date of U.S. Coast Guard approval.

(c) The U.S. Coast Guard may require a vessel owner or operator to revise a response plan at any time as a result of—

(1) Deficiencies involving the identification of a qualified individual or response resources must be corrected within three days.

(2) All other deficiencies must be corrected within 30 days of receipt of the U.S. Coast Guard notice or the plan will be declared invalid and any further storage, transfer, or handling of oil in areas subject to the jurisdiction of the United States will be in violation of section 311(j)(6)(E) of the FWPCA.

(d) A vessel owner or operator who disagrees with a deficiency determination may submit a request for reconsideration within 7 days from the date of receipt of the U.S. Coast Guard notice. After considering all relevant material presented, the U.S. Coast Guard will notify the vessel owner or operator of the final decision.

(1) Unless the vessel owner or operator petitions for a review of the U.S. Coast Guard decision, the vessel’s owner or operator will have 30 days from the date of the U.S. Coast Guard final determination to comply with the notice.

(2) If the vessel owner or operator petitions the District Commander, the effective date of the U.S. Coast Guard notice may be delayed pending a decision by the District Commander. Petitions to the District Commander must be submitted in writing, via the U.S. Coast Guard official who issued the requirement to amend the response plan, within five days of receipt of the notice.

(e) Except as required in paragraph (b) of this section, amendments to personnel and telephone number lists included in the response plan do not require prior U.S. Coast Guard approval. The U.S. Coast Guard and all other holders of the response plan shall be advised of the revisions and provided a copy of the revisions as they occur.

Subpart E—Additional Response Plan Requirements for Certain Vessels Operating in Prince William Sound, Alaska

§ 155.1110 Purpose and applicability.

(a) This subpart establishes oil spill response planning requirements for an owner or operator of a vessel carrying oil in bulk as cargo operating in Prince William Sound, Alaska, in addition to the requirements of subpart D of this part.

(b) The information required in this subpart must be included in a Prince William Sound geographic-specific appendix to the vessel response plan required by subpart D of this part.

§ 155.1115 Definitions.

Except as provided in this section, the definitions in § 155.1015 apply to this subpart. As used in this subpart—

Certification of equipment means attesting that the equipment is on-site and is operable in accordance with the manufacturer’s specification.

Crude oil means any liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation, and includes crude oil from which certain distillate fractions may have been removed, and crude oil to which certain distillate fractions may have been added.

Non-crude oil means any oil other than crude oil.

Prince William Sound means all State and Federal waters within Prince William Sound, Alaska, including the approach to Hinchinbrook Entrance out to and encompassing Seal Rocks.

§ 155.1120 Operating restrictions and interim operating authorization.

The owner or operator of a vessel to which this subpart applies may not operate in Prince William Sound, Alaska, unless the requirements of this subpart as well as § 155.1025 have been met. The owner or operator of a vessel shall certify to the U.S. Coast Guard that they have identified, through an oil spill removal organization required by § 155.1125, the necessary response resources to remove, to the maximum extent practicable, a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater, in Prince William Sound.

§ 155.1125 Additional response plan requirements.

(a) The owner or operator of a vessel shall include the requirements of this section in the Prince William Sound geographic-specific appendix required by subpart D of this part.

(i) Perform response activities;

(ii) Provide oil spill removal and containment training, including training in the operation of prepositioned equipment, for personnel from the following locations in Prince William Sound—

(A) Valdez;

(B) Tatitlek;

(C) Cordova;

(D) Whittier;

(E) Chenega;

(F) Armin Koering fish hatchery;

(G) Main Bay fish hatchery;

(H) Wally Norenberg fish hatchery;

(I) Cannery Creek fish hatchery;

(J) Solomon Gulch fish hatchery; and

(K) Other locations in Prince William Sound, to be determined by the COTP.

(iii) Consist of sufficient numbers of trained personnel to remove, to the maximum extent practicable, a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater; and

(iv) Address the responsibilities required in § 155.1035(d)(5).

(2) The response plan must include drill procedures that must—

(i) Provide two drills of the oil spill removal organization each year that ensure preposition equipment and trained personnel required under this subpart perform effectively;

(ii) Provide for both announced and unannounced drills; and
(iii) Provide for drills that test either the entire appendix or individual components.

(3) The response plan must identify a testing, inspection, and certification program for the prepositioned response equipment required in § 155.1130 that must provide for—

(i) Annual testing and equipment inspection in accordance with the manufacturer’s recommended procedures, to include—

(A) Start-up and running under load all electrical motors, pumps, power packs, air compressors, internal combustion engines, and oil recovery devices; and

(B) Removal of no less than one-third of required boom from storage;

(ii) Records of equipment tests and inspection.

(4) The response plan must identify and give the location of the prepositioned response resources required in § 155.1130 including the make, model, and effective daily recovery rate of each oil recovery resource.

(b) The owner or operator shall submit to the COTP for approval, no later than September 30th of each calendar year, a schedule for the training and drills required by the geographic-specific appendix for Prince William Sound for the following calendar year.

(c) All records required by this section must be available for inspection by the U.S. Coast Guard and must be maintained for a period of 3 years.

§ 155.1130 Requirements for prepositioned response equipment.

Except as permitted under § 155.1140, the owner or operator of a vessel carrying oil in bulk as cargo shall provide the following prepositioned response equipment, located within Prince William Sound, in addition to that required by §§ 155.1035, 155.1040 or 155.1045:

(a) On-water recovery equipment with a minimum effective daily recovery rate of 30,000 barrels for a vessel carrying crude oil or 3,000 barrels for a vessel over 15,000 deadweight tons (DWT) carrying non-crude oil, capable of being on scene within six hours of notification of a discharge.

(b) On-water storage capacity of 100,000 barrels for recovered oily material for a vessel carrying crude oil or 5,000 barrels for a vessel over 15,000 DWT carrying non-crude oil, capable of being on scene within six hours of notification of a discharge.

(c) On-water storage capacity of 300,000 barrels for recovered oily material for a vessel carrying crude oil.

capable of being on scene within 24 hours of notification of a discharge.

d) Equipment as identified below, for the locations identified in § 155.1125(a)(1)(ii), sufficient for the protection of the environment in those locations—

(1) On-water oil recovery devices and storage equipment;

(2) Boom appropriate for the specific locations;

(3) Sufficient boats to deploy boom and sorbents;

(4) Sorbents including booms, sweeps, pads, blankets, drums and plastic bags;

(5) Personnel protective clothing and equipment;

(6) Survival equipment;

(7) First aid supplies;

(8) Buckets, shovels, and various other tools;

(9) Decontamination equipment;

(10) Shoreline cleanup equipment;

(11) Mooring equipment;

(12) Anchored buoys at appropriate locations to facilitate the positioning of defensive boom; and

(13) Other appropriate removal equipment for the protection of the environment as identified by the COTP.

(e) For each oil-laden vessel transit, two escort vessels, each fitted with skimming and onboard storage capabilities that are practicable for the oil recovery planned for a cleanup operation, as identified by the oil spill removal organization.

(f) Lightering resources required in § 155.1035(c)(6) capable of arriving on scene within 6 hours of notification of a discharge.

§ 155.1135 Response plan development and evaluation criteria.

The following response times must be used in determining the on scene arrival time in Prince William Sound, for the response resources required by § 155.1050:

<table>
<thead>
<tr>
<th>Tier</th>
<th>Prince William Sound Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier 1</td>
<td>12 hrs</td>
</tr>
</tbody>
</table>

§ 155.1140 Special consideration for vessels contracting with a facility permitted under the Trans-Alaska Pipeline Authorization Act.

A vessel owner or operator may meet any of the requirements of this subpart by contracting with a facility permitted under the Trans-Alaska Pipeline Authorization Act. The extent to which these requirements are met by the contractual arrangement will be determined by the COTP.
average temperature ranges expected in a geographic area in which a vessel operates. All equipment identified in a response plan must be designed to operate within those conditions or ranges.

2.6 The requirements of subpart D of this part establish response resource mobilization and response times. The location that the vessel operates farthest from the storage location of the response resources must be used to determine whether the resources can arrive on scene within the time required. A vessel owner or operator shall include the time for notification, mobilization, and travel time of resources identified to meet the maximum most probable discharge and Tier 1 worst case discharge requirements. Tier 2 and 3 resources must be notified and mobilized as necessary to meet the requirements for arrival on scene. An on water speed of 10 knots and a land speed of 35 miles per hour is assumed unless the vessel owner or operator can demonstrate otherwise.

2.7 In identifying equipment, the vessel owner or operator shall list the storage location, quantity, and manufacturer's make and model. For oil recovery devices, the effective recovery rate, as determined using section 6 of this appendix, must be included. For boom, the overall boom height must be included. A vessel owner or operator is responsible for ensuring that identified boom has compatible connectors.

3. Determining Response Resources Required for the Average Most Probable Discharge

3.1 A vessel owner or operator shall ensure that sufficient response resources are available to respond to the 50 barrel average most probable discharge. The equipment must be designed to function in the operating environment at the point of oil transfer.

3.1.1 These resources must be located at or near the site of operational transfers involving vessels that carry oil in bulk as a primary cargo.

.1 Containment boom in a quantity equal to twice the length of the largest vessel involved in the transfer and a means of immediate deployment.

.2 Oil recovery devices with an effective recovery rate of 50 barrel per day or greater available at the transfer site within two hours of the detection of an oil discharge.

.3 Oil storage capacity for recovered oily material indicated in section 9.2 of this appendix.

3.1.2 A vessel that carries oil in bulk as a secondary cargo must identify sources of equipment in its areas of operation. Deployment requirements in section 3.1.1 of this appendix need not be met for these vessels.

4. Determining Response Resources Required for the Maximum Most Probable Discharge

4.1 A vessel owner or operator shall ensure that sufficient response resources are available to respond to the maximum most probable discharge volume for that vessel. This will require resources capable of containing and collecting up to 2,500 barrels of oil. All equipment identified must be designed to operate in the applicable operating environment specified in Table 1.

4.2 To determine the maximum most probable discharge volume to be used for planning, use the lesser of—

- 2,500 barrels
- 10% of the total oil cargo capacity.

4.3 Oil recovery devices identified to meet the maximum most probable discharge volume planning criteria must be located such that they arrive on scene within 12 hours in higher volume port areas and the Great Lakes and 24 hours in all other river, inland, and coastal areas.

4.3.1 Because rapid control, containment, and removal of oil is critical to reduce spill impact, the effective daily recovery rate for oil recovery devices must equal 50% of the planning volume applicable for the vessel as determined in section 4.2 of this appendix. The effective daily recovery rate for oil recovery devices identified in the plan must be determined using the criteria in section 6 of this appendix.

4.4 In addition to oil recovery capacity, the plan must identify and ensure the availability of, through contract or other approved means, sufficient boom available within the required response times for oil containment and collection and for protection of shoreline areas. While the regulation does not set required quantities of boom, the response plan must identify and ensure the availability of the quantity of boom available through contract or other approved means.

4.5 The plan must indicate the availability of temporary storage capacity to meet the requirements of section 9.2 of this appendix. If available storage capacity is insufficient to meet this requirement, then the effective daily recovery rate must be derated to the limits of the available storage capacity.

4.6 The following is an example of a maximum most probable discharge volume planning calculation for equipment identification in a higher volume port area:

The vessel's capacity is 10,000 barrels, thus the planning volume is 10 percent or 1,000 barrels. The effective daily recovery rate must be 50% of this, or 500 barrels per day. The ability to meet this capacity will be calculated using the procedures in section 6 of this appendix.

Temporary storage capacity available on scene must equal twice the daily recovery rate as indicated in section 9 of this appendix, or 1,000 barrels per day. This is the information the vessel owner or operator would use to identify and ensure the availability of, through contract or other approved means, the required response resources. The vessel owner would also need to identify how much boom was available for use.

5. Determining Response Resources Required for the Worst Case Discharge to the Maximum Extent Practicable

5.1 A vessel owner or operator shall specify the availability of sufficient response resources to respond to the worst case discharge of oil cargo to the maximum extent practicable. Section 7 describes the method to determine the required response resources.

5.2 Oil spill recovery devices identified to meet the applicable worst case discharge planning volume must be located such that they can arrive at the scene of a discharge within the time specified for the applicable response tier listed in § 155.3050.

5.3 The effective daily recovery rate for oil recovery devices identified in a response plan must be determined using the criteria in section 6 of this appendix. A vessel owner or operator shall identify the storage locations of oil spill equipment that must be used to fulfill the requirements for each tier. The owner or operator of a vessel whose required daily recovery capacity exceeds the applicable contracting caps in Table 6 shall identify sources of additional equipment, their locations, and the arrangements made to obtain this equipment during a response. While general listings of available response equipment may be used to identify additional sources, a response plan must identify the specific sources and quantities of equipment that a vessel owner or operator has considered in their planning.

5.4 In addition to oil spill recovery devices, a vessel owner or operator shall identify and ensure the availability of, through contract or other approved means, sufficient boom for shoreline protection of a vessel owner or operator shall identify and ensure the availability of, through contract or other approved means.

5.5 A vessel owner or operator shall identify the availability of temporary storage capacity to meet the requirements of section 9.2 of this appendix. If available storage capacity is insufficient to meet this requirement, then the effective daily recovery rate must be derated to the limits of the available storage capacity.

6. Determining Effective Daily Recovery Rate for Oil Recovery Devices

6.1 Oil recovery devices identified by a vessel owner or operator must be identified by manufacturer, model, and effective daily recovery rate. These rates must be determined whether there is sufficient capacity to meet the applicable planning criteria for the average most probable discharge; maximum most probable discharge; and worst case discharge to the maximum extent practicable.

6.2 For the purposes of determining the effective daily recovery rate of oil recovery devices, the following method will be used. This method considers potential limitations due to available daylight, weather, sea state, and percentage of emulsified oil in the recovered material. The Coast Guard may assign a lower efficiency factor to equipment listed in a response plan if it determines that such a reduction is warranted.

6.2.1 The following formula must be used to calculate the effective daily recovery rate:

\[ R = T \times \frac{E}{24} \times \frac{P}{E} \]

where:

- \( R \) = Effective daily recovery rate
- \( T \) = Throughput rate in barrels per hour
- \( E \) = Efficiency factor (or lower factor as determined by Coast Guard)
- \( P \) = Plate load capacity

6.2.2 For those devices in which the pump limits the throughput of liquid, throughput
rate will be calculated using the pump
capacity.
6.2.3 For belt or mop type devices, the
throughput rate will be calculated using the
speed of the belt or mop and the cap of the
belt or mop in contact with the water surface;
and the oil encounter rate. For purposes of
this calculation, the assumed thickness of oil
will be 1/4 inch.
6.3 As an alternative to 6.2, a vessel
owner or operator may submit adequate
evidence that a different effective daily
recovery rate should be applied for a specific
oil recovery device. Adequate evidence is
actual verified performance data in spill
conditions or tests using ASTM Standard F
631-80, F 805-83 (1988), or an equivalent test
approved by the Coast Guard.
6.3.1 The following formula must be used
to calculate the effective daily recovery rate
under this alternative:

\[ R = D \times U \]

where:
- \( R \) = Effective daily recovery rate
- \( D \) = Average Oil Recovery Rate in barrels
  per hour (Item 26 in F 805-83, Item 13.15 in F
  631-80, or actual performance data)
- \( U \) = Hours per day that a vessel owner or
  operator can document capability to operate
  equipment under spill conditions. Ten hours
  per day is assumed unless a vessel owner or
  operator can demonstrate that the
  recovery operation can be sustained for
  longer periods.

A vessel owner or operator submitting
a response plan shall provide data that
supports the effective daily recovery rates for
the oil recovery devices listed. The following
is an example of these calculations:
A weir skimmer identified in a response
plan has a manufacturer’s rated throughput at
the pump of 267 gallons per minute (gpm).

\[ 267 \text{ gpm} = 381 \text{ barrels per hour} \]

After testing using ASTM procedures, the
skimmer’s oil recovery rate is determined to
be 220 gpm. The vessel owner or operator
identifies sufficient resources available to
support operations 12 hours per day.

\[ 220 \text{ gpm} = 314 \text{ barrels per hour} \]

A vessel owner or operator will be able to
use the higher rate if sufficient temporary oil
storage capacity is available.

7. Calculating the Worst Case Discharge
Planning Volumes

7.1 A vessel owner or operator shall plan
for a response to a vessel’s worst case
discharge volume of oil cargo. The planning
for on-water recovery must take into account
a loss of some oil to the environment due to
evaporative and natural dissipation, potential
increases in volume due to emulsification,
and the potential for deposit of some oil on
the shoreline.

7.2 The following procedures must be
used to determine the surface area of the
planning volume used by a vessel owner or operator
for determining required on water recovery capacity:

7.2.1 The following must be determined:
the total volume of oil cargo carried, the
appropriate cargo group for the type of oil
carried (persistent [Groups 2, 3, 4] or
nonpersistent [Group 1]), and the geographic
area(s) in which the vessel operates. For
vessels carrying mixed cargoes from different
oil groups, each group must be calculated
separately. This information is to be used
with Table 3 to determine the percentages
of the total cargo volume to be used for removal
capacity planning. This table divides the
cargo volume in 1993 into three categories: oil
lost to the environment; oil deposited on the
shoreline; and oil available for on-water recovery.

7.2.2 The on-water oil recovery volume
must be adjusted using the appropriate
emulsification factor found in Table 4.

7.2.3 The adjusted volume is multiplied by
the on-water oil recovery resource
mobilization factor found in Table 5 from the
appropriate operating area and response
tier to determine the total on water oil recovery
capacity in barrels per day that must be
identified or contracted for to arrive on-scene
within the applicable time for each response
tier. Three tiers are specified. For higher
volume port areas and the Great Lakes, the
contracted tiers of resources must be located
such that they can arrive on-scene within 12,
30, and 60 hours of the discovery of an oil
discharge. For all other river, inland,
nearshore, and offshore areas, the tiers are
24, 48, and 72 hours. For the open ocean area,
the tiers are 48, 72, and 72 hours with an
additional travel time to account for the
travel time of the oil from the point of
discharge to the point of arrival on the shore
for every additional 10 nautical miles beyond
50 miles from shore.

7.2.4 The resulting on-water recovery
capacity is calculated in barrels per day for each tier
is used to identify response resources necessary
to sustain operations in the applicable
geographic area. The equipment must be
capable of sustaining operations for the time
period specified in Table 5. A vessel owner or
operator shall identify and ensure the
availability of, through contract or other
approved means, sufficient oil spill recovery
devices to provide the effective daily oil
recovery capacity required. If the required
capacity exceeds the applicable cap specified
in Table 6, then a vessel owner or operator
shall contract only for the quantity of
resources required to meet the cap, but shall
identify sources of additional resources as
indicated in this appendix.

The owner or operator of a vessel whose planning
volume exceeds the cap in 1993 must make
arrangements for additional capacity to be
under contract by 1998 or 2003, as
appropriate. For a vessel that carries multiple
groups of oil, the required effective daily
recovery capacity for each group is
calculated before applying the cap.

7.3 The following procedures must be
used to calculate the planning volume for
identifying shoreline cleanup capacity:

7.3.1 The following must be determined:
the total volume of oil cargo carried; the
appropriate cargo group for the type of oil
carried (persistent [Groups 2, 3, 4] or
nonpersistent [Group 1]); and the geographic
area(s) in which the vessel operates. For
vessels carrying cargoes from different
oil groups, each group must be calculated
separately. This information is to be used
with Table 3 to determine the percentages
of the total cargo volume to be used for shoreline cleanup.

7.3.2 The shoreline cleanup planning
volume must be adjusted using the emulsification
factor using the same
procedures as described in section 7.2.2.

7.3.3 The resulting volume will be used to
identify response resources necessary for
shoreline cleanup.

7.4 The following is an example of the
procedure described above:

A vessel with a 100,000 barrel capacity for
#6 oil (specific gravity .86) will move from a
higher volume port area to another area. The
vessel’s route will be 70 miles from shore.

Cabo carried: 100,000 bbls. Group 4 oil.
Emulsification factor: 1.8.
Areas transited: Inland, Nearshore, Offshore.
Open ocean.

Planning % on-water recovery:
Inland 50%
Nearshore 50%
Offshore 40%
Open ocean 20%.

Planning % oil onshore recovery:
Inland 70%
Nearshore 70%
Offshore 30%
Open ocean 30%.

Planning volumes for on water recovery:

<table>
<thead>
<tr>
<th>Area</th>
<th>Vessel Capacity</th>
<th>Planning Volume</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inland</td>
<td>100,000 x .5 = 50,000 bbls</td>
<td></td>
</tr>
<tr>
<td>Nearshore</td>
<td>100,000 x .7 = 70,000 bbls</td>
<td></td>
</tr>
<tr>
<td>Offshore</td>
<td>100,000 x .8 = 80,000 bbls</td>
<td></td>
</tr>
</tbody>
</table>

Planning volumes for on shore recovery:

<table>
<thead>
<tr>
<th>Area</th>
<th>Vessel Capacity</th>
<th>Planning Volume</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inland</td>
<td>100,000 x .7 = 70,000 bbls</td>
<td></td>
</tr>
<tr>
<td>Nearshore</td>
<td>100,000 x .7 = 70,000 bbls</td>
<td></td>
</tr>
<tr>
<td>Offshore</td>
<td>100,000 x .8 = 80,000 bbls</td>
<td></td>
</tr>
</tbody>
</table>

The vessel owner or operator must contract
with a response resource capable of
managing a 126,000 barrel shoreline cleanup
in those areas where the vessel comes closer
than 50 miles to shore. There is no contract
required for the 84,000 barrel capability
required for open ocean if the vessel is
operating farther than 50 miles from shore
during the transit.

Determine required resources for on
water recovery for each tier using mobilization
factors:

<table>
<thead>
<tr>
<th>Tier</th>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inland/Nearshore</td>
<td>90,000 x .15 = 13,500 bbls</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offshore</td>
<td>7,200</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Open ocean</td>
<td>2,160</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Since the requirements for tiers 1 and 2 for
inland and nearshore exceed the caps, the
vessel owner would only need to contract for
10,000 bpd for tier 1 and 20,000 bpd for tier 2.
Sources for the remaining 3,500 bpd for tier 1
and 2,500 for tier 2 would need to be
identified but not contracted for.

The vessel owner or operator would also
be requested to identify or contract for
quantities of boom identified in Table 2 for
the areas that the vessel operates.
8. Determining the Availability of High-Rate Response Methods

8.1 Response plans for a vessel carrying persistent oil as a primary cargo that operates in the offshore or open ocean environments must identify and ensure the availability of, through contact or other approved means, dispersants and appropriate application equipment in those areas. These resources must be capable of being on-scene within 24 hours of a discharge. The volume of oil discharge to be used in planning for dispersant use will be the volume of the single largest cargo tank aboard the vessel.

8.2 A response plan must identify the locations of dispersant stockpiles, methods of shipping to a shoreside staging area, and appropriate aircraft or vessels to apply the dispersant and monitor its effectiveness at the scene of an oil discharge.

8.2.1 Sufficient volumes of dispersants must be available to treat the oil at the discharge rate recommended by the dispersant manufacturer. Dispersants identified in a response plan must be on the NCP Product Schedule maintained by the U.S. Environmental Protection Agency. (Some states have a list of approved dispersants and within state waters only they can be used.)

8.2.2 Dispersant application equipment identified in a response plan must be located such that it can be mobilized to shoreside staging areas to meet the time requirements in 8.1 above. Sufficient equipment capacity must be identified to treat the planning volume (largest cargo tank) within 48 hours of arrival at the staging area.

8.3 In addition to the equipment and supplies required, a vessel owner or operator shall identify a source of support to conduct the monitoring and post-use effectiveness evaluation required by applicable regional and area contingency plans.

8.4 Identification of the resources for dispersant application does not imply that the use of this technique will be authorized. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable Regional or Area Contingency Plan. A vessel owner or operator that operates a vessel in areas with year-round pre-approval of dispersant can reduce their required on-water recovery capacity for 1993 up to 25%. A vessel owner or operator may reduce their required on water recovery cap increase for 1998 and 2003 up to 50% by identifying non-mechanical methods.

8.5 The use of in-situ burning as a non-mechanical response method is still being studied. Because limitations and uncertainties remain for the use of this method, it may not be used to reduce required oil recovery capacity in 1993.

### Table 1.—response resource operating criteria—oil recovery devices

<table>
<thead>
<tr>
<th>Operating environment</th>
<th>Significant wave height</th>
<th>Sea state</th>
</tr>
</thead>
<tbody>
<tr>
<td>River</td>
<td>&lt;1 foot</td>
<td>1</td>
</tr>
<tr>
<td>Inland</td>
<td>&lt; 3 feet</td>
<td>2</td>
</tr>
<tr>
<td>Great Lakes</td>
<td>&lt; 4 feet</td>
<td>2-3</td>
</tr>
<tr>
<td>Ocean</td>
<td>&lt;6 feet</td>
<td>3-4</td>
</tr>
</tbody>
</table>

#### BOOM

<table>
<thead>
<tr>
<th>Boom property</th>
<th>Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Significant Wave Height</td>
<td>River</td>
</tr>
<tr>
<td>Sea State</td>
<td>&lt;1</td>
</tr>
<tr>
<td>Boom height—ft (draft plus freeboard)</td>
<td>10-18</td>
</tr>
<tr>
<td>Reserve Buoyancy to Weight Ratio</td>
<td>2:1</td>
</tr>
<tr>
<td>Total Tensile Strength—lbf</td>
<td>4,500</td>
</tr>
<tr>
<td>Skirt Fabric Tensile Strength—lbf</td>
<td>200</td>
</tr>
<tr>
<td>Skirt Fabric Tear Strength—lbf</td>
<td>100</td>
</tr>
</tbody>
</table>

### Table 2.—Shoreline Protection Requirements

<table>
<thead>
<tr>
<th>Location</th>
<th>Boom contracted (ft)</th>
<th>Availability hours</th>
<th>Boom identified (ft)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Persistent Oils</td>
<td></td>
<td>High volume port area</td>
<td>Other areas</td>
</tr>
<tr>
<td>Open Ocean</td>
<td>15,000</td>
<td>24</td>
<td>48</td>
</tr>
<tr>
<td>Offshore</td>
<td>30,000</td>
<td>12</td>
<td>24</td>
</tr>
<tr>
<td>Nearshore/Inland</td>
<td>25,000</td>
<td>12</td>
<td>24</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Non-Persistent Oils</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Open Ocean</td>
<td>15,000</td>
<td></td>
</tr>
<tr>
<td>Offshore</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

9. Additional Equipment Necessary to Sustain Response Operations

9.1 A vessel owner or operator is responsible for ensuring that sufficient numbers of trained personnel and boats, aerial spotting aircraft, containment boom, sorbent materials, boom anchoring materials, and other supplies are available to sustain response operations to completion. A vessel owner or operator is not required to list these resources, but shall certify their availability.

9.2 A vessel owner or operator shall evaluate the availability of adequate temporary storage capacity to sustain the effective daily recovery rates from equipment identified in the plan. Because of the inefficiencies of oil spill recovery devices, response plans must identify daily storage capacity equivalent to twice the effective daily recovery rate required on scene. This capacity may be reduced if a vessel owner or operator can demonstrate that the efficiencies of the oil recovery devices will reduce the overall volume of oily material storage requirement.

9.3 A vessel owner or operator shall ensure that their oil spill removal organization has the capability to arrange for disposal of recovered oil products. Specific disposal procedures will be addressed in the applicable Area Contingency Plan.
### Table 2.—Shoreline Protection Requirements—Continued

<table>
<thead>
<tr>
<th>Location</th>
<th>Boom contracted (ft)</th>
<th>Availability hours</th>
<th>Other areas</th>
<th>Boom identified (ft)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nearshore/inland</td>
<td>10,000</td>
<td>12</td>
<td>24</td>
<td>Ref. Area Plan.</td>
</tr>
<tr>
<td>Rivers</td>
<td>15,000</td>
<td>12</td>
<td>24</td>
<td>Ref. Area Plan.</td>
</tr>
</tbody>
</table>

### Table 3.—Removal Capacity Planning Table

<table>
<thead>
<tr>
<th>Spill location: Sustainability of on-water oil recovery—Oil group</th>
<th>Nearshore/inland, 4 days (percent)</th>
<th>River, 3 days (percent)</th>
<th>Open ocean, 10 days (percent)</th>
<th>Offshore, 6 days (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Natural dissipation</td>
<td>Recovered floating oil</td>
<td>Oil on shore</td>
<td>Natural dissipation</td>
</tr>
<tr>
<td>Natural dissipation</td>
<td>Recovered floating oil</td>
<td>Oil on shore</td>
<td>Natural dissipation</td>
<td>Recovered floating oil</td>
</tr>
<tr>
<td>1. Non-light persistent oils</td>
<td>80</td>
<td>20</td>
<td>80</td>
<td>10</td>
</tr>
<tr>
<td>2. Light crude and fuels</td>
<td>50</td>
<td>50</td>
<td>30</td>
<td>40</td>
</tr>
<tr>
<td>3. Medium crude and fuels</td>
<td>30</td>
<td>50</td>
<td>50</td>
<td>20</td>
</tr>
<tr>
<td>4. Heavy crude/fuels</td>
<td>10</td>
<td>50</td>
<td>70</td>
<td>5</td>
</tr>
</tbody>
</table>

### Table 4.—Emulsification Factors for Oil Cargo Groups

<table>
<thead>
<tr>
<th>Non-persistent oil: Group 1</th>
<th>Persistent oil: Group 2</th>
<th>Persistent oil: Group 3</th>
<th>Persistent oil: Group 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>2.5</td>
<td>3.3</td>
<td>1.8</td>
</tr>
</tbody>
</table>

### Table 5.—On Water Oil Recovery Resource Mobilization Factors

<table>
<thead>
<tr>
<th>Area</th>
<th>Tier 1</th>
<th>Tier 2</th>
<th>Tier 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>River</td>
<td>30</td>
<td>40</td>
<td>60</td>
</tr>
<tr>
<td>Inland/Neearshore</td>
<td>15</td>
<td>25</td>
<td>40</td>
</tr>
<tr>
<td>Offshore</td>
<td>10</td>
<td>15</td>
<td>21</td>
</tr>
<tr>
<td>Ocean</td>
<td>.06</td>
<td>.10</td>
<td>.12</td>
</tr>
</tbody>
</table>

Note: These mobilization factors are for total resources mobilized, not incremental resources.

### Table 6.—Response Capability Caps by Geographic Area

<table>
<thead>
<tr>
<th>Tier 1</th>
<th>Tier 2</th>
<th>Tier 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 1993:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All except rivers</td>
<td>10K bbls/day</td>
<td>20K bbls/day</td>
</tr>
<tr>
<td>Rivers</td>
<td>1,500 bbls/day</td>
<td>3,000 bbls/day</td>
</tr>
<tr>
<td>March 1998:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All except rivers</td>
<td>12.5K bbls/day</td>
<td>25K bbls/day</td>
</tr>
<tr>
<td>Rivers</td>
<td>1,875 bbls/day</td>
<td>3,750 bbls/day</td>
</tr>
<tr>
<td>March 2003:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All except rivers</td>
<td>15K bbls/day</td>
<td>30K bbls/day</td>
</tr>
<tr>
<td>Rivers</td>
<td>2,250 bbls/day</td>
<td>4,500 bbls/day</td>
</tr>
</tbody>
</table>

Note: The caps show cumulative overall effective daily recovery rate, not incremental increases.

Dated: June 12, 1992.

J. W. Kime
Admiral, U. S. Coast Guard, Commandant.

[FR Doc. 92-14283 Filed 6-15-92; 3:30 pm]

BILLING CODE 4910-14-M
Part III

Department of Education

34 CFR Part 212
Even Start Family Literacy Program (Even Start); Final Regulations
DEPARTMENT OF EDUCATION

34 CFR Part 212
RIN 1810-AA64

Even Start

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Even Start Family Literacy program (Even Start). Even Start is authorized by Part B of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (the Act). The National Literacy Act of 1991 contains amendments to Even Start. These final regulations amend current Even Start regulations to: (1) Reflect the statutory amendments to: (1) Reflect the statutory

regulations governing the Even Start program when it becomes State-administered; and (3) make related changes to the migrant education component of the Even Start program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Patricia McKee, Chief, Grants Administration Branch, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 2043, Washington, DC 20202; Telephone: (202) 401-1692. Deaf and hearing impaired individuals may call (202) 732-4538 for TDD services.


SUPPLEMENTARY INFORMATION:

A. Background

On February 28, 1992, the Secretary published a notice of proposed rulemaking (NPRM) for the Even Start program in the Federal Register (57 FR 7300). These amendments to the regulations reflect statutory changes to Even Start contained in the National Literacy Act of 1991 (Pub. L. 102–73). In accordance with the statutory changes, the regulations:

(1) Make community-based organizations, in cooperation with local educational agencies (LEAs), eligible to apply for grants (§§ 212.2 and 212.6);

(2) Expand eligibility for Even Start funds to include Indian tribes, tribal organizations, and the Nation’s insular areas (§ 212.2);

(3) Expand the age of children eligible for Even Start to include those from birth through age 7 (§ 212.7);

(4) Provide that families that otherwise would be ineligible due to one or more participants having become ineligible under the statute may continue to participate until all family members become ineligible (§ 212.7);

(5) Revise the selection criteria for making discretionary grants to eligible entities (§ § 212.22);

(6) Provide a method for applying the priorities contained in the legislative amendments to the discretionary grant selection process (§ 212.21);

(7) Specify conditions for waiving the requirement relating to the source of the local contribution of funds (§ 212.25);

(8) Contain provisions regarding State administration of the program, which will begin in fiscal year (FY) 1992 (§§ 212.30–212.34); and

(9) Make conforming changes to regulations governing the Migrant Education Even Start program (§§ 212.30–212.58).

Even Start supports AMERICA 2000, the President's strategy to help America move toward achieving the six National Education Goals. Because it integrates early childhood education and adult education by involving parents who have limited education skills in the education of their young children, Even Start helps States and localities directly address two of the National Education Goals. Goal 1 calls for all children and parents out of Even Start to start school ready to learn. An objective of Goal 1 is for every parent to be a child’s first teacher, to devote time each day to helping his or her preschool child learn, and to have access to training and support. Even Start also contributes to achieving Goal 5—that every adult American will be literate, possess the knowledge and skills necessary to compete in a global economy, and exercise the rights and responsibilities of citizenship.

These regulations are necessary to bring current regulations into conformity with legislative amendments, and to establish procedures that will govern the program when it becomes State-administered in FY 1992.

The only significant changes from the NPRM that are contained in these final regulations are the following: Several of the indirect cost provisions in the Education Department General Administrative Regulations (EDGAR) have been made applicable to the State administration and technical assistance set-aside (§ 212.5(b)(3)(vi)); the child eligibility requirements have been revised for Indian tribes, tribal organizations, and the insular areas (§ 212.7(a)(2)(ii)); a provision has been added requiring family participation in all three Even Start components—early childhood education, adult literacy, and parenting education (§ 212.7(c)); the application requirements for the insular areas have been revised (§ 212.13); the selection criterion regarding cooperative and coordination (§ 212.21(c)) has been modified to clarify that the provisions for cooperative efforts with other service providers should include provision, as needed, for the transition of children and parents out of Even Start into other appropriate programs (§ 212.21(c)(1)(iii)); provisions have been added clarifying which regulatory requirements apply to the insular areas (§§ 212.23(b)(3)), and (§ 212.23(c)(1)) as proposed in the NPRM, regarding a State’s treatment of a grantee’s unobligated funds, has been deleted to allow maximum flexibility for the States. Minor clarifying changes and corrections also have been made.

B. Issues

State Requirements

Section 212.30(a) and (b) of the regulations requires that, in order for a State to receive funds for the first three fiscal years in which the program is State-administered, it must submit a State plan to the Secretary. State plans are needed to ensure full understanding and implementation of Even Start statutory and administrative requirements that govern the program after it converts from Federal to State administration. State plans provide a systematic means for communication between the Department and each State about those requirements and help the Department provide appropriate technical assistance to all States. The Department discourages States from filing lengthy documents.

After the three-year period, it is expected that State plans will no longer be necessary. Consequently, under § 212.30(c), which governs application procedures for the fourth and subsequent years, States are required to file only appropriate assurances with the Department.
agency (SEA) prior to completion of that
Federal grant's budget period (or an
extension of that budget period), it must
keep separate records for each grant.

The closeout regulations require
grantees to file certain reports with the
Department, including a final
performance report. [34 CFR 80.50(b)]
However, the Secretary will accept a
copy of a grantee's application to its
SEA for a continuation award as the
final performance report. provided that
it demonstrates that progress has been
made toward meeting the project's
objectives in accordance with section
1057(d) of the Act.

### Indian Tribes and Tribal Organizations

Section 212.23(a)(2)(i) of the NPRM
incorrectly stated that § 212.20(a)(2),
regarding the review panel's evaluation
of an application for a new grant, did
not apply to Indian tribes and tribal
organizations. That error has been
corrected in these regulations. An
application to the Secretary from an
Indian tribe or tribal organization is
evaluated by a review panel on the
same basis as applications to the States
from eligible entities.

In addition, there has been some
confusion regarding whether the
requirements in §§ 212.20(a)(3) and
212.24, regarding an applicant's
contribution of funding for a portion of
the total project cost for each year of a
grant, apply to Indian tribes or tribal
organizations. These regulations clarify
that the requirement applies
(§ 212.23(a)(2)). The provisions in
§ 212.25, regarding when the Secretary
may waive the requirement concerning
the source of that local contribution,
also apply to Indian tribes and tribal
organizations (§ 212.23(a)(2)).

### The Insular Areas

The final regulations change the term
"territories," used in the NPRM, to the
more accurate term "insular areas."
Under the statutory set-aside for certain
categories of applicants, the insular
areas (defined in § 212.6) will receive
formula grants based on the proportion
each receives of basic grant funds under
Part A of Chapter 1 of Title I of the Act
(the Chapter 1 LEA program). Insular
area applicants may submit to the
Department either a consolidated grant
application or a State plan (§ 212.13).
If an insular area chooses to submit a
State plan, the plan must be updated or
amended for the following two years,
and a new State plan submitted every
third year.

### Applicability of General Chapter 1
Provisions

The Even Start program is contained
in Part B of Chapter 1 of Title I of the
Act. Several provisions in Parts E and F
of Chapter 1 will affect the States in
their administration of the Even Start
program. Others are inapplicable to
Even Start. Those that do apply to Even
Start, and are directed to the States
rather than the Department, are
identified in §§ 212.34 and
212.57(a)(1)(ix) of the regulations.

Section 1404 of the Act (Payments for
State Administration) concerns
payments to the States for performance
of their duties under Chapter 1. These
funds may be used for administration of
Even Start, if needed, in addition to the
5 percent of Even Start funds that the
State is authorized to use under section
1052(b) of the Act.

Section 1432(b) of the Act
(Availability of Appropriations),
containing limitations on carryover of
funds, does not apply to Even Start. This
provision is interpreted to apply only to
basic and concentration grants under
the Chapter 1 LEA program that
distributes funds to LEAs by formula.
The Chapter 1 carryover limits help
establish consistent yearly spending
patterns among those LEAs that have an
expectation of yearly funding. Unlike
the Chapter 1 LEA program, Even Start
is a discretionary program that makes
funds available on a competitive basis
for a project period of up to four years.
Even Start applicants receiving funds
thus have no legitimate expectation of
continued funding beyond that period.
Furthermore, under section 1057 of the
Act, Even Start grantees may not
receive annual continuation awards if
they do not show progress toward
meeting project objectives.

The "Tydings" provision in section
412(b) of the General Education
Provisions Act (GEPA) (Availability of
Appropriations on Academic or School
Year Basis) does, however, apply to
Even Start when the program is State-
administered, so that Even Start funds
the States receive will remain available
for obligation by subgrantees during the
fiscal year succeeding the fiscal year
for which they are appropriated.

Consequently, States may allow a
subgrantee to retain unobligated funds
from a State grant for the entire Tydings
period. States can either reduce the
amount of the future award by the
carryover amount, or increase the grant
award to include the carryover funds, so
long as the applicant's budget reflects
the total award amount.
Section 1438 of the Act (Application of General Education Provisions Act), providing that GEPA applies except for certain superseded or excepted provisions, is applicable to Even Start. Note that, because section 435 of GEPA, governing single-State applications, is inapplicable, States are not required by Federal law to conduct public hearings on their Even Start State plans. In addition, even though section 436 of GEPA, governing LEA applications to the State, is mostly inapplicable, section 1056 of the Even Start statute specifically requires eligible entities to submit applications to States containing the detailed information listed in section 1056.

Section 1451 of the Act (State Regulations), which requires, among other things, that a committee of practitioners review any proposed State rules, regulations, or policies governing the program, applies to Even Start as well. The regulations in § 212.5(b)(11) adopt the Chapter 1 provision in 34 CFR 200.70 that interprets and implements the provisions of section 1451. However, some provisions of 34 CFR 200.70 are not appropriate for Even Start and are excepted. The committee of practitioners is required to review a State’s interpretation and proposed application of the statutory selection criteria, whether the State chooses to adopt the Federal regulations or to adopt its own interpretation.

Section 1453 (Assignment of Personnel) applies to the extent that Even Start personnel, who teach Even Start children through age 7, are paid entirely with Even Start funds and perform their duties in a public school setting. For this purpose, § 212.5(b)(11) of the regulations adopts the Chapter 1 provision in 34 CFR 200.39 that interprets the statutory requirements.

Applicability of Certain Education Department General Administrative Regulations

Section 212.5 of the regulations, lists those sections of part 76 of EDGAR that apply to Even Start. In addition, the Department plans to amend part 76 to include Even Start as a program covered by 34 CFR 76.102 (Definition of “State plan” for part 76), and 34 CFR 76.125 (What is the purpose of these regulations?) governing consolidated applications from insular areas.

Part 80 of EDGAR (for grants to State and local governments, the insular areas, and Indian tribes and tribal organizations) will continue to apply to Even Start when the program is State-administered. Section 212.5 has been revised to provide that part 74 of EDGAR (for grants and subgrants to nonprofit organizations) will also apply when the program is State-administered. Because part 74 expressly applies only to grants that the Department makes directly to institutions of higher education, hospitals, and nonprofit organizations, the inclusion of part 74 in § 212.5(b)’s list of applicable regulations is needed to make the provisions of part 74 applicable to Even Start subgrants that States make to nonprofit organizations.

Migrant Education Even Start Program

As proposed in the NPRM, § 212.55 would have provided for an award of up to 32 points for a project’s “likelihood of success in meeting Even Start goals,” while at the same time adopting § 212.21(a)(2), under which priority points would be assigned on the basis of a 40-point selection criterion. Section 212.55(d)(1) of the regulations corrects this problem by tailoring the priority point provision to a 32-point criterion. In addition, § 212.57(a)(9) of the NPRM, as proposed, incorrectly incorporated Migrant Education program regulations regarding State rulemaking and complaint procedures (34 CFR 201.46 and 201.47). Because the Migrant Education Even Start program is administered by the Secretary, and not by the States, these provisions are not included in § 212.57 as applicable to this program.

Analysis of Comments and Changes

In response to the Secretary’s invitation in the NPRM, 18 parties commented either orally or in writing on the proposed regulations. An analysis of the comments and of the changes in the regulations since the publication of the NPRM is published as an appendix to the final regulations. The appendix responds first to general comments on major issues, then to substantive issues that pertain to specific regulatory sections. Technical and other minor changes not specifically discussed above—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The Migrant Education Even Start program is also subject to these requirements. 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 notification of the Department’s specific plans and actions for this program.

List of Subjects in 34 CFR Part 212

Adult education, Education, Education of disadvantaged children, Education of individuals with disabilities, Elementary and secondary education, Family, Family-centered education, Grant programs—education, Indians—education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.213, Even Start program.)

Dated: June 12, 1992.

Lamar Alexander,
Secretary of Education.

The Secretary revises part 212 of title 34 of the Code of Federal Regulations to read as follows:

PART 212—EVEN START

Subpart A—General

Sec. 212.1 What is the Even Start Family Literacy Program?
212.2 Who is eligible for a grant?
212.3 What activities may the Secretary or SEAs fund?
212.4 What is the duration of a project?
212.5 What regulations apply?
212.6 What definitions apply?
212.7 Who are eligible participants in an Even Start project?

Subpart B—How Does an Applicant Apply for a Grant?
212.10 To whom does an eligible entity submit an application?
212.11 What requirements apply to eligible entities for submitting an application to the Secretary for a new grant?
212.12 How does an Indian tribe or tribal organization apply for assistance?
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§ 212.2 Who is eligible for a grant?

If section 1052(a) of the Act applies, the Secretary makes grants to—

(a) Eligible entities or consortia of eligible entities;

(b) The insular areas;

(c) Indian tribes and tribal organizations; and

(d) State educational agencies (SEAs), or a consortium of SEAs, for migrant projects under subpart F of this part.

If section 1052(b) of the Act applies, the Secretary makes grants to—

(1) SEAs, for subgrants to eligible entities;

(2) The insular areas;

(3) Indian tribes and tribal organizations; and

(4) SEAs, or consortium of SEAs, for migrant projects under subpart F of this part.


§ 212.2§ What activities may the Secretary or SEAs fund?

The Secretary, or each SEA, as the case may be, funds family-centered education projects that comply with section 1054 of the Act, and that includes all of the program elements required by section 1054(b) of the Act.


§ 212.2§ What is the duration of a project?

No project operated by an eligible entity, or Indian tribe or tribal organization, may exceed four years. A grantees may reapply as a new applicant after the fourth year, for the same or a different project.


§ 212.5 What regulations apply?

The following regulations apply to the Even Start program:

(a) When the Secretary makes direct grants under section 1052(a) of the Act, the following parts of the Education Department General Administrative Regulations (EDGAR) and section of 34 CFR part 200:

(i) In subpart A of part 76, §§ 76.1, 76.2, 76.50, and 76.51.

(ii) In subpart B of part 76, §§ 76.100, 76.102 through 76.106, and, for the first three consecutive fiscal years in which section 1052(b) of the Act applies, §§ 76.140 through 76.142.

(iii) In subpart C of part 76, §§ 76.260, 76.261, and, for the first three consecutive fiscal years in which section 1052(b) of the Act applies, §§ 76.201 through 76.235.

(b) The Secretary implements the Even Start program by assisting cooperative projects that build on existing community resources to create a new range of services, integrating early childhood education and adult education for parents.

Authority: 20 U.S.C. 2741, 2744(a).

(5) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities), except for grants to Indian tribes and tribal organizations.

(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) for grants to State and local governments, the insular areas, and Indian tribes and tribal organizations.

(7) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(8) 34 CFR part 82 (New Restrictions on Lobbying).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR part 86 (Drug-Free Schools and Campuses) for grants to institutions of higher education (IHEs), SEAs, local educational agencies (LEAs), and the insular areas.

(11) 34 CFR 200.39 (How may personnel be assigned non-Chapter 1 duties?) for grants to LEAs, with the term “Chapter 1” interpreted as “Even Start.”

(b) When the Secretary makes grants under section 1052(b) of the Act, the following parts of EDGAR and sections of 34 CFR part 200:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations) for grants to nonprofit organizations.

(2) 34 CFR part 75 (Direct Grant Programs) for grants to Indian tribes and tribal organizations, and to SEAs under subpart F of this part.

(3) The following provisions of 34 CFR part 76 (State-administered Programs) for grants to SEAs and the insular areas:

(i) In subpart A of part 78, §§ 78.1, 78.2, 78.50, and 78.61.

(ii) In subpart B of part 76, §§ 76.125 through 76.137 and, for the first three consecutive fiscal years in which section 1052(b) of the Act applies, §§ 76.140 through 76.142.

(iii) In subpart C of part 76, §§ 76.260, 76.261, and, for the first three consecutive fiscal years in which section 1052(b) of the Act applies, §§ 76.201 through 76.235.

(iv) In subpart D of part 78, §§ 76.300, and §§ 76.302 through 76.305.

(v) All of subpart E of part 78 (§§ 76.400 and 76.401).

(vi) In subpart F of part 76, §§ 76.500 through 76.534, §§ 76.580 through 76.592, §§ 76.681 through 76.683, §§ 76.690 and, only with respect to the amount of Even
Facilities. Fiscal year, Grant, Grant period, Contractor, Nonprofit, Project.

(c) Other definitions. The following definitions also apply to this part:

Act means the Elementary and Secondary Education Act of 1965, as amended.

Eligible entity means—

(i) An LEA applying in collaboration with a community-based organization, public agency, institution of higher education, or other nonprofit organization;

(ii) A community-based organization or other nonprofit organization of demonstrated quality applying in collaboration with an LEA.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) (43 U.S.C. 1601 et seq.) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Insular area means Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Pub. L. 99–658).

State means any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Tribal organization means the recognized governing body of any Indian tribe, and any legally established organization of Indians that is controlled, sanctioned, or chartered by the governing body or is democratically elected by the adult members of the Indian community to be served by the organization and that includes the maximum participation of Indians in all phases of its activities.


§ 212.7 Who are eligible participants in an Even Start project?

(a) Except as provided in paragraph (b) of this section, eligible participants are—

(1) A parent of a child described in paragraph (a)(2) of this section, if the parent is eligible for participation in an adult education program under the Adult Education Act, 20 U.S.C. 1221e-3(a)(1) and (2); and

(2) Except as provided in paragraph (a)(2) of this section, a child—

(A) From birth through age 7;

(B) Who is the child of an eligible parent; and

(C) Who resides in an elementary school attendance area designated for participation in programs under Part A of Chapter 1 of Title I of the Act; or

(ii) For grants to the insular areas, and Indian tribes or tribal organizations, a child, from birth through age 7, of any eligible parent.

(b)(1) To be eligible, at least one parent and one or more eligible children must participate together in the Even Start project.

(2) Except as provided in paragraph (c)(2) of this section—

(i) Participating children must take part in early childhood education activities; and

(ii) Participating parents must take part in—

(A) Adult literacy activities; and

(B) Parenting education activities, including activities in which the parents and children are involved together.

(c)(1) A family that would become ineligible for participation as a result of one or more family members becoming ineligible may continue to participate in the program until all family members become ineligible.

(2) In the situation described in paragraph (c)(1) of this section, the following requirements apply:

(i) Any family member who would be ineligible under paragraph (a) of this section may continue to participate in appropriate family-oriented activities that involve joint parent and child participation.

(ii) Projects may not provide, to a family member who would be ineligible under paragraph (a) of this section, special activities different from those already provided for other Even Start participants; for example, activities designed for children beyond age seven or activities for parents who are no longer eligible for adult education under the Adult Education Act, 20 U.S.C. 1201a (1) and (2).


Subpart B—How Does an Applicant Apply for a Grant

§ 212.10 To whom does an eligible entity submit an application?

An eligible entity shall submit an application to the Secretary under section 1052(a) of the Act, in the form required by the Secretary, or to the SEA under section 1052(b) of the Act, in the form required by the SEA, as the case may be.

(Approved by the Office of Management and Budget under control number 1810–0560)

§ 212.11 What requirements apply to eligible entities for submitting an application to the Secretary for a new grant?

Before submitting an application to the Secretary for a new grant under section 1052(a) of the Act, an eligible entity shall—

(a) Give reasonable notice of the general public's opportunity to testify or otherwise comment at an open meeting regarding the subject matter of the application;
(b) Hold the open meeting; and
(c) Consider comments obtained at the meeting in developing the final application.

(Approved by the Office of Management and Budget under control number 1810–0540.) Authority: 20 U.S.C. 3366.

§ 212.12 How does an Indian tribe or tribal organization apply for assistance?

An Indian tribe or tribal organization shall submit an application to the Secretary in the form required by the Secretary.

(Approved by the Office of Management and Budget under control number 1810–0540.) Authority: 20 U.S.C. 2743(a).

§ 212.13 How does an insular area apply for assistance?

(a) An insular area shall—

(1) Submit a State plan to the Secretary at least every three years in accordance with the provisions in 34 CFR part 76 and paragraph (b) of this section; or

(2) Submit an annual consolidated grant application to the Secretary in accordance with the provisions in 34 CFR part 76.

(b) If an insular area submits a State plan to the Secretary under paragraph (a)(1) of this section—

(1) For the first year of every three-year period in which the insular area submits a State plan, the State plan must include the following:

(i) A description of how the insular area's project will meet the elements set forth in sections 1054(a) and (b) and 1056(b) and (c) of the Act.

(ii) The certifications and assurances required by §212.30(a)(2); and

(iii) The insular area shall submit to the Secretary an update or amendment to the plan if there have been any changes to information submitted in that plan.


Subpart C—How Does the Secretary Make a Grant? New Grants

§ 212.20 How does the Secretary evaluate an application from an eligible entity for a new grant?

(a) Review panel. (1) The Secretary appoints a panel to review applications in accordance with section 1057 of the Act.

(2)(i) The panel evaluates an application for a new grant on the basis of the criteria in §212.21.

(ii) The panel gives up to 120 points for these criteria.

(iii) The maximum possible score for each complete criterion in § 212.21 is indicated in parentheses.

(3) The panel indicates whether the applicant has adequately demonstrated its ability to provide the additional funding required by §212.24.

(b) Additional factors. The Secretary then applies the additional considerations in §212.22 to make grants.


§ 212.21 What selection criteria are used in making new grants to eligible entities?

The following criteria are used to evaluate an eligible entity's application for a new grant:

(a) Likelihood of success in meeting the Even Start goals (40 total points plus possible 10 priority points). (1) The Secretary reviews each application to determine the extent to which the proposed project will provide a family-centered education program that includes activities to promote literacy of participating parents, train parents to support the educational growth of their children, and prepare children for success in regular school programs. In applying this criterion, the Secretary determines the extent to which the project described in the application—

(i) Contains objective evidence, including evidence from similar programs serving the same population, applicants may provide showing by comparison with other areas or comparable data on the model's effectiveness or preliminary data on program; or

(ii) Includes appropriate activities, services, and timelines to achieve those objectives (5 points); and

(iii) Designates responsibilities to specific personnel who are qualified to administer and implement the project and to provide special training necessary to prepare staff for the program (5 points);

(v) Includes an effective plan to ensure proper and efficient administration of the project (5 points);

(vi) Contains evidence that the project will have a high percentage of or large number of children served (5 points);

(vii) Provides for continuity of services to maintain progress by, for example, providing continuous services through the summer months, or serving participants, as needed, for the full period of their eligibility (5 points); and

(viii) Provides—

(A) Objective evidence, including quantitative data on the educational and related outcomes of the program, that the applicant, or its collaborating LEA, has achieved success in operating a literacy program, an adult education program, an early childhood education program, or a parenting education program;

(B) A description of the specific family literacy model that the applicant proposes to implement (including quantitative data on the model's effectiveness), information supporting the applicability of the model to the local site, and a detailed description of how the model will be implemented in the proposed project (5 points).

(2)(i) The Secretary gives 10 additional points to applicants that receive at least 35 out of 40 points for likelihood of success under paragraph (a)(1) of this section, including all 5 possible points for past success under paragraph (a)(1)(vii)(A) of this section.

(ii) Applicants that do not meet the requirements in paragraph (a)(2)(i) of this section receive no priority points (0 or 10 points).


(b) Need for the project (10 total points plus possible 10 priority points). (1) The Secretary reviews each application to determine the extent to which the applicant demonstrates that the area to be served has a high percentage of or large number of children and parents in need of Even Start services.

(2) For purposes of paragraph (b)(1) of this section, need for Ever Start services must be shown by demonstrating the following:

(i) High levels of poverty, illiteracy, unemployment, limited English proficiency, or other needs-related indicators. High levels of need may be shown by comparison with other areas of the State or the United States.

(ii) The unavailability of comprehensive family literacy services or programs for the target population. If similar programs serve the same population, applicants may provide
evidence of waiting lists or other indicators that local demand exceeds the ability of those programs to meet the needs.

(2) The applicant will make use of currently available resources such as facilities and equipment; and

(3) The budget provides sufficient information to support the requested amount of funds.

(e) Promise as a model! (10 total points). The Secretary reviews each application to determine the extent to which the proposed project shows promise in providing an effective model that may be transferred to other eligible entities. The Secretary considers the extent to which—

(1) The preliminary evaluation plan described in the application—

(i) Measures the progress and success of the project in achieving its clearly stated and attainable objectives;

(ii) Utilizes concrete and quantifiable means of measurement; and

(iii) Includes, if possible, comparisons with appropriate control groups (5 points);

(2) The general components of the project are readily understandable and usable by other entities, and are based on research or models that have proven to be adaptable to various circumstances (3 points); and

(3) The applicant shows a willingness to have its project serve as a model and to disseminate detailed information about the project to the Department and to other eligible entities (2 points).

(2) In addition to this section, the Secretary applies all of this subpart in making grants to Indian tribes and tribal organizations, except § 212.22(a) (2) and (3), (b), and (c).
same project, at least 40 percent of the total cost of the project. 

(c) Except as provided in §212.25, the local share of the cost of the project must be obtained from any source other than funds made available for programs under Chapter 1 of Title I of the Act, and may be provided in cash or in kind, fairly evaluated.


§ 212.25 When may the Secretary waive the requirement concerning the local contribution of funds?

The Secretary may waive, in whole or in part, the requirement in §212.24(c) that the local share of the cost of the project be obtained from sources other than funds under Chapter 1 of Title I of the Act if—

(a) An eligible entity demonstrates that, due to its own financial situation and the lack of any other sources of funding—

(1) It otherwise would not be able to conduct an Even Start project; or

(2) It otherwise would not be able to continue its project at the level previously maintained, if it is a grantee applying for a continuation grant;

(b) The demonstration required by paragraph (a) of this section is supported by detailed financial data and is accompanied by a signed statement from a responsible official that all possible sources of funding, including cooperating entities, have been explored;

(c) The applicant designates the specific funds under Chapter 1 of Title I of the Act that it intends to use for its local share; and

(d) The applicant negotiates an agreement with the Secretary with respect to the amount of the local contribution to which the waiver would be applicable.

(Approved by the Office of Management and Budget under control number 1610-0540.)

Authority: 20 U.S.C. 2744(c).

Continuation Awards.

§ 212.26 How does the Secretary make continuation awards if there are insufficient appropriations to fund all requests fully?

(a) If funds are insufficient for the Secretary to fund all continuation requests in the amounts at which each request would otherwise be funded, the Secretary reduces the approvable grant amounts for continuation requests on a pro rata basis.

(b) The Secretary does not reduce funding for a project for any fiscal year more than 25 percent below its approvable grant amount, subject to paragraph (c) of this section.

(c) If funds are insufficient to fund all continuation awards at 75 percent of their approvable grant amounts, the Secretary—

(1) Ranks all continuation requests based on the criteria in §212.21, taking into account information collected throughout the project period, including yearly progress reports, the application submitted in the first year, and revisions to that application; and

(2) Funds continuation requests, based on that rank ordering, at 75 percent of approvable grant amounts until funds are exhausted.

(d) If the ranking procedure in paragraph (c) of this section does not result in the distribution of awards consistent with the requirements of §212.22(a), the Secretary adjusts the selection process so as to meet those requirements.


§ 212.27 What actions may the Secretary take if a grantee does not make sufficient progress toward meeting its project objectives?

If the Secretary finds, after the first, second, or third year of a project, that the grantee has not made sufficient progress toward meeting its project objectives, the Secretary may—

(a) Approve revisions to the project, proposed by the grantee, if those revisions would enable the grantee to meet its project objectives; or

(b) After affording the grantee notice and an opportunity for a hearing, refuse to make a continuation award to the grantee for that project.


Subpart D—State Administration

§ 212.30 How does an SEA apply for Even Start funds?

(a) In order to receive assistance for the first fiscal year in which section 1052(b) of the Act applies, an SEA must provide a State plan to the Secretary. The State plan must include—

(1) Descriptions. The following descriptions:

(i) Selection Criteria and Priorities. A description of how the SEA, in making subgrants to eligible entities, will apply the selection criteria and priorities set forth in section 1057 of the Act.

(ii) State Administration. A description of how the SEA, in administering the Even Start program, will involve appropriate State offices, including the following:

(A) Adult education and early childhood education offices.

(B) Offices administering the programs listed in §212.21(c)(2).

(C) Appropriate statewide organizations, such as statewide literacy councils.

(iii) Grantee Compliance. A description of what methods, such as monitoring or other means, the SEA will use to ensure that grantees are meeting the requirements of sections 1054 (Uses of Funds), 1055 (Eligible Participants), and 1056 (Applications) of the Act.

(ii) Certifications and Assurances. The following certifications and assurances, signed and dated by an authorized representative of the SEA:

(i) The certifications required by 34 CFR 76.104.

(ii) An assurance that the SEA will meet the requirements in section 435(b) (2) and (5) of the General Education Provisions Act (GEPA) relating to fiscal control and fund accounting.

(iii) An assurance that the SEA will comply with all applicable Federal laws in implementing the program.

(b) In order to receive assistance for the second and third consecutive fiscal years in which section 1052(b) of the Act applies, an SEA shall submit to the Secretary an update or amendment to the plan submitted under paragraph (a) of this section, if there have been any changes to information submitted in that plan.

(c) In order to receive assistance for the fourth and following fiscal years in which section 1052(b) of the Act applies, an SEA shall submit to the Secretary assurances that it—

(1) Will coordinate Even Start activities with appropriate offices at the State level, including the following:

(i) Those dealing with adult education and early childhood education.

(ii) Those administering the Federal programs listed in §212.21(c)(2).

(iii) Other appropriate statewide organizations, such as statewide literacy councils.

(2) Will ensure that its subgrantees comply with all the applicable statutory and regulatory requirements;

(3) Will meet the requirements in section 435(b) (2) and (5) of GEPA relating to fiscal control and fund accounting procedures; and

(4) Will comply with all applicable Federal laws in implementing the program.

(Approved by the Office of Management and Budget under control number 1810-0540.)

Authority: 20 U.S.C. 2747(d), 2831(a), 2838.

§ 212.31 What requirements must an SEA meet in making subgrants?

(a) Projects supported by subgrants must—

(1) Be funded with no less than $75,000 of Federal Even Start funds;
(2) Be of sufficient size, scope, and quality to give reasonable promise of meeting the purposes of Even Start; and
(3) Make maximum use of the resources available at the local level.
(b) Before making subgrants, an SEA must—
(1) Determine the effectiveness and financial needs of the currently funded projects within the State;
(2) Consider a current grantee to have an acceptable continuation application if—
(i) The grantee shows that it is making sufficient progress toward meeting the objectives of the project; and
(ii) The grantee meets applicable State requirements for continuation awards; and
(3) Provide funding for each continuation application that the SEA determines has made sufficient progress toward meeting the project's objectives in the previous year, at a level (if sufficient funds exist) that will ensure the project's continuity of services for the current year.
(c) After making continuation awards, the SEA shall use any remaining funds to make grants to new applicants, subject to paragraph (a) of this section.
(d) An SEA shall ensure a representative distribution of assistance between urban and rural areas of the State.

Authority: 20 U.S.C. 2742(b), 2747(c)(2), (d)(2), 2831(a).

§ 212.32 What selection criteria does an SEA use in making new subgrantees?

In making new subgrants under section 1052(b) of the Act, an SEA may—
(a) Apply the criteria contained in § 212.21; or
(b) Apply its own criteria, provided the criteria are consistent with section 1052 of the Act.

(Approved by the Office of Management and Budget under control number 1010-0540.)

§ 212.33 What reporting requirements apply to SEAs?

In any fiscal year in which section 1052(b) of the Act applies, SEAs shall annually report information about program operations as may be required by the Secretary.

(Approved by the Office of Management and Budget under control number 1010-0540.)
Authority: 20 U.S.C. 1232f(a), 2852.

§ 212.34 Which of the general Chapter 1 provisions apply to SEAs in their administration of Even Start?

The following sections of parts E and F of chapter 1 of title I of the Act apply to SEAs in their administration of Even Start:

(a) Section 1404 of the Act (Payments for State Administration);
(b) Section 1433 of the Act (Withholding of Payments);
(c) Section 1434 of the Act (Judicial Review);
(d) Section 1438 of the Act (Application of General Education Provisions Act);
(e) Section 1451 of the Act (State Regulations);
(f) Section 1452 of the Act (Records and Information);
(g) Section 1453 of the Act (Assignment of Personnel), to the extent the Even Start personnel are paid entirely with Even Start funds and perform their duties in a public school setting.


Subpart E—Transition Provisions

§ 212.40 How are grants made when responsibility for making grants to applicants transfers between the Department and the SEAs?

When the responsibility for administering the Even Start program transfers from the Department to the SEAs, or vice versa—
(a) The Secretary applies—
(1) 34 CFR 75.253 with the exception of 34 CFR 75.253(a)(2);
(2) Section 212.27; and
(3) Section 212.26, if necessary;
(b) An SEA applies §§ 212.31 and 212.32; and
(c) The Federal share limitations contained in section 1054(c) of the Act are determined from the original year of the project grant award.

Authority: 20 U.S.C. 2747(d), 2831(a).

Subpart F—Migrant Education Even Start

§ 212.50 What is the Migrant Education Even Start program?

(a) The Migrant Education Even Start program supports grants to eligible SEAs for the cost of providing family-centered education projects to help parents of currently migratory children (as defined in 34 CFR 201.3) become full partners in the education of their children, to assist currently migratory children in reaching their full potential as learners, and to provide literacy training for their parents.
(b) The Secretary makes grants for family-centered education projects that provide services on an intrastate or interstate basis, and that include all of the program elements required by section 1054(b) of the Act.


§ 212.51 Who is eligible for a grant?

An SEA or a consortium of SEAs that applies under section 1053(a) of the Act is eligible to receive a grant under the Migrant Education Even Start program.


§ 212.52 Who may be served?

(a) Except as provided in paragraph (b) of this section, eligible participants under this subpart are—
(1) A parent of a child described in paragraph (a)(2) of this section, if the parent is eligible for participation in an adult education program under the Adult Education Act, 20 U.S.C. 1201a (1) and (2); and
(2) A child as a first priority, a currently migratory child, as defined in 34 CFR 201.3, from birth through age 7; and
(ii) As a second priority and, if space is available, a formerly migratory child, as defined in 34 CFR 201.3, from birth through age 7.

(b)(1) To be eligible, at least one parent and one or more eligible children must participate in the Even Start project.
(2) Except as provided in paragraph (c)(2) of this section—
(i) Participating children must take part in early childhood education activities; and
(ii) Participating parents must take part in the following:
(A) Adult literacy activities.
(B) Parenting education activities, including activities in which the parents and children are involved together.
(c)(1) A family that would become ineligible for participation as a result of one or more family members becoming ineligible may continue to participate in the program until all family members become ineligible.
(2) In the situation described in paragraph (c)(1) of this section, the following requirements apply:
(i) Any family member who would be ineligible under paragraph (a) of this section may continue to participate in appropriate family-oriented activities that involve joint parent and child participation.
(ii) Projects may not provide, to a family member who would be ineligible under paragraph (a) of this section, special activities different from those already provided for other Even Start participants; for example, activities designed for children beyond age seven or activities for parents who are not
§ 212.53 What applications does the Secretary consider?

The Secretary considers an application that—
(a) Meets the purposes of the Migrant Education Even Start program as provided in § 212.50; and
(b)(1) Adequately demonstrates the applicant's ability to provide the additional funding required by § 212.24; or
(2) As provided in § 212.25, includes a request for the Secretary to waive the requirement in 212.24 concerning the source of the local contribution of funds.

(Approved by the Office of Management and Budget under control number 1810-0541)

(Authority: 20 U.S.C. 2743, 2745, 2831)

§ 212.54 How does the Secretary evaluate an application for a new grant?

(a) The Secretary uses the criteria in § 212.55 to evaluate an application.
(b) The Secretary awards up to 120 possible points for these criteria.
(c) The maximum number of points for each criterion is indicated in § 212.55(c).

(Authority: 20 U.S.C. 2743, 2744)

§ 212.55 What selection criteria does the Secretary use in making new grants?

The Secretary uses the criteria in § 212.21 in evaluating an application, except as follows:
(a) The provision for priority points contained in § 212.21(a)(2) (regarding likelihood of success in meeting the Even Start goals) does not apply.
(b) The criteria in § 212.21(b) (regarding need for the project) do not apply. Instead, for purposes of this part, the Secretary uses the criterion in paragraphs (b) (1) and (2) of this section to evaluate the need for the project.
(1) The Secretary reviews each application to determine the extent to which the applicant demonstrates that, during the period in which the project would operate in a particular location may be shown by comparison with other areas of the State or of the United States.
(ii) High levels of need during the period in which the project would operate in a particular location may be shown by comparison with other areas of the State or of the United States.

(c)(1) The criterion in § 212.21(c)(1)(iii) (regarding the degree of cooperation and coordination) does not apply.
(2) Instead, for purposes of this part, the Secretary considers a criterion the extent to which the applicant, in planning the interstate or intrastate project, has entered into firm agreements for specific cooperative activities with various providers from all locations in which the project would operate.
(d) The maximum number of points that an applicant may receive for each selection criterion is:

(1) Likelihood of success in meeting the even start goals—32 points plus a possible 10 priority points.
   (i) The Secretary awards up to 4 points for each criterion contained in § 212.21(a)(1) through (a)(4).
   (ii) The Secretary awards 10 additional points to applicants that receive at least 28 out of 32 points under § 212.21(a)(1), including all 4 possible points under § 212.21(a)(2)(vIII)(A).
(2) Need for the project—20 points.
(3) Degree of cooperation and coordination—30 points.
   The Secretary distributes these points as follows:
   § 212.21(c)(1)(i)—5 points; § 212.25(c)—10 points; § 212.21(c)(2)(ii)—5 points; and § 212.21(c)(1)(iv)—10 points.
(4) Reasonableness of budget—8 points.
(5) Promise as a model—20 points.

The Secretary distributes these points as follows:
§ 212.21(e)(1)—9 points; § 212.21(e)(2)—9 points; and § 212.21(e)(3)—2 points. (Approved by the Office of Management and Budget under control number 1810-0541)

(Authority: 20 U.S.C. 2743, 2744)

§ 212.56 What additional factors does the Secretary consider in making new grants?

(a) In addition to applying the criteria in §§ 212.21 and 212.55, the Secretary ensures that—
   (1) Grants are made to projects that ensure coordination and cooperation between States (or areas of a State) in which participating children and parents reside during the year;
   (2) Each project will build on existing community resources in a cooperative effort to create a new range of services integrating early childhood education, adult education, and parenting education into a unified program; and
   (3) To the extent possible, grants are distributed equitably among the States in the three migrant streams, as defined in paragraph (c) of this section.
(b) In order to meet the requirements of paragraph (a)(3) of this section, the Secretary—
   (1) Separates applications into three groups representing the three migrant streams; and
   (2) Awards grants to applicants in each stream that are ranked the highest as a result of the process in § 212.54, provided that there is one or more acceptable applications from an SEA or consortium of SEAs in that stream.

For the purposes of this section, the States comprising each stream are the following:

**Eastern Stream—**
- Alabama
- New Jersey
- North Carolina
- New York
- Florida
- California
- New Hampshire
- Maine
- Arizona
- Connecticut
- North Dakota
- Ohio
- Nevada
- Maryland
- Oklahoma
- Pennsylvania
- Massachusetts
- Oregon
- Mississippi
- Rhode Island
- Pennsylvania
- Missouri
- New York
- Montana
- Connecticut
- New Hampshire
- New Jersey
- California
- Maryland
- North Carolina
- North Dakota
- Ohio
- Oklahoma
- Pennsylvania
- Rhode Island
- South Carolina
- Utah
- Vermont
- Virginia
- Washington
- Wisconsin
- West Virginia
- Wyoming
- District of Columbia

**Central Stream—**
- Alabama
- Alaska
- Arizona
- Arkansas
- California
- Colorado
- Connecticut
- Delaware
- Florida
- Georgia
- Hawaii
- Idaho
- Illinois
- Indiana
- Iowa
- Kansas
- Kentucky
- Louisiana
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Mississippi
- Missouri
- Montana
- Nebraska
- New Hampshire
- New Jersey
- Nevada
- New Mexico
- New York
- North Carolina
- North Dakota
- Ohio
- Oklahoma
- Oregon
- Pennsylvania
- Rhode Island
- South Carolina
- South Dakota
- Texas
- Utah
- Virginia
- Washington
- Wisconsin
- Idaho
- Wyoming
- District of Columbia

**Western Stream—**
- Alaska
- Arizona
- California
- Colorado
- Idaho
- Montana
- Nevada
- New Mexico
- Oregon
- Utah
- Washington
- Hawaii
- Wyoming
- District of Columbia

(Authority: 20 U.S.C. 2743, 2744)

§ 212.57 What other regulations apply?

(a)(1) In addition to the provisions in this part, the following provisions in this part apply to the Migrant Education Even Start program:
   (i) Section 212.3.
   (ii) Section 212.4.
   (iii) Section 212.5, except for § 212.5(a)(11) and (b)(11).
   (iv) Section 212.6, except for the definition of eligible entity in § 212.6(c).

For the purposes of the Migrant Education Even Start program, except as noted in paragraphs (a)(2) and (3) of this section, eligible entity means—

(A) An SEA or other operating agency as defined in 34 CFR 201.3 applying in collaboration with a community-based organization, public agency, institutions of higher education, or other nonprofit organization; or
(B) A community-based organization or other nonprofit organization of
demonstrated quality applying in collaboration with an LEA or other operating agency as defined in 34 CFR 2103.

(v) Section 212.24.

(vi) Section 212.25.

(vii) Section 212.26, except that for the purposes of the Migrant Education Even Start program, the appropriate cross-references in § 212.20 (c) and (d) to §§ 212.21 and 212.22(e) are to §§ 212.55 and 212.56, respectively.

(viii) Section 212.27.

(ix) Section 212.34, except for paragraph (e).

(2) For the purposes of the Migrant Education Even Start program, in §§ 212.4, 212.21 and 212.25 an "eligible entity" means an SEA.

(3) For the purposes of the Migrant Education Even Start program, in § 212.24 an "eligible entity" means an SEA or eligible entity.

(b) The following sections of 34 CFR part 201 apply to the Migrant Education Even Start program:

(1) Section 201.3 (Definitions for this program).

(2) Section 201.49 (Persons to be assigned non-Chapter 1 duties), with "Chapter 1" or "Chapter 1—Migrant Education Program" interpreted as "Migrant Education Even Start."

(Authority: 20 U.S.C. 2743)

§ 212.58 May an SEA make a subgrant to an eligible entity?

(a) Notwithstanding the prohibition of subgrants in 34 CFR 75.708(a), an SEA that receives a grant under the Migrant Education Even Start program may make a subgrant of funds to one or more eligible entities, as defined in § 212.37(a)(4), that program funds are used as the SEA's approved project application specifies.

(b) An SEA that makes a subgrant of funds to one or more eligible entities may use not more than 5 percent of its Migrant Education Even Start grant for the costs of administration and technical assistance.

(Authority: 20 U.S.C. 2743, 2831)

(Note: This appendix will not be codified in the Code of Federal Regulations.)

Appendix—Summary of Comments and Responses to the Notice of Proposed Rulemaking

PART 212—EVEN START

General

A number of commentators expressed support for portions of the proposed regulations as published. Those comments, as well as technical and other minor changes, are not addressed in this appendix. All other specific comments received on the proposed regulations are summarized below, each followed by the Secretary's response.

Comment: Several commenters inquired whether a State could limit applicants to those that have not previously received grants over a four-year period.

Discussion: Under section 1056 of the Act, any eligible entity (as defined in section 1052(d) of the Act) may apply for Even Start funds. Thus, a State may not limit applicants only to those that have not previously received grants. In addition, § 76.776(g)(1) of the Education Department General Administrative Regulations (EDGAR), which applies to Even Start, provides that a State may "not act in any manner that prevents eligible applicants from applying under the program."

After the end of a four-year grant period, a previously funded applicant may apply for the same or a different project. Under section 1054(c) of the Act and § 212.24 of the regulations, however, if the applicant is funded again for the same project, the local share of the total project cost remains at least at 40 percent for all years of the new project period.

Under section 1057 of the Act and § 212.32 of these regulations, a State has some flexibility in how it chooses to interpret and apply the statutory selection criteria and priorities in selecting projects for funding, and in the distribution of grants between urban and rural areas of the State. Note that under § 212.5(b)(10)(ii), the adoption by a State of an interpretation of the statutory selection criteria and priorities for the purpose of administering the Even Start program requires review by a committee of practitioners convened by the State.

Changes: None.

Comment: One commenter suggested that States be prohibited from establishing a separate committee of practitioners for the Even Start program.

Discussion: Section 1451(b) of the Act contains requirements for the composition of State committees of practitioners. A current Chapter 1 committee might not have the kind of representation appropriate for Even Start. Consequently, the Secretary believes that requiring States to establish Chapter 1 committees would unduly restrict State flexibility and could hinder States in obtaining helpful advice concerning the Even Start program. As explained in the preamble to the Notice of Proposed Rulemaking (NPRM), under these regulations a State has the option of: Using the current Chapter 1 committee already in place; modifying that committee by including persons familiar with adult education, family literacy, or early childhood education; or establishing a new committee solely for Even Start.

Changes: None.

Comment: One commenter suggested that the Department clarify that Even Start projects can and should serve children with disabilities.

Discussion: Section 1056(c)(5) of the Act requires each application to include information on the methods the applicant will use to provide services to those with disabilities, including individuals with handicaps."

Changes: None.

Section 212.2 Who is eligible for a grant?

Comment: One commenter suggested that States be allowed to limit eligibility for new grants to LEAs in collaboration with other agencies.

Discussion: Funds awarded to local educational agencies (LEAs) during previous years when the appropriation was less than $50,000,000 may not now be turned over to States. During the first three years of the Even Start program, the Department, rather than the States, made grants directly to LEAs. Current projects were thus funded as Federal discretionary grants. Beginning with fiscal year (FY) 1992, however, the States, rather than the Federal Government, will administer the distribution of grant funds to eligible entities, and the Department will not be awarding continuations of previous grants.

The Department must therefore close out all FY 1991 grants made directly to LEAs. See 34 CFR 80.50. The preamble contains a discussion of the closeout process in the section captioned "Transition."

Changes: None.

Comment: One commenter was concerned that the discussion of section 1453 of the Act (Assignment of Personnel) in the preamble to the NPRM regarding personnel who "teach Even Start children in kindergarten through grade 12" could be misleading to mean that a program could provide services to children from kindergarten through grade twelve.

Discussion: The intent of the preamble language was to describe the public school setting in which some Even Start personnel provide services, and not to describe the Even Start participating children, who are only through age 7, or to describe the scope of services provided by an Even Start program.

Changes: None. However, the discussion in the preamble to the final regulations has been clarified.

Comment: One commenter recommended that the regulations require a State's review panel to include State agency personnel and recipients of Even Start services.

Discussion: Section 1057(b) of the Act specifies the members who are required to be on the panel, and those who, to the extent practicable, may be on the panel. State agency personnel or recipients of Even Start services may serve on the review panel if they qualify under the statutory specifications.

Changes: None.

Section 212.2 Who is eligible for a grant?

Comment: One commenter suggested that States be allowed to limit eligibility for new grants to LEAs, in collaboration with other agencies.
Even Start funds for "[r]eligious worship, instruction, or proselytization," [or] equipment or supplies to be used in any of those activities." (See 34 CFR 75.532(a)(1)-(3);) Under section 1052(b)(3) of the Act, eligible participants when either the child or parent, when one or more family members become ineligible. When the youngest child reaches the age of 8, the family is no longer eligible. Changes: None.

Section 212.7 Who are eligible participants in an Even Start project?

Comment: One commenter asked if the definition of "community-based organization" could include nonpublic, sectarian schools.

Discussion: There is no statutory prohibition against a religiously affiliated organization qualifying as a "community-based organization," but under section 1052(b)(3)(B) of the Act, a public entity, institution of higher education, or community-based organization, as such, apply for Even Start funds because the BIA is a Federal entity, whereas those funded but not operated by the BIA, and whether those schools are eligible to apply for Even Start funds under § 212.23 of the regulations.

Discussion: Federally recognized Indian tribes or tribal organizations are eligible for funds, including those that operate schools under grant or contract with the BIA, or send children to BIA schools. However, BIA-operated schools may not apply for Even Start funds because the BIA is a Federal entity and not a tribe or tribal organization. Tribes and tribal organizations whose children are served by a BIA-operated school are eligible applicants.

Discussion: Section 1471(3) of the Act, which applies to Even Start, defines a community-based organization as a "private nonprofit organization." Hence, public agencies, such as public libraries, are not directly eligible for funding under section 1052(d)(1)(B) of the Act. However, under section 1052(d)(1)(A) of the Act, a public agency may apply in collaboration with an LEA.

Changes: None.

Section 212.7 What definitions apply?

Comment: One commenter asked if the term "tribal organization" includes schools operated by the Bureau of Indian Affairs (BIA), or those funded but not operated by the BIA, and whether those schools are eligible to apply for Even Start funds under § 212.23 of the regulations.

Discussion: The provision in § 212.7(a)(2) regarding eligible children applies only to projects operated by LEAs or community-based organizations in collaboration with LEAs. For projects operated by Indian tribes, tribal organizations, and the insular areas, a child is not required to reside in a Chapter 1 attendance area to be eligible for Even Start.

Changes: A new paragraph (b) has been added to § 212.7 to codify existing policy requiring that, in order to be eligible to participate in the program, families must participate in all three Even Start activities—early childhood education, adult literacy, and parenting education.

Changes: None.

Discussion: Section 212.4 has been revised to clarify that the four-year maximum grant period does not prohibit a grant recipient from competing for another four-year grant at the conclusion of the initial grant period.

Section 212.5 What regulations apply?

Comment: One commenter asked whether the prohibition on indirect costs applies to funds used for State administration of the program.

Discussion: Under section 1052(b)(3) of the Act, however, section 1054(c) of the Act precludes States from applying the indirect cost rate to the remainingportion which must be subgranted to eligible entities for projects. In addition, section 1401(b) of the Act, which limits indirect costs to 15 percent of funds a State receives for general administrative expenses of Chapter 1 programs, does not apply to the Even Start administrative and technical assistance set-aside.

Discussion: Section 212.6 What do I need to know about Federal Even Start funds for costs of administration and technical assistance. The State may apply its indirect cost rate to the funds withheld for these purposes, as long as the total direct plus indirect costs do not exceed 5 percent of the State's grant. However, section 1054(c) of the Act precludes States from applying the indirect cost rate to the remainingportion which must be subgranted to eligible entities for projects. In addition, section 1401(b) of the Act, which limits indirect costs to 15 percent of funds a State receives for general administrative expenses of Chapter 1 programs, does not apply to the Even Start administrative and technical assistance set-aside.

Discussion: Section 212.4 has been revised to clarify that §§ 76.560 and 76.561 of EDGAR, regarding indirect cost rates, apply only with respect to the portion of Federal Even Start funds (up to 5 percent) that may be used by the State for administration and technical assistance authorized under section 1052(b)(3) of the Act.

Changes: None.
longer eligible for services under the Adult Education Act.

Changes: Section 212.2(b)(2) has been revised to clarify that an ineligible family member may continue to participate in appropriate family-oriented activities that involve joint parent and child participation, but that projects may not provide special activities to that ineligible family member. A project may not provide special activities designed for children beyond age 7, or for parents who are no longer eligible for adult education under the Adult Education Act.

Section 212.21 What selection criteria are used in making new grants to eligible entities?

Comment: One commenter suggested that previously funded projects should be given priority in the selection criteria.

Discussion: The selection criteria and priorities in § 212.21 are necessarily based on those required by section 1057(a) of the Act, which does not contain any specific priority for previously funded projects. Moreover, the House Report accompanying the Even Start law, H.R. 3734, § 4(c) (Even Start) is designed as a demonstration program. Applications showing the greatest promise will be funded for four years with a decreasing Federal share each year. The intent of this provision is to encourage grantees to become self-sufficient so that programs will continue to exist when Federal funds are withdrawn and grants awarded to other worthy applicants. This explanation makes clear that Congress did not envision that Even Start funds would be used to support long-term projects in a few districts; rather, it assumes many worthy districts will receive Even Start funds to develop projects, whose cost would be borne from other sources. A Federal Even Start funding is withdrawn.

Changes: None.

Comment: One commenter suggested that the selection criteria contain a provision on how to facilitate the transition of children from Even Start to the next appropriate program or services that could meet the children’s needs.

Discussion: The Secretary agrees that the regulations also should list those programs for the benefit of the public. The programs are Chapter 1 and Head Start; any relevant programs under the Individuals with Disabilities Education Act, the Job Training Partnership Act, and the Workforce Investment Act; volunteer literacy programs; and other relevant programs.

Changes: A new paragraph (c)(2) has been added to § 212.21, listing the specific programs under section 1054(b)(7) of the Act. Sections 212.30 (a) and (c) have been amended to refer to § 212.21(c) for the listing of use programs.

Comment: One commenter suggested that additional information should be required on how existing services will be coordinated with Even Start, including an assessment of the relevance and quality of possible cooperation agencies, and that applicants should be required to provide contingency plans stating how the program will be carried out if the cooperating agencies described in the application are unable to provide the necessary services.

Discussion: The Secretary believes that requiring contingency plans would be unnecessarily burdensome on applicants. Applicants can use information obtained in the survey referenced in § 212.21(c)(1) to help select those agencies or organizations that are candidates for successful cooperative arrangements or agreements. Further, in the event a grantee is unable to execute an agreement that was included in the application, it could propose a change to the funding agency, such as by requesting approval of agreements to be made with other service providers. Section 61.30 of the Department must apply principles consistent with the purposes of the Act, but that all of the required number of points under those criteria, the applicant receives no priority points.

Changes: The language in § 212.21(a)(2) has been revised, and a new paragraph (b) has been added, to clarify the provision.

Comment: One commenter suggested that § 212.21(c) list the specific Federal programs with which Even Start projects must be coordinated.

Discussion: Specific programs with which Even Start projects must be coordinated are listed in section 1054(b)(7) of the Act. The Secretary agrees that the regulations also should list those programs for the benefit of the public. The programs are Chapter 1 and Head Start; any relevant programs under Chapter 2, the Adult Education Act, the Individuals with Disabilities Education Act, and the Job Training Partnership Act; volunteer literacy programs; and other relevant programs.

Changes: A new paragraph (c)(2) has been added to § 212.21, listing the specific programs under section 1054(b)(7) of the Act. Sections 212.30 (a) and (c) have been amended to refer to § 212.21(c) for the listing of use programs.

Comment: One commenter suggested that additional information should be required on how existing services will be coordinated with Even Start, including an assessment of the relevance and quality of possible cooperation agencies, and that applicants should be required to provide contingency plans stating how the program will be carried out if the cooperating agencies described in the application are unable to provide the necessary services.

Discussion: The Secretary believes that requiring contingency plans would be unnecessarily burdensome on applicants. Applicants can use information obtained in the survey referenced in § 212.21(c)(1) to help select those agencies or organizations that are candidates for successful cooperative arrangements or agreements. Further, in the event a grantee is unable to execute an agreement that was included in the application, it could propose a change to the funding agency, such as by requesting approval of agreements to be made with other service providers. Section 61.30 of the Department must apply principles consistent with the purposes of the Act, but that all of the
making subgrants, has been revised to clarify that States must fund each subgrant with Federal Even Start funds in an amount no less than $75,000. In addition, § 212.24 (a) and (b), regarding the percentage of funds that an eligible entity must contribute to a project's cost, has been revised to clarify that the percentage is of a project's total funding, rather than a portion of the Federal grant amount.

Section 212.25 When may the Secretary waive the requirement concerning the local contribution of funds?

Comment: One commenter inquired whether the Secretary or a State could, in granting a waiver, give additional Even Start funds to the grantee for the grantee to use as its required contribution under section 1054(c) of the Act, if the grantee has no other Chapter 1 funds available.

Discussion: Section 1054(c) of the Act, under certain circumstances, permits a waiver of the requirement that sources other than funds made available under [Chapter 1] be used to make up a grantee's contribution. If waiver is granted as necessary to allow participation in the program, the Secretary interprets section 1054(c) to permit Federal Even Start funds to be used to cover a portion or all of the cost of a project.

Changes: None.

Section 212.30 How does a State apply for Even Start funds?

Comments: A number of comments were received regarding the requirement for submission of a State plan to the Department. One commenter objected to the plan requirement, suggesting that, in its place, a State be required to submit a description of its proposed Even Start program and a set of assurances. Several commenters, while supporting the requirement that States provide information to the Department on how they plan to operate their Even Start programs, suggested that some term other than “State Plan” be used to describe the submission. One commenter indicated that the proposed plan requirement is unduly burdensome and could result in delays in States receiving Even Start funds. Two other commenters supported the State plan requirement, one suggesting that Federal monitoring of the plan be included, and the other suggesting a Federal evaluation of State performance at the conclusion of the three-year plan period.

Discussion: The Secretary believes that the State plan, which is required to be submitted (or updated) for the initial three-year period only, should remain unchanged. As set forth in § 212.30, the required plan essentially is comprised of two parts: (1) A description of the State's Even Start program including descriptions of the selection criteria to be used by the State, how the State will administer the program, and what methods will be used to verify program compliance; and (2) a set of certifications and assurances. Changing the name of the submission to other than “State Plan” would not affect the content, nor exempt the submission from the requirements in §§ 76.100-76.106 of EDGAR with regard to State plan submissions.

The Secretary is aware that the requirement for State plans places some burden on States. However, the requirement should not be unduly burdensome, because each State must in any event develop a method for operating its Even Start program and administering the subgrant competition under the statute. Further, except for the requirements regarding fiscal control and fund accounting procedures in section 435(a)(2) and (5) of the General Education Provisions Act (GEPA), States are not subject to the requirements contained in sections 434, 435, or 436 of GEPA, including the requirement in section 435 that States must hold public hearings on their proposed State plans.

Finally, with regard to Federal monitoring and evaluation, the Secretary intends to monitor State implementation of Even Start in the same manner as is done for other State-administered programs, such as Chapter 1 grants to LEAs.

Changes: Section 212.30 has been revised to clarify that the State plan is comprised of two basic elements: certain descriptions regarding a State’s Even Start programs and certifications and assurances.

Section 212.34 Which of the general Chapter 1 provisions apply to States in their administration of Even Start?

Comment: One commenter suggested that grantees renewed after the initial four years be allowed to carry over funds remaining into the new project period, without having that amount deducted from their awards. The commenter noted that the Chapter 1 basic grant program allows this carryover.

Discussion: The Chapter 1 basic grant program, unlike Even Start, is a formula grant program in which each eligible LEA receives its entitlement. Therefore, subject to the statutory limitations on carryover, Chapter 1 basic funds may be carried over from one year to the next because LEAs have a legitimate expectation of continued funding. However, because Even Start is a discretionary grant program, it carries no entitlement to funds; therefore, grantees that compete for and receive new Even Start awards may not carry over previously awarded Even Start funds into the succeeding project period. However, the awarding agency may extend the grant budget period for grantees that are unable to complete their projects within the original project period.

Section 412(b) of GEPA (the ‘Treasury provision) extends the period for which funds awarded by formula grants to State educational agencies (SEAs) are available for obligation to one year beyond the year for which they are appropriated (e.g., funds that become available for obligation as of July 1, 1992 will remain available until September 30, 1994). SEAs may not extend a subgrantee’s budget period beyond that date.

Changes: None.
Part IV

Department of Health and Human Services

Administration on Children, Youth and Families

Comprehensive Child Development Program; Availability of Fiscal Year 1992 Funds and Request for Applications; Notice
DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration on Children, Youth and Families

[Program Announcement No. ACYF-HS-93.600-92-6]

Administration on Children, Youth and Families: Availability of FY 1992 Funds and Request for Applications; Comprehensive Child Development Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Announcement of the availability of financial assistance and request for applications for Comprehensive Child Development Programs.

SUMMARY: The Head Start Bureau of the Administration on Children, Youth and Families announces the availability of funds for competing grant applications to operate a Comprehensive Child Development Program (CCDP). The purpose of this program is to plan for and carry out projects for intensive, comprehensive, integrated and continuous support services for infants, toddlers and preschoolers from low-income families to enhance their intellectual, social, emotional and physical development and provide supportive services to their parents and other family members.

This announcement describes the grant application process. Between six (6) and ten (10) agencies will be selected to receive grants based on the outcome of a competitive review process. DATES: The closing date for receipt of grant applications is August 18, 1992.

ADDRESSES: Address applications to: Comprehensive Child Development Program, Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 200 Independence Avenue, SW., Hubert H. Humphrey Building, room 341-F, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Allen N. Smith (202) 245-0568, ACYF Project Officer.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Program Purpose

On April 28, 1988, the President signed the Comprehensive Child Development Act of 1988, Part E of Public Law 100-297 (the Act). The overall objectives of the Act are to provide intensive, comprehensive, integrated and continuous support services to low-income children from birth to entrance into elementary school that will enhance their intellectual, social, emotional and physical development and to provide needed support services to parents and other household family members that will enhance family stability and economic and social self-sufficiency.

A third party evaluation contractor will be used by ACYF to assess whether the above stated objectives are being achieved in the projects funded under the Act. The contractor also might examine the relative effectiveness of different staffing and program models for achieving desirable child and family benefits. Comparison (control) groups of families who are not participating in the project will be compared with families who are participating. In addition, a management support contractor will be used by ACYF to provide ongoing administrative and technical support to grantees in the conduct of their projects and will help assure a smooth and effective implementation needed for delivering core services and for optimizing family participation and services utilization.

B. Background

On September 23, 1989, twenty-two (22) CCDP grantees were selected by ACYF to receive operating grants. On May 1, 1990, two additional grantees were selected, for a total of twenty-four (24) CCDPs nationwide. (See appendix I for a list of current CCDPs). The CCDPs are currently in their third year of funding. A report describing each of these 24 grantees as well as CCDP in general is available upon written request to ACYF, Head Start Publications Unit, P.O. Box 1182, Washington, DC 20013. This report should satisfy the information needs of all interested applicants. Consequently, applicants are requested not to contact any of the CCDP grantees of ACYF contractors for information or consultation. The ACYF contact person, Allen N. Smith (202) 245-0568, will be able to answer any future requests for information.

C. Framework

Early intervention in the lives of infants and young children from low-income families is an important factor in overcoming the cognitive, social, emotional and physical risks faced by these children. Compared with children from middle- and upper-income families, these children are more likely to experience poor school achievement, low test score performance, higher grade retention and more special education class placements. Intervening successfully, however, is complicated because these children are often part of families that have many social, economic, physical and educational problems which can hinder their development and prevent them from achieving the full benefits of such an intervention. Also, the violence occurring in communities where many low-income families live threatens family stability and child development. This points to the need for coordination and cooperation between human service agencies and law enforcement agencies in order to reduce the effects of such violence on children and families.

Evidence has emerged which indicates that high quality intervention programs which serve all family members increase effective and productive family functioning and contribute substantially toward achieving their full potential. Equally important is the evidence which suggests that intervention for low-income families should begin as soon after birth as possible, address a broad range of needs and continue throughout the preschool years. Investing resources early gives parents more opportunity to develop needed skills and confidence for accessing resources and support systems which can facilitate a greater commitment to directly and actively involving themselves in their child's development as well as in their own development and achievement.

D. Program Services

Projects funded under the Act must intervene as early as possible in the child's life; involve the whole family; provide comprehensive services to all infants and young children in the household which address their intellectual, social, emotional and physical needs; provide services to parents and other family members which enhance their ability to contribute to their child's healthy development and which enable them to achieve family stability and economic and social self-sufficiency; and continue to provide these services until children enter elementary school at the kindergarten or first grade level. It is expected that successful applicants under this announcement will provide and/or arrange for all such services. Family members will not be required to pay for these services in the early project years. As family income increases, and families can afford to partially pay for some services, ACYF will provide grantees with a payment fee schedule.
In the case of infants, toddlers and preschool children, the core services which grantees must ensure are provided under this program, either directly or through arrangements with third-party providers, are health services (including screening, immunization, treatment and referral); developmental screening and assessment; early childhood development programs; early intervention services for children with or at-risk of developmental delay; and nutritional services.

In the case of parents and other household family members, the core services which grantees must provide or arrange for third-parties to provide under this program are prenatal care; education in infant and child development, health care, nutrition and parenting; health care; mental health care; substance abuse identification and treatment; child care that meets State licensing requirements; employment counseling; vocational training; education; and assistance in securing adequate income support, nutritional assistance and housing.

Grantees should, to the extent possible, coordinate with and utilize those core services that exist locally and expand these services, when necessary. Grantees should directly provide required core services that are not available in the area to be served.

Grantees are encouraged to provide and/or arrange for other supportive services as well, in order to meet the assessed needs of enrolled families. These services should be relevant to enhancing the intellectual, social, emotional and physical development of children and the economic and social self-sufficiency of parents.

E. Eligible Applicants

The following types of organizations are eligible to apply for operating grants under this announcement:

- A Head Start agency;
- An agency that is eligible to be designated as a Head Start agency under section 641 of the Head Start Act; and
- A community development corporation as defined under section 691(a)(2)(A) of the Community Services Block Grant Act (42 U.S.C. 9910(a)(2)(A)); or
- A public or private non-profit agency or organization specializing in delivering social services to infants or young children (i.e., toddlers and preschoolers) and/or families.

Current CCDP grantees are excluded from applying for a grant under this announcement. With the exception of applicants for a Special Emphasis Program (see part I, section H below), other agencies located in the same county or counties where a CCDP currently exists are also excluded (see appendix I for a listing of current grantees).

F. Recruiting and Enrolling Families

Families are eligible for recruitment and enrollment in the CCDP if their household incomes are at or below the poverty line and they have a child either unborn or less than six months of age at the time they are initially enrolled. The poverty line is determined in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2) and is published annually by the Department in the Federal Register. For information purposes, the 1981 Poverty Income Guidelines are reprinted in appendix II. The Guidelines for subsequent years will be found in the Federal Register.

Special Emphasis Program agencies must enroll a minimum of 120 eligible families. All other CCDP agencies must enroll a minimum of 240 eligible families for this project. Urban and rural agencies are eligible to apply.

Agencies will be expected to recruit at least 2.5 times the number of eligible families to be enrolled. Of this number, 40 percent will be randomly selected as program families, 40 percent as comparison families and 20 percent as replacement families.

In determining which families will be program families, which will be comparison group families, and which will be replacement families, ACYF requires that grantees use a random assignment procedure to assure that the three groups are equivalent. For evaluation purposes, it is important that any outcome differences are attributable to the CCDP and not to initial differences between the groups. ACYF will provide assistance to grantees in randomly assigning families.

Families identified as comparison group families will not receive services covered by the CCDP but most will be given a stipend (amounts to be determined later by ACYF) for allowing child and family information to be collected periodically. Their participation in the group families would not, of course, affect any other type of assistance, service or training they are eligible to receive, are currently receiving or will receive in the future from sources other than the CCDP project, provided that the stipend does not change their eligibility for certain amounts or types of such assistance.

Many program families will also receive a stipend for participating in the evaluation as part of a special sub-study to examine the effects on response rates.

As the program progresses and after the initial group of replacement families has been given an opportunity to replace CCDP enrollees leaving the program, other replacement families will be recruited based on the same eligibility criteria as families initially selected during the first funding year.

Comparison group families cannot serve as replacement families.

Families who start with the program are expected to be enrolled for the full project period, which should be through September 30, 1997. The figures are needed to assure that the objectives for the CCDP can be adequately examined over the full five-year project period. Agencies must provide assurances in their operating grant proposal that these minimums will be met.

Shortly after operating grants have been awarded, ACYF will provide grantees with a listing of types of demographic characteristics (i.e., social-economic status, ethnicity, special needs, etc.) to be used in recruiting all families, including enrollees, comparison families and replacement families. Recruited families should reflect demographic characteristics generally proportionate to their distributions in each recruiting area. After families are recruited, grantees will submit a roster of all recruited families along with their demographic characteristics to the ACYF Project Officer or designee. Once this roster is approved, and the random assignment of recruited families takes place, families will be notified by the grantee and enrolled.

Grantees will be at different stages of readiness for providing core services at the time operating grant awards are made and consequently will differ on when they are prepared to enroll families into the program. ACYF
encourages grantees to enroll families as soon as possible after the project is funded, but not before all core services are available to families. Recruitment and enrollment of families will occur in stages during the first twelve months of the project. All of the families the grantee plans to serve must be enrolled and all core and other proposed services must be available to these families by October 1, 1993.

G. Available Funds

This competitive announcement is soliciting applications for five-year project periods. Initial awards will be for a one-year budget period. Continuation grants for years two through five will be awarded subject to availability of funds, timely and successful completion of project tasks and ACYF’s determination that this would be in the best interest of the Government.

In fiscal year 1992, ACYF expects to commit approximately $12,000,000 to fund new operating grants. Between 6 and 10 grants will be funded (3 to 5 of which will be Special Emphasis Projects). Special Emphasis grants are expected to average approximately $1.2 million (Federal share) annually and non-Special Emphasis grants are expected to average about $1.8 million (Federal share) annually.

We anticipate that grants will be refunded in subsequent years and at the same level as the first year of funding.

Continuation funds will be available to serve eligible families who were initially enrolled and eligible families which replaced starting families (i.e., replacement families) who left the program during any single year.

Agencies should serve at least the same number of eligible families each year throughout their five-year project periods.

H. Special Emphasis Program

The Department of Health and Human Services is targeting 3-5 of the grants to be awarded under this announcement to eligible agencies that will operate CCDPs which exclusively recruit and enroll children and families affected by substance and/or alcohol abuse. Enrollees would include families where parents of preschool children (or other adults in the household who provide nurturance to the preschool children) are substance and/or alcohol abusers. It is not necessary that such children would have been exposed to drugs or alcohol in utero. Applicants will have to meet the recruiting and enrolling provisions under part I, section F, of this announcement.

While all agencies listed in part I, section E are eligible to apply for these Special Emphasis grants, agencies particularly encouraged to submit an application include (1) family support-oriented programs (or substance abuse programs) interested in expanding to provide substance abuse services (or child/family support-oriented services); (2) family support programs (or substance abuse programs) that would contract with substance abuse providers (or family support providers) and work together closely to assure a family support orientation in the treatment of substance abuse; and (3) multi-purpose organizations that have both a family support component and a substance abuse component. These programs must fall under the eligibility listing in part I, section B, of this announcement.

In addition to the program services to be provided children and families under part I, section D, of this announcement, as well as grantees responsibilities under part II of this announcement, these programs are required to provide or assure the provision of substance abuse services in order to meet the specific needs of families with substance abuse problems. These services include treatment to affected family members; training for non-addicted family members on co-dependency issues and the recovery process; and peer support groups for recovering addicts and for relative caregivers.

II. Description of the Comprehensive Child Development Program

A. Grantee Responsibilities

The Comprehensive Child Development Program is intended to enhance the intellectual, social, emotional, and physical development of children from low-income families necessary for their long range success as well as to enhance the educational, parenting, and vocational skills of low-income parents and other significant household family members necessary for effective parenting and family functioning and economic/social self-sufficiency. To accomplish these goals, agencies awarded grants will be expected to involve the whole family and to provide comprehensive, relevant and age appropriate services as early as possible in the child's life, continuing the same level of such services to all children in the family until entrance into elementary school.

In each participating family there must either be a woman who is pregnant or a child who is less than six months old at the time the family is initially enrolled in the program. The continual development of the child will be of particular study interest as the project progresses. Other infants, toddlers and preschool children in that family will also receive similar preschool services and their progress will also be of study interest.

Services to parents and other household family members will be based upon individual and family needs assessments and will be provided in accordance with individual and family service plans. These plans would include specific and well-detailed short and long range goals for family members and activities important for achieving these goals. Grantees will need to be sensitive to the changing economic, social and educational conditions of families as the project progresses.

No single model or design for delivering services is prescribed under this announcement. The intent of the Act is to fund and evaluate programs with different structures and mechanisms for delivering services. In addition, the intensity, duration and frequency of required services would be expected to vary from grantee to grantee. Similarly, programs will vary in terms of which services they directly provide and which services they arrange to be provided in coordination with other service providers or organizations.

Also, no single program or staffing model is prescribed under this announcement. Consequently, it is expected that models with different philosophies or strategies for enhancing the intellectual, social, emotional and physical development of children will be funded and assessed across the different child and family populations served.

Similarly, programs will be expected to vary with respect to the emphasis placed on center-based or combination center/home-based models and with the characteristics and intensity of their parent involvement activities.

Grantees are expected to cooperate with a management support contractor which will provide administrative and technical assistance to grantees during the start-up and operating periods. This contractor will also conduct on-going program monitoring needed to assure compliance with the requirements of the Act and with the content of the grant proposals.

Grantees are also expected to cooperate with a third party evaluation contractor which will conduct process and impact assessments of their program.

Cooperation with both contractors will involve periodically furnishing needed program and process-oriented data as required by ACYF and allowing the evaluation contractor reasonable
access to obtain child and family impact information. All child and family data collected by both contractors will be kept confidential.

There will also be a Management Information System (MIS) developed to collect program information from grantees on families, service activities, collaborative arrangements, staff, training, services utilization and costs. Grantees will be responsible for coordinating the collection and management of this information and reporting it on a periodic basis using data entry forms and a software package developed by ACYF for this purpose.

Data entry and periodic transmission will be through a personal computer that grantees will be required to purchase. The capabilities required of the personal computer will be provided to the grantee after the grant is awarded.

All funded projects must provide the core services for children, parents and other family members identified in part I, section D, of this announcement. Parents should also be given an opportunity to be involved in decision making about the nature and operation of these services. Under-utilization by parents of available services is a major challenge facing human services delivery agencies. Since the CCDP is designed to be a family as well as a child intervention program, enrolled parents must be encouraged to participate in all facets of the program and utilize all services when needed. To increase the likelihood of this happening, CCDP grantees should obtain in writing from program and comparison parents, prior to their enrollment, a commitment of intent to participate in the evaluation.

Grantees should make it clear to parents that continued enrollment in the program is conditioned on this commitment, unless reasonable circumstances prevent families from keeping this commitment.

The level of core services provided to children and families must be consistent with acceptable developmental, health and nutritional practices for children and must meet or exceed the level reflected in the Head Start Program Performance Standards (45 CFR subchapter B, part 1304: subparts, B, C, D and E, excluding appendices A and B) which are included as appendix III to this announcement.

Furthermore, developmentally appropriate childhood experiences must be provided to all preschool children of enrolled families in the child’s home at least once a week or out of home at least three times a week. Also, programs are required to carry reasonable amounts of on- and off-premises accident and liability insurance, covering enrolled children and parents. They are also required to make arrangements for bonding officials and employees authorized to dispense program funds.

B. Grantee Share of Project

The non-Federal share of operating grant costs shall be 20 percent of the total project costs for each grantee and may be provided in cash or in-kind, fairly evaluated, including equipment and/or services.

C. Operating Grant Proposals

To facilitate judging the capacity of agencies for providing quality services in this program, applications for grants (including applicants applying for a Special Emphasis Program grant under part I, section H, of this announcement) shall:

1. Provide an overview of this project identifying the needs for CCDP: major goals and factors contributing to its success and future implications.

2. Identify the population and geographic location to be served by the project (service and recruiting areas) and how the population will be recruited and selected for enrollment, assuring that only eligible families will be served and that eligible families will be located at a reasonable distance to all service providing agencies. Also provide assurances by furnishing appropriate demographic data that the minimum numbers of eligible families required in this announcement are in the catchment or recruiting area(s) and can be recruited and enrolled.

3. Identify the specific results and benefits that could be expected for families and children participating in this project. Provide assurances and describe how core and other services to be provided will be closely related to the assessed needs of the enrolled family members (including male and female adults). Describe how the needs to be addressed are important for successful child and family functioning and growth consistent with the objectives of this project.

4. Provide assurances and describe how each core service identified in part I, section D, will be provided (along with a description of each service) to parents beginning with prenatal care and how core services will be provided on a continuous basis over the five year course of the project to all infants and young children (i.e., toddlers and preschoolers) in the enrolled family’s household, as well as to other family members. Identify how the applicant will enhance utilization of these services by both male and female family members. Clearly identify the project’s funding source for each service.

5. Provide assurances and describe how the level of services specified in Number four above are developmentally appropriate and consistent with Head Start and other established Federal, State and/or local public agency standards.

6. Identify and describe the specific program model(s) that will be used for assuring the intellectual, social, emotional and physical development of children served, including center or home or center/home-based combination model configurations, educational philosophy, curricula, staffing patterns, staff qualifications, and any other information that clearly describes the model(s) and supports its use.

7. Describe how infant, toddler and preschool child care services needed in connection with parental education, vocational training and/or employment will be provided and paid for. Identify and describe existing child care resources in the service or community that could be utilized by the applicant.

8. Describe how core and other supportive services will be furnished at off-site locations, if appropriate. Provide assurances that families will have access to these services through a viable transportation system either existing or to be developed. Describe this system.

9. Identify by name specific providers, agencies and organizations with which the applicant will coordinate in order to carry out the requirements of this project. Applicants should furnish formal interagency agreements or contracts (if available) indicating which services will be provided to which project participants for what periods of time, by each of those provider agencies and/or organizations.

Applicants should describe the role of the business community as participants in this project and describe what specific efforts they will conduct and what relationships they intend to establish to assure the availability of entry level jobs for program families. Applicants should identify project staff who will coordinate these business relationships and describe their qualifications for this unique and important activity.

10. Describe the extent to which the applicant will provide services not currently available in the area to be served by the project. Applicants must explain if services are already available in the community or communities to be served but are not considered adequate
to meet the anticipated needs of CCDP families.

11. Discuss how the applicant proposes to help children who live in neighborhoods plagued with violence and drug activities. The application should identify and discuss the effect of violence on family stability and growth in the community and identify how the applicant will train staff and facilitate coordination and cooperation among local education, juvenile justice, law enforcement, employment and social service agencies, and drug abuse referral, treatment and rehabilitation programs for the purpose of preventing or reducing the incidence of violence in communities.

12. Identify how the project will be administered and managed. Since the enrollment of families will need to be completed by October 1, 1993, submit a first-year timetable for implementing all activities.

13. Describe the steps that will be taken to assure that all core services will be available to enrolled families by October 1, 1993. Provide a description of the applicant's previous program, administrative and fiscal experience in providing direct services and in coordinating activities with State and local public and/or other non-profit agencies and organizations.

14. Provide resumes which include descriptions of the training and background of the key project staff, their responsibilities in connection with this project and the time they will be committing to this project. Applicants should furnish any other staff and organizational information which illustrates their skills and capacity to deliver required services in a timely manner and to implement a quality project which can endure for the required project period, including evidence of current or previous relationships with agencies that are committed to work with this applicant on the project.

Applicants should identify the specific staff positions (and their qualifications) that will relate to the direct provision of each core service, the coordination of each core service and the coordination/management/analysis of the MIS data. Applicants should detail the specific training programs to be provided to different staff positions. Applicants who plan to hire paraprofessional case managers are required to justify preferring such staff over case management staff with professional training and/or experience in child development and/or family support development.

Applicants should describe the specific case management model they will utilize for providing case management services in the family's home and describe how that model would target individual family member goals as well as monitor progress toward achieving such goals.

15. Provide assurances and describe how the eligible agency will pay the non-Federal share of the cost of the project for the full five-year project period.

16. Identify in detail the proposed first year budget for the project and describe how the proposed costs are reasonable in view of the services to be provided. The budget should anticipate level Federal funding over the project life. The budget should also include travel money for five staff persons to attend two conferences in Washington, D.C. annually.

17. Identify and describe any technical assistance services which will be utilized by the applicant to assure a smooth start-up of the project and to assure the ongoing integrity of the proposed model.

18. Provide assurances that the applicant will cooperate with a management support contractor to provide training and technical assistance and with a third party evaluation contractor hired by ACYF to evaluate the effectiveness of the Comprehensive Child Development program. Applicants should also verify that they will agree to use a random assignment procedure defined by ACYF for assigning recruited families into program, comparison and replacement groups.

19. Provide assurances that the applicant will collect data on groups of individuals and geographic areas served, types of services to be furnished, service utilization information, costs of providing comprehensive services, types and nature of needs identified and met, and such other information as may be required periodically by ACYF.

Applicants will address how confidentiality of user data will be maintained.

20. Describe how the applicant will provide for an advisory board consisting of:

(a) Program families;
(b) Public and community agencies furnishing services; individuals with expertise in services the project provides; and individuals with expertise in other aspects of child and family health and development; and
(c) Political, educational and business representatives of the community in which the project will be located.

21. Applicants should describe how the CCDP advisory board would be active and functional and not just a pro forma body. Applicants should provide letters of commitment (not merely support) from prospective board members, except for those board positions to be filled by program family members who will not yet have been recruited.

22. Special Emphasis Program applicants, as identified in part I, section H, of this announcement, should also discuss the potential difficulties of serving substance abuse populations as well as strategies for resolving those difficulties. Applicants who will contract with other agencies for family support or substance abuse services should describe how this would be accomplished to assure an integrated family support framework for substance abusers.

Applicants should describe how the proposed recruiting area has been heavily impacted by substance abuse and provide statistics and reports which verify this. Applicants should also provide assurances that the minimum number of substance abuse families required in this announcement can be recruited and enrolled.

III. Criteria for Review and Evaluation of Applicants' Operating Grant Proposals

In considering how the eligible applicant for an operating grant will carry out the responsibilities addressed under part II of this announcement, applications will be reviewed and evaluated against the following criteria:

A. Objectives and Need for Assistance. (10 Points)

The extent to which the application reflects a good understanding of the objectives of the project; pinpoints any relevant physical, economic, social, financial, institutional, or other problems requiring a grant; demonstrates the need for assistance; and states the principal and subordinate objectives of the project.

Information provided in response to part II, section N, number 1 of this announcement will be used to review and evaluate applicants on this criterion.

B. Results or Benefits Expected (10 Points)

The extent to which the identified results and benefits to be derived are consistent with the objectives of the proposal and there are clear and important anticipated contributions to policy, practice, theory and/or research indicated.

Information provided in response to part II, section C, number 3 of this
announced will be used to review and evaluate applicants on this criterion.

C. Approach. (35 points)

The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work and gives acceptable reasons for taking the approach proposed as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, or extraordinary social and community involvements; provides required detail for each of the core services and gives projections of the accomplishments to be achieved.

The extent to which the application lists the activities to be carried out in chronological order and shows a reasonable schedule of accomplishments and target dates.

The extent to which the application lists and provides letters of commitment from each organization, agency, consultant, or other key individuals or groups who will work with the project along with a description of their activities and nature of their effort or contribution.

Information provided in response to part II, section C. Numbers 4, 5, 6, 7, 8, 9, 10, 11, 17, 18, 19, 20, 21 and 22 of this announcement will be used to review and evaluate applicants on this criterion.

D. Geographic Location. (5 points)

The extent to which the application gives a precise location of the project and area to be served by the proposed project and includes maps or other graphic aids. The extent to which the application describes characteristics of the families to be recruited and enrolled and provides assurances that the minimum number of eligible families required in this announcement can be recruited and enrolled.

Information provided in response to part II, section C. Number 2 of this announcement will be used to review and evaluate applicants on this criterion.

E. Staff Background and Experience. (25 points)

The extent to which the resumes of the program director and key project staff (including names, addresses, training, background and other qualifying experience) and the organization's experience demonstrate the ability to effectively and efficiently administer a project of this size, complexity and scope and reflect the ability to use and coordinate activities with other agencies for the delivery of comprehensive support services.

Information provided in response to part II, section C. Numbers 12, 13 and 14 of this announcement will be used to review and evaluate applicants on this criterion.

F. Budget Appropriateness (15 points)

The extent to which the project's cost are reasonable in view of the activities to be carried out and the anticipated outcomes. The extent to which assurances are provided that the applicant can and will contribute the non-Federal share of the total project cost.

Information provided in response to part II, section C. Numbers 15 and 16 of this announcement will be used to review and evaluate applicants on the above criterion.

IV. The Application Process

A. Availability of Forms

Agencies and organizations interested in applying for operating grant funds should submit an application on the Standard Form 424 included in this announcement (Appendix VIII). In addition, please provide the following assurances: Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions (Appendix V); Certification Regarding Drug-Free Workplace Requirements (Appendix VI); and Certification Regarding Lobbying (Appendix VII).

Each application must be executed by an individual authorized to act on behalf of the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in this announcement and the instructions in the attached application package.

B. Application Submission

One signed original and two copies of the grant application, including all attachments, are required. Completed applications must be sent to: Comprehensive Child Development Program, Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 200 Independence Avenue SW., Hubert H. Humphrey Building, room 314-F, Washington, DC 20201.

The program announcement number must be clearly identified on the application. Applicants applying for one of the Special Emphasis Program grants should enter the following, "Special Emphasis Program Grant" in the box labeled "Applicant Identifier." Applicants applying for a Special Emphasis Program grant cannot also apply for one of the other CCDP grants and vice versa.

C. Application Consideration

Applications will be scored against the criteria outlined in part III of this announcement. The competitive review will be conducted in Washington, DC. Reviewers will be persons knowledgeable about early childhood education and development and family support programs, and, for Special Emphasis Program applications, will have special expertise on substance abuse. Applicants applying for one of the Special Emphasis Program grants will be reviewed separately from applicants applying for one of the other grants.

The results of the competitive review will be taken into consideration by the Associate Commissioner, Head Start Bureau, who will recommend programs to be funded to the Commissioner, ACYF. The Commissioner, ACYF, will make the final selections. Applicants may be funded in whole or in part. Consideration will also be given to ensuring, to the extent possible, that a variety of geographic areas are served, that projects with different auspices are selected and that various project designs and models are represented.

Successful applicants will be notified through a Notice of Financial Assistance Awarded. The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the grant, the total project period, the budget period and the amount of the non-Federal matching share.

D. Proposal Format

Applicants submitting an operating grant proposal should use the following format guidelines:

1. Proposals should be organized according to the operating grant proposal criteria for review and evaluation located in part III of this Federal Register announcement. For each of the six specified criteria, applicants should provide information in response to those proposal requirements described in Part II, Section C. These proposal requirements are cross-referenced by number in the last paragraph of each criterion. Applicants should use these numbers to identify specific responses.
2. Lines on each page should be double-spaced.
3. All pages should be numbered.
4. A table of contents should be included.
5. A one-page abstract should be included in the beginning of the proposal.
6. All persons who prepared sections of the proposal should be identified along with those sections they prepared and their responsibilities under this grant.

E. Due Date for the Receipt of Applications

The closing date for grant applications is August 18, 1992.

Deadlines: Applications should be considered as meeting an announced deadline if they are either:
1. Received on or before the deadline date at a place specified in the program announcement, or
2. Sent on or before the deadline date and received by the granting agency in time for independent review under Chapter 1-62. (Applicants are cautioned to request a legibly edited U.S. Postal Service postmark or to obtain a legibly metered postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the above criteria are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: The granting agency may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

F. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96-511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements and regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved by OMB.

G. Executive Order 12372—Notification Process

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Program," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities."

Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories, except Kansas, Louisiana, Minnesota, Oregon, Virginia, Pennsylvania, Alaska, Idaho, Nebraska, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPoCs).

Applications from these eleven areas need not take an action regarding E.O. 12372. Applications for projects to be administered by federally recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

Otherwise, applicants should contact their SPoC as soon as possible to alert them of the prospective application and receive any necessary instructions. Applicants must submit any required material to the SPoC as early as possible so that the program office can obtain and review SPoC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPoC and indicate the date of this submittal (or date of contact if no submittal is required) in the SP 424, item 16a. SPoCs have until September 18, 1992 to comment on applications for financial assistance under this program. This announcement has required extensive preparation to ensure its consistency with the 1990 reauthorization of the Head Start Act and the Comprehensive Child Development Centers Act of 1988. Consequently, there is insufficient time remaining in the fiscal year to permit a 90-day SPoC comment period. SPoCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPoCs are requested to clearly differentiate between advisory comments and those official State process recommendations which they intend to trigger the “accommodate or explain” rule.

When comments are submitted directly to ACF, they should be addressed to: Comprehensive Child Development Program, Administration on Children and Families, Grants and Contract Management Division, 200 Independence Avenue SW., room 341F, Hubert H. Humphrey Building, Washington, DC 20201. ACF will notify the State of any application received which has no indication that the State process has had an opportunity for review. A list of single points of contact for each State and territory is included in appendix IV of this announcement.

H. Protection of Human Subjects

Department of Health and Human Services policy (45 CFR part 46, 42 U.S.C. 289) requires that if any phase of this project will involve subjecting individuals to the risk of physical, psychological, sociological, or other harm, certain safeguards must be instituted and an assurance must be filed. If there is any question about the application of requirements for the protection of human subjects for this project, further information should be requested from Mr. Cliff Sharke of the Office for Protection from Research Risks, Building 31, room 5559, National Institutes of Health, DHHS, 9000 Rockville Pike, Bethesda, Maryland 20892: (301) 498-7041.

The Catalog of Federal Domestic Assistance number for the Comprehensive Child Development Program is 93–666.


Wade F. Horn, Commissioner, Administration on Children, Youth and Families.

Appendix I—Comprehensive Child Development Program

Directory of Grantees

Region I

Project AFRIC, Dimock Community Health Center, 56 Dimock St., Richards Bldg., Roxbury, MA 02119, County: Suffolk County.

Windham County Family Support Program, Brattleboro Town School District, 198 Canal St., Brattleboro, VT 05301, County: Windham County.

Region II

Project CHANCE, 136 Lawrence Street—3A & B, Brooklyn, NY 11201, County: Kings County.

Region III

Parent Child Resource Center, Edward C. Mazique Parent Child Center, Inc., 1325 W St., NW., Washington, DC 20009, County: Not Applicable—Washington, DC.

Family Start, Friends of the Family, Inc., 1510 West Lafayette Avenue, Baltimore, MD 21217, County: Baltimore City.

Family Foundations, Community Human Services, 374 Lawn Street, Pittsburgh, PA 15213, County: Allegheny County.

Region IV


Operation Family, Community Action Council, P.O. Box 11610, Lexington, KY 40579, County: Lexington-Fayette County.

Region V
Project Focus, Grand Rapids Child Guidance Clinic, 1309 Madison, S.E., Grand Rapids, MI 49506, County: Kent County.
West CAP Full Circle Project, P.O. Box 308 (439 Maple Street), Glenwood City, WI 54013-0308, Counties: Barron, Chippewa, Dunn, Pepin, Pierce, Polk, and St. Croix Counties.

Region VI
Project Family, P.O. Box 120, (4208 Frazier Pike), College Station, AR 77905, County: Pulaski County.
City of Albuquerque CCDP, Albuquerque Dept of Human Services, Children’s Services Section, 601 Yale, S.E., Albuquerque, NM 87106, County: Bernalillo County.
Primero Los Niños, La Clínica de Familia, 225 E. Idaho, La Mission, Ft. #28, Las Cruces, NM 88005, County: Doña Ana County.
Share Care Program, Day Care Association of Fort Worth & Tarrant County, 121 North Rayner, Ft. Worth, TX 76111, Counties: Fort Worth and Tarrant Counties.

Region VII
Mid-Iowa Community Action, 1500 East Linn St., Marshalltown, IA 50158, Counties: Hardin, Marshall, Poweshiek, Story and Tama Counties.
Project EAGLE, Gateway Centre, Tower 2, Suite 1001, Fourth and State Avenues, Hardin, Marshall, Poweshiek, Story and Tama Counties.

Region VIII
Family Futures, 3804 Martin Luther King, Jr. Blvd., Denver, CO 80205, Att: Proj. Dir., County: Denver County.
Little Hoop Community College, P.O. Box 269, Ft. Totten, ND 58332, County: Beulah County.
Community-Family Partnership Project, Center for Persons with Disabilities, UMC 6800, Logan, UT 84322-6800, Counties: Cache and Box Elder Counties.

Region IX
Conocimiento, Southwest Human Development, Inc., 1336 East Thomas Rd., Suite 100, Phoenix, AZ 85014-5739, County: Maricopa County.
Entrich, Venice Family Clinic, 604 Rose Ave., Venice, CA 90291, County: Los Angeles County.

Region X
FamilyFirst, Children’s Home Society of Washington, P.O. Box 1997, Auburn, WA 98001, County: King County.

APPENDIX II—1992 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA—Continued

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<th>Poverty guideline</th>
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For family units with more than 8 members, add $2,980 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

<table>
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<th>Size of family unit</th>
<th>Poverty guideline</th>
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For family units with more than 8 members, add $2,740 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

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For family units with more than 8 members, add $2,740 for each additional member.

Appendix III
Head Start—Administration for Children, Youth & Families Program Performance Standards

Subpart A—General
Sec. 1304.1-1 Purpose and application. 1304.1-2 Definitions. 1304.1-3 Head Start program goals. 1304.1-4 Performance standards plan development. 1304.1-5 Performance standards implementation and enforcement.

Subpart B—Education Services Objectives and Performance Standards
1304.2-1 Education services objectives. 1304.2-2 Education services plan content: operations. 1304.2-3 Education services plan content: facilities.

Subpart C—Health Services Objectives and Performance Standards
1304.3-1 Health services general objectives. 1304.3-2 Health Services Advisory Committee. 1304.3-3 Medical and dental history, screening, and examination. 1304.3-4 Medical and dental treatment. 1304.3-5 Medical and dental records. 1304.3-6 Health education. 1304.3-7 Mental health objectives. 1304.3-8 Mental health services. 1304.3-9 Nutrition objectives. 1304.3-10 Nutrition services.

Subpart D—Social Services Objectives and Performance Standards
1304.4-1 Social services objectives. 1304.4-2 Social services plan content.

Subpart E—Parent Involvement Objectives and Performance Standards
1304.5-1 Parent involvement objectives. 1304.5-2 Parent involvement plan content: parent participation policy. 1304.5-3 Parent involvement plan content: enhancing development of parenting skills. 1304.5-4 Parent involvement plan content: communications among program management, program staff, and parents. 1304.5-5 Parent involvement plan content: parents, area residents, and the program.

Subpart A—General
Section 1304.1-1 Purpose and application
This part sets out the goals of the Head Start program as they may be achieved by the combined attainment of the objectives of the basic components of the program, with emphasis on the program performance standards necessary and required to attain those objectives. With the required development of plans covering the implementation of the performance standards, grantees and delegate agencies will have firm bases for operations most likely to lead to demonstrable benefits to children and their families. While compliance with the performance standards is required as a condition of Federal Head Start funding, it is expected that the standards will be largely self-enforcing. This part applies to all Head Start grantees and delegate agencies.

Section 1304.1-2 Definitions
As used in this part:
(a) The term “ACYF” means the Administration for Children, Youth and Families, Office of Human Development Services, U.S. Department of Health and Human Services, and includes appropriate regional office staff.
(b) The term “responsible HHS official” means the official who is authorized to make regional office staff.
The Head Start Program approach is based on the philosophy that:

1. A child can benefit most from a comprehensive, interdisciplinary program to foster development and remedy problems as expressed in a broad range of services, and that:
   a. The child’s entire family, as well as the community must be involved. The program should maximize the strengths and unique experiences of each child. The family, which is perceived as the principal influence on the child’s development, must be a direct participant in the program. Local communities are allowed latitude in developing creative program designs so long as the basic goals, objectives and standards of a comprehensive program are adhered to.
   b. The overall goal of the Head Start program is to bring about a greater degree of social competence in children of low-income families. By social competence is meant the child’s everyday effectiveness in dealing with both present environment and future learning efforts and overall development.

2. The child’s everyday effectiveness in dealing with future learning efforts and overall development.
(1) The space per child provided by the Head Start program does not comply with the Education Services performance standard but there is no risk to the health or safety of the children;
(2) The Head Start program is unable to provide Medical or Dental Treatment Services as required by Health Services Performance Standards because funding is insufficient and there are no community or other resources available;
(3) The services of a mental health professional are not available or accessible to the program as required by the Health Service Performance Standards; or
(4) The deficient service is not able to be corrected within the 90 days notice period.

notwithstanding full effort at compliance, because of lack of funds and outside community resources, but it is reasonable to expect that the services will be brought into compliance within the extended period, and the overall high quality of the Head Start program otherwise will be maintained during the extension.

Introduction

The Performance Standards presented in the following pages are accompanied by guidance material which elaborates upon their intent and provides methods and procedures for implementing them. The standard is found in the left hand column and the appropriate guidance material in the right hand column. The standards in the left hand column constitute Head Start policy with which all grantees and delegate agencies are required to conform. They are taken verbatim from the Federal Register dates June 30, 1975, Volume 40, Number 126, Part II, that contains the Head Start Program Performance Standards for operation of Head Start programs by grantees and delegate agencies. The guidance in the right hand column is provided for the assistance of Head Start programs in interpreting and implementing the standards and is not in itself mandatory.

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EDUCATION

PERFORMANCE STANDARDS

Subpart B—Education Services Objectives and Performance Standards

§ 1304.2-1 Education services objectives.

The objectives of the Education Service component of the Head Start program are to:

(a) Provide children with a learning environment and the varied experiences which will help them develop socially, intellectually, physically, and emotionally in a manner appropriate to their age and stage of development toward the overall goal of social competence.

(b) Integrate the educational aspects of the various Head Start components in the daily program of activities.

(c) Involve parents in educational activities of the program to enhance their role as the principal influence on the child's education and development.

(d) Assist parents to increase knowledge, understanding, skills, and experience in child growth and development.

(e) Identify and reinforce experiences which occur in the home that parents can utilize as educational activities for their children.

§ 1304.2-2 Education services plan content: operations.

(a) The education services component of the performance standards plan shall provide strategies for achieving the education objectives. In so doing it shall provide for program activities that include an organized series of experiences designed to meet the individual differences and needs of participating children, the special needs of handicapped children, the needs of specific educational priorities of the local population and the community. Program activities must be carried out in a manner to avoid sex role stereotyping.

In addition, the plan shall provide methods for assisting parents in understanding and using alternative ways to foster learning and development of their children.

GUIDANCE

(a) The education plan should be prepared by the educational staff with cooperation from other Head Start staff, parents and policy group members. Professional consultants may be called upon as needed.

Before the education plan is written, parents, staff and policy group members should meet to discuss the education service objectives and performance standards. The staff has the responsibility to inform parents and policy group members about alternative strategies for achieving the education objectives. The staff should recommend those strategies (curriculum approaches, teaching methods, classroom activities, etc.) most appropriate to the individual needs of the population served and based on performance standard requirements. With the concurrence of the parents and policy group members, the educational staff will then write the plan. The education plan must be specifically designed to meet children's needs as determined through assessment procedures.

The education plan must specify strategies for implementing each of the education services objectives of the Head Start program.
EDUCATION

PERFORMANCE STANDARDS

(b) The education services component of the plan shall provide for:

(1) A supportive social and emotional climate which:
   (i) Enhances children's understanding of themselves as individuals, and in relation to others, by providing for individual, small group, and large group activities;

GUIDANCE

The education plan should indicate:

• How the education program will provide children with a learning environment and varied experiences appropriate to their age and stage of development which will help them develop:
  
  socially
  intellectually
  physically
  emotionally

• How the education program will integrate the educational aspects of the various Head Start components in the daily program of activities.

• How the education program will involve parents in educational activities to enhance their role as the principal influence on the child's education and development.

• How the education program will assist parents to increase knowledge, understanding, skills, and experience in child growth and development.

• How the education program will identify and reinforce experiences which occur in the home that parents can utilize as educational activities for their children.

The plan should be accompanied by brief descriptive information regarding:

• Geographical setting
• Physical setting (available facilities)
• Population to be served (ethnicity, race, language, age, prevalence of handicapping conditions, health factors, family situations)
• Education staff (staffing patterns, experience, training)
• Volunteers
• Community resources
• Program philosophy/curriculum approach
• Assessment procedures (individual child, total program)

(1) The following suggestions may be useful beginning steps:

(i) Encourage awareness of self through the use of full-length mirrors, photos and drawings of child and family, tape recordings of voices, etc.
EDUCATION

PERFORMANCE STANDARDS

• Use child's name on his/her work and belongings.
• Arrange activity settings to invite group participation (block and doll corners, dramatic play).
• Include active and quiet periods, child-initiated and adult-initiated activities, and use of special areas for quiet and individual play or rest.

(ii) Gives children many opportunities for success through program activities;

(iii) Provides an environment of acceptance which helps each child build ethnic pride, develop a positive self-concept, enhance his individual strengths, and develop facility in social relationships.

GUIDANCE

• Make sure that activities are suited to the developmental level of each child;
• Allow the child to do as much for himself as he can;
• Help the child learn "self-help" skills (pouring milk, putting on coat);
• Recognize and praise honest effort and not just results;
• Support efforts and intervene when helpful to the child;
• Help the child accept failure without defeat ("I will help you try again.");
• Help the child learn to wait ("You will have a turn in five minutes.");
• Break tasks down into manageable parts so that children can see how much progress they are making.

(ii) Here are some examples:

• Make sure that activities are suited to the developmental level of each child;
• Allow the child to do as much for himself as he can;
• Help the child learn "self-help" skills (pouring milk, putting on coat);
• Recognize and praise honest effort and not just results;
• Support efforts and intervene when helpful to the child;
• Help the child accept failure without defeat ("I will help you try again.");
• Help the child learn to wait ("You will have a turn in five minutes.");
• Break tasks down into manageable parts so that children can see how much progress they are making.

(iii) This can be accomplished by adult behavior such as:

• showing respect for each child;
• listening and responding to children;
• showing affection and personal regard (greeting by name, one-to-one contact);
• giving attention to what the child considers important (looking at a block structure, locating a lost mitten);
• expressing appreciation, recognizing effort and accomplishments of each child, following through on promises;
• respecting and protecting individual rights and personal belongings (a "cubby" or box for storage, name printed on work in large, clear letters);
• acknowledging and accepting unique qualities of each child;
• avoiding situations which stereotype sex roles or racial/ethnic backgrounds;
• providing ample opportunity for each child to experience success, to earn praise, to develop an "I can," "Let me try," attitude;
• accepting each child's language, whether it be standard English, a dialect or a foreign lan-
EDUCATION

PERFORMANCE STANDARDS

(2) Development of intellectual skills by:

(i) Encouraging children to solve problems, initiate activities, explore, experiment, question, and gain mastery through learning by doing;

(ii) Promoting language understanding and use in an atmosphere that encourages easy communication among children and between children and adults;

(iii) Working toward recognition of the symbols for letters and numbers according to the individual developmental level of the children;

(iv) Encouraging children to organize their experiences and understand concepts; and

(v) Providing a balance program of staff-directed and child initiated activities.

(3) Promotion of physical growth by:

(i) Providing adequate indoor and outdoor space, materials, equipment, and time for child-directed activities.

GUIDANCE

(2) Intellectual skills can be enhanced by providing a learning climate in which staff guide children to foster cognitive functioning (i.e., understanding, reasoning, conceptualizing, etc.).

(i) Provide materials and time appropriate to the child's age and level of development in the areas of:

- science; concepts of size, shape, texture, weight, color, etc.;
- dramatic play;
- art;
- music;
- numerical concepts; spatial, locational and other relationships.

(ii) Some examples are:

- Give children ample time to talk to each other and ask questions in the language of their choice;
- Encourage free discussion and conversation between children and adults;
- Provide games, songs, stories, poems which offer new and interesting vocabulary;
- Encourage children to tell and listen to stories.

(iii) Make use of information that is relevant to the child's interests, such as his name, telephone number, address and age. Make ample use of written language within the context of the child's understanding, for example, experience stories, labels, signs.

(iv) The sequence of classroom activities should progress from simple to more complex tasks, and from concrete to abstract concepts. Activities can be organized around concepts to be learned.

(v) Although each day's activities should be planned by the staff, the schedule should allow ample time for both spontaneous activity by children and blocks of time for teacher-directed activities.

(i) This can be accomplished through regular periods for physical activity (both indoor and out).
EDUCATION

PERFORMANCE STANDARDS

I. Providing appropriate guidance while children are using equipment and materials in order to promote children's physical growth.

(c) The education services component of the plan shall provide for a program which is individualized to meet the special needs of children from various populations by:

1. Having a curriculum which is relevant and reflective of the needs of the population served (bilingual/bicultural, multicultural, rural, urban, reservation, migrant, etc.).

2. Having staff and program resources reflective of the racial and ethnic population of the children in the program.

(i) Including persons who speak the primary language of the children and are knowledgeable about their heritage; and, at a minimum, when a majority of the children speak a language other than English, at least one teacher or aide interacting regularly with the children must speak their language; and

(ii) Where only a few children, or a single child, speak a language different from the rest,

GUIDANCE

Physical activities should include materials and experiences designed to develop:

- large muscles (wheel toys, climbing apparatus, blocks);
- small muscles (scissors, clay, puzzles, small blocks);
- eye-hand coordination (puzzles, balls, lotto);
- body awareness;
- rhythm and movement (dancing, musical instruments).

(ii) Staff should be actively involved with children during periods of physical activity. During such activities, staff should take opportunities to increase their contact with individual children. To ensure safety, activities should be adequately supervised.

(1) This can be accomplished by including in each classroom materials and activities which reflect the cultural background of the children. Examples of materials include:

- books;
- records;
- posters, maps, charts;
- dolls, clothing.

Activities may include:

- celebration of cultural events and holidays;
- serving foods related to other cultures;
- stories, music, and games representative of children's background;
- inviting persons who speak the child's native language to assist with activities.

(i) This adult may be:

- a teacher or aide;
- other member of the center staff;
- a parent or family member;
- a volunteer who speaks the child's language;

(ii) In some cases where a single child is affected it may not be possible for the center to pro-
PERFORMANCE STANDARDS

one adult in the center should be available to communicate in the native language.

(3) Including parents in curriculum development and having them serve as resource persons (e.g., for bilingual/bicultural activities).

GUIDANCE

vide an adult speaking the child's language on a regular basis.

(3) Parents can be valuable resources in planning activities which reflect the children's heritage. Teachers may request suggestions from parents on ways to integrate cultural activities into the program. For example, parents may wish to:

• plan holiday celebrations;
• prepare foods unique to various cultures;
• recommend books, records, or other materials for the classroom;
• act as classroom volunteers;
• suggest games, songs and art projects which reflect cultural customs.

(d) The education services component of the plan shall provide procedures for on-going observation, recording and evaluation of each child's growth and development for the purpose of planning activities to suit individual needs. It shall provide, also, for integrating the educational aspects of other Head Start components into the daily education services program.

(d) The education plan should specify how Head Start staff will assess the individual developmental/instructional needs of children. Some ways this may be accomplished include:

• discussions with parents during recruitment, enrollment, home visits, parent-staff conferences and meetings;
• review of child's medical and developmental records;
• conferences with medical or psychological consultants where indicated;
• teacher observations documenting developmental progress used as guidance in planning for and/or modifying individual children's activities;
• use of specific assessment instruments or scales.

Planning should take into account the age groups and abilities of the children. For example, activities will differ for three and five year olds. Children with handicaps, like all children, should have specific goals set for them according to their ability.

The plan should also include the following:

• long-range plans based on evaluation of each child's current needs, interests and abilities;
• specific activities and responsibilities of staff members;
• consistent methods for observing and recording the progress of each child;
• procedures to be used for reviewing each child's progress and modifying the program when indicated.

The plan should also include the following:

• long-range plans based on evaluation of each child's current needs, interests and abilities;
• specific activities and responsibilities of staff members;
• consistent methods for observing and recording the progress of each child;
• procedures to be used for reviewing each child's progress and modifying the program when indicated.
EDUCATION

PERFORMANCE STANDARDS

(e) The plan shall provide methods for enhancing the knowledge and understanding of both staff and parents of the educational and developmental needs and activities of children in the program. These shall include:

GUIDANCE

Activities to integrate educational aspects of other components into the daily education program could include:

- Health Education built into the schedule through:
  - time to talk about physical and dental examinations in order to increase understanding and reduce fears;
  - books and pictures about doctors and dentists;
  - materials for dramatic play (stethoscope, nurse's uniform, flashlight);
  - role playing before and after visits to doctors, dentists, hospitals, clinics, etc.

- Nutrition Education as part of the daily schedule:
  - assistance in meal preparation, setting table;
  - learning experiences through food preparation (adding liquids to solids, seasoning, freezing, melting, heating, cooling, cooking simple foods);
  - books, pictures, films, trips related to the source of foods, (farm, garden, warehouse, market, grocery store).

(e) The plan should indicate some of the ways parents and staff will work together to understand each child and provide for his learning experiences. The plan should include details of ways the home and center will attempt to supplement each other in providing positive experiences for the child.

There should be an early orientation to the Education Services Objectives. Special emphasis should be given to the significance of the materials, equipment and experiences provided in a Head Start Child Development program. Interpreters should be available to facilitate full participation of non-English speaking parents.

Procedures should be established to facilitate maximum communication between staff and parents, for example:

- newsletters
- parent/teacher conferences
- group meetings
- phone calls
- home visits
- posters, bulletin boards, radio/TV announcements.
EDUCATION

PERFORMANCE STANDARDS

(1) Parent participation in planning the education program, and in center, classroom and home program activities;

(2) Parent training in activities that can be used in the home to reinforce the learning and development of their children in the center;

(3) Parent training in the observation of growth and development of their children in the home environment and identification of and handling special developmental needs;

(4) Participation in staff and staff-parent conferences and the making of periodic home visits (no less than two) by members of the education staff;

(5) Staff and parent training, under a program jointly developed with all components of the Head Start program, in child development and behavioral developmental problems of preschool children; and

GUIDANCE

(1) Meeting with staff to provide for the overall written education plan (see item 1304.2-2(a) for further guidance).

(2) Some examples are:

- orientation and training sessions
- designing activities for children at home
- participation in classroom/center activities.

(3) Provide parents with films, workshops, publications, specialists, professionals, etc., in child growth and development. Arrange for films, publications and specialists to provide training.

(4) Areas of mutual concern to be discussed could include:

- child's developmental progress;
- child rearing issues;
- discussion of possible home activities to expand the Head Start experience;
- discussion of health problems or handicapping conditions of the Head Start child.

Although only two home visits are required, we suggest that consideration be given to visiting each child's home at the beginning, middle and end of the year. Arrangements for such visits should respect parent's wishes and convenience and should be coordinated with the visits of other component staff. At least one of these visits should be devoted to discussion with parents around areas of mutual interest and concern in order to identify home activities and other ways to expand the Head Start experience.

(5) An orientation and training program should be planned in cooperation with other component staff members and parents. The training program should provide for periodic formal and informal sessions. The content, organization, staffing and scheduling will depend on the individual program needs as determined in the planning stage. Training should focus on the normal child as well as the child with special needs. Emphasis should be on mental, physical, social, and emotional growth and development.

There should be identification of opportunities for training or continuing education to contribute to staff competence. In some locations, CDA training can be an appropriate means for achieving this; many Head Start staff members are receiving CDA training through the Head Start Supplementary Training program.
EDUCATION

PERFORMANCE STANDARDS

(6) Staff training in identification of and handling children with special needs and working with the parents of such children, and in coordinating relevant referral resources.

(7) Outdoor play areas shall be made so as to prevent children from leaving the premises and getting into unsafe and unsupervised areas;

§ 1304.2-3 Education services plan content: facilities.

(a) The education services component of the plan shall provide for a physical environment, conducive to learning and reflective of the different stages of development of the children. Home-based programs must make affirmative efforts to achieve this environment. For center-based programs, space shall be organized into functional areas recognized by the children, and space, light, ventilation, heat, and other physical arrangements must be consistent with the health, safety and developmental needs of the children. To comply with this standard:

(1) There shall be a safe and effective heating system;

(2) No highly flammable furnishings or decorations shall be used.

(3) Flammable and other dangerous materials and potential poisons shall be stored in locked cabinets or storage facilities accessible only to authorized persons;

(4) Emergency lighting shall be available in case of power failure;

(5) Approved, working fire extinguishers shall be readily available;

(6) Indoor and outdoor premises shall be kept clean and free, on a daily basis, of undesirable and hazardous material and conditions;

(7) Outdoor play areas shall be made so as to prevent children from leaving the premises and getting into unsafe and unsupervised areas;

GUIDANCE

(6) Training should also familiarize staff and parents with appropriate referral resources in the community. (Refer to 1304.3-3(b)(10)).

(a) Indoor and outdoor space should be sufficient and appropriate for necessary program activities and for support functions (offices, food preparation, custodial services) if they are conducted on the premises. In addition, rest/hap facilities and space for isolation of sick children should be available.

(1) Radiators, stoves, hot water pipes, portable heating units, and similar potential hazards are adequately screened or insulated to prevent burns.

(2) Flammable materials can be fireproofed with commercial preparations.

(3) Cleaning supplies and potentially dangerous materials should be stored separately from food and out of reach of children.

(4) High powered flashlights may be used. Candles are fire hazards.

(5) Adults in the program should be able to locate and properly operate fire extinguishers.

(6) If evidence of rodents or vermin is found, the local health or sanitation department may provide assistance or referral for extermination. At regular intervals programs should check for and correct splintered surfaces, extremely sharp or protruding corners or edges, loose or broken parts. All clear glass doors should be clearly marked with opaque tape to avoid accidents.

(7) Where outdoor space borders on unsafe areas (traffic, streets, ponds, swimming areas) adults should always be positioned to supervise the children. If possible such areas should be enclosed.
PERFORMANCE STANDARDS

(8) Paint coatings on premises used for care of children shall be determined to assure the absence of a hazardous quantity of lead;

(9) Rooms shall be well lighted;

(10) A source of water approved by the appropriate local authority shall be available in the facility; adequate toilets and handwashing facilities shall be available and easily reached by children;

(11) All sewage and liquid waste shall be disposed of through a sewer system approved by an appropriate responsible authority, and garbage and trash shall be stored in a safe and sanitary manner until collected;

(12) There shall be at least 35 square feet of indoor space per child available for the care of children (i.e., exclusive of bathrooms, halls, kitchen, and storage places). There shall be at least 75 square feet per child outdoors; and

(13) Adequate provisions shall be made for handicapped children to ensure their safety and comfort.

GUIDANCE

(8) Old buildings may be dangerous; be sure to check for lead contamination.

The local public health department can be contacted to provide information on lead poisoning and to detect hazardous quantities of lead in the facility.

(9) Fixtures which have a low glare surface to sufficiently diffuse and reflect light may be useful. Use bulbs with sufficient wattage. Check and replace burned-out bulbs regularly.

(10) Verify State and local licensing requirements in these areas. Stepstools or low platforms may be useful where toilets or handwashing facilities are too high.

(11) Disposal problems can be referred to the local sanitation and public work department. Keep all waste materials away from children’s activity areas and from areas used for storage and for preparation of food.

(12) Where minimum space is not available, various alternatives can be considered. For example, a variation in program design (See Notice N-30-334-1 on Program Options for Project Head Start), stagger the program day, the program week, outdoor play periods. In this manner, all children will not be present at the same time. In some cases, outdoor space requirements may be met by arranging for daily use of an adjoining or nearby school yard, park, playground, vacant lot, or other space. Be sure that these areas are easily accessible and fulfill the necessary safety requirements.

In some cases, it may be necessary to locate more suitable facilities.

(13) Ramps, railings, and special materials and equipment may be needed in order to allow such children maximum possible mobility. Community resources may be used to acquire needed special materials and services.

Confirm compliance with local licensing requirements. Where no licensing is required, the grantee and Policy Council should request advice from local fire and health departments in determining safety standards.
EDUCATION

PERFORMANCE STANDARDS

Arrangement in such a way as to facilitate learning, assure a balanced program of spontaneous and structured activities, and encourage self-reliance in the children. The equipment and materials shall be:

(1) Consistent with the specific educational objectives of the local program;

(2) Consistent with the cultural and ethnic background of the children;

(3) Geared to the age, ability, and developmental needs of the children;

(4) Safe, durable, and kept in good condition;

(5) Stored in a safe and orderly fashion when not in use;

(6) Accessible, attractive, and inviting to the children; and

(7) Designed to provide a variety of learning experiences and to encourage experimentation and exploration.

GUIDANCE

(1) Make use of the written plan when selecting materials and equipment.

(2) Many books, pictures, records, and other materials reflect ethnic and cultural heritage and background.

(3) For instance, chairs and tables are child size; toys, books, and other materials and equipment are interesting and challenging to the children.


(5) (6) Securely-fastened, well-organized closets and cabinets are needed for many supplies which should be stored out of reach and sight of small children. Classroom materials and equipment, stored on low shelves and/or in open bins should be located near the area where they are to be used and arranged in orderly convenient fashion so that children may be responsible for their use and return to storage.

(7) Materials that can be used in a number of ways rather than single-purpose items are generally more useful.
PERFORMANCE STANDARDS

Subpart C—Health Services Objectives and Performance Standards

§ 1304.3-1 Health services general objectives.

The general objectives of the health services component of the Head Start program are to:

(a) Provide a comprehensive health services program which includes a broad range of medical, dental, mental health and nutrition services to preschool children, including handicapped children, to assist the child's physical, emotional, cognitive and social development toward the overall goal of social competence.

(b) Promote preventive health services and early intervention.

(c) Provide the child's family with the necessary skills and insight and otherwise attempt to link the family to an ongoing health care system to ensure that the child continues to receive comprehensive health care even after leaving the Head Start program.

§ 1304.3-2 Health Services Advisory Committee.

The plan shall provide for the creation of a Health Services Advisory Committee whose purpose shall be advising in the planning, operation and evaluation of the health services program and which shall consist of Head Start parents and health services providers in the community and other specialists in the various health disciplines. (Existing committees may be modified or combined to carry out this function.)

GUIDANCE

(a), (b), & (c) These are the aims toward which the program efforts should be directed.

In order to achieve the comprehensive goals, the health program should be planned by professionally competent people. Planning must take place early and should involve a wide cross section of the professional health talent available in the community. The committee should be represented by all four areas of health professionals, i.e., medical, dental, mental health and nutrition.

The committee should meet at least twice a year to advise on the development of the health services and health education program and must approve the health plan.

Examples of people who could be involved in planning the health program of the Head Start program include:

a. Pediatricians and pediatric societies.
b. General practitioners and the Academy of General Practice.
c. Other physicians and the county and State medical societies.
d. Local, regional, and State health offices.
e. Child and general psychiatrists and their associations.
f. Hospital administrators and their associations.
g. Dentists and Dental Hygienists and their associations.
h. Public health nurses, school nurses, and nursing organizations.
§ 1304.3-3 Medical and dental history, screening, and examinations.

(a) The health services component of the performance standards plan shall provide that for each child enrolled in the Head Start program a complete medical, dental and developmental history will be obtained and recorded, a thorough health screening will be given, and medical and dental examinations will be performed. The plan will provide also for advance parent or guardian authorization for all health services under this subpart.

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i. Nutritionists and their associations.

j. Optometrists and their associations.

k. Psychologists and their associations.

l. Medical technologists and their associations.

m. Speech and hearing personnel and their associations.

The plan should indicate the number of parents, and specific health professionals on the health advisory committee; goals and objectives; and projected number of meetings.

Involving parents, health professionals and their organizations in planning will ensure that the health program is tailored to the needs of the children, and that it utilizes fully the resources available in the community without duplicating already existing services. The health professionals should be aware of common health practices in their community. The health advisory committee should develop guidelines to deal with health practices that may be potentially harmful to a child. Organizations and individuals who are involved in the early planning of a program are likely to cooperate fully in the implementation of the program.

a) As much pertinent health information as possible should be accumulated and recorded for each child. This should be performed as soon after the child is enrolled as is feasible. There are three main sources for such information: records of past medical and dental care, teachers’ observations, and interviews with parents or guardians.

Every effort should be made to obtain records or summaries of the significant medical and dental care and immunizations that each child has received in the past. This information may be available from hospital clinics, private physicians and dentists, or health department-sponsored well-child clinics. In special cases, it may be desirable to obtain the mother’s and infant’s delivery and birth history from the hospital where the child was born, especially if the child now shows evidence of neurologic impairment. Written records of important health events are important supplements to the mother’s recollection of such events. By acquiring such records before the physician performs the complete health evaluation, a great deal of repetition, wasted time, and unnecessary concern may be avoided.
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(b) Health screenings shall include:

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Health providers should be informed of program requirements for health services. An example of the type of information required is contained in the CHILD HEALTH RECORD available from the Head Start Bureau, P.O. Box 1182, Washington, DC 20013.

Timely informed written parental consent should be obtained for authorization of all health services provided/arranged.

The teacher is in an unusually good position to notice those children who may have health problems. The teacher observes the children for 15 to 30 hours a week, whereas the physician can only observe the child for 20 minutes to an hour. Poor coordination, hyperactivity, unintelligible speech, excessive tiredness, or withdrawal from others may be noted much more readily by a teacher than by either the parent, who usually has little basis for comparison, or the physician, who has a limited time of observation. The teacher may observe dental problems when children eat. Some formal provision should be made to ensure that teachers’ observations of the children’s health and behavior are available to the physician at the time of the medical evaluation.

An example of the type of form and information the teacher should record is contained in the CHILD HEALTH RECORD.

(b) Screening tests should be carried out for all the Head Start children. These are tests some of which may be performed by non-professional workers. They do not represent a complete evaluation, but they identify a group of children who require more complete professional evaluation. Health coordinators are encouraged to schedule screening for children who appear to have health problems or handicaps early in the year (the spring before where possible) so that valuable time will not elapse before their health conditions or handicaps can be addressed. Screenings should be completed within 90 days after the child is enrolled or entered into the program.

It is important that the results of the screening as well as the complete medical and development history are available to the physician at the time of medical examination. The purpose of this is to identify children with needs and to alert the physician to problems requiring a more complete professional evaluation.

A diagnostic evaluation should be arranged for each child with atypical/abnormal findings resulting from screenings.
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(1) Growth assessment (head circumference up to two years old) height, weight, and age.

(2) Vision testing.

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If a child has had a diagnostic evaluation with an atypical/abnormal finding within the past 12 months or is currently under treatment for that finding, the diagnostic evaluation need not be repeated.

(1) Head circumference measurement is not necessary after the child reaches one year of age. (A health professional should teach this procedure to para-professionals.)

The results of careful height and weight measurements for each child should be recorded on standardized growth charts in the beginning and approximately two months prior to the end of the school year so that a failure to gain weight or too rapid a gain in weight will allow for follow-up.

A beam balance scale should be used for weights since ordinary bathroom scales may be inaccurate.

Heights should be measured with the child standing straight with the back to a wall on which is mounted a paper, wooden, or metal measure. A straight-edged device rested on the child's head is held at right angle to the measure.

In interpreting height and weight measurements, one must remember that many normal, well-nourished children are small for their age. In evaluating poor nutrition and poor growth, the rate of growth of a child between two measurements separated in time is more important than a single measurement. For this purpose, and whenever available, weights and measurements which were obtained in previous health examinations, should be recorded on a graphic recording sheet. The small child who is growing at a normal rate is likely to be well-nourished and free from serious disease. Even a much larger child who is growing at an unusually slow rate may have some significant adverse condition affecting the child's health.

(2) Visual acuity and strabismus testing should be performed every two years beginning at age three. The most appropriate visual screening test to be applied in any community can usually best be determined by the health services director in consultation with the group of health practitioners—ophthalmologists/optometrists, who will be responsible for the complete evaluation and treatment of the children. These specialists can determine the type of tests and the criteria for passing or failing which they feel are most appropriate. Health departments and school health programs often have well-established visual screening programs.
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which can be applied readily to Head Start children.

When there is no established screening program and consultation from eye specialists is not available to a community, the National Society for the Prevention of Blindness* or its State or local chapters, or the Volunteers for Vision may assist in setting up a screening program.

If none of these resources is available, the following vision screening method may be used, which will generally identify most of the children who are in need of further eye care. The test may be performed by nurses, by health aides, or volunteers trained in the method.

A Snellen E illiterate visual testing chart (obtainable from any hospital supply company or from the National Society for the Prevention of Blindness) should be placed on a bare wall without windows. There should be no bright light or glare within the child's field of vision. The child should be seated comfortably with the head 20 feet away from the chart. A goose-neck lamp with a metal shade and a 75 watt bulb placed 5 feet from the chart will provide adequate standard illumination.

Children should be instructed in the Head Start classroom, or in small groups before testing, in "how to play the E game." The child is told to indicate with his own fingers the direction in which the "fingers" of the E point. After he has learned to do this, each child is tested individually, a black "pirate's patch" may be a more acceptable way of covering one eye than simply holding a card in front of that eye. To avoid possible transfer of infection, a separate patch or card should be used for each child. The card or patch should not put any pressure on the eye, and the child should keep the covered eye open. First, the child's vision with both eyes is tested. Then, with his left eye covered, the child is asked to indicate which direction the E is pointing as the examiner uses a pencil or pointer to indicate specific symbols on the chart. An examiner may point first to the first E on the 20/60 line. If this is passed successfully, go on to the first two symbols on the 20/40 line. If these are passed successfully, go on to the first three symbols on the 20/30 line, and if these are passed successfully, go on to the 20/20 line. Whenever a child fails to identify the position correctly, the tester should continue across the same line on the E chart. A line is considered "passed" if more than one half of the figures on the line are correctly identified.

*Address: 79 Madison Avenue, New York, New York 10016.
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(3) Hearing testing.

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The same procedure is repeated with the right eye covered. A child fails the test if, with either eye, more than half of the symbols on the 20/40 line cannot be identified, or if there is more than a two line difference in vision between one eye and the other, even if the worse eye is 20/40 or better.

A child who is unable to learn to "play the E game" should be reported as "non-testable" and may be given further instruction in the "E game," either in the classroom or by the parents at home, and retested at a later date.

Children already wearing glasses should be tested while wearing their glasses. If they pass the test while wearing glasses, there is no need for further testing.

Children failing the test who appear acutely ill or particularly fatigued should be retested before they are referred to an eye specialist. Other children who fail the screening test should be referred to an eye specialist for further evaluation. The results of the screening test should be recorded on the child's health form and should be brought to the attention of the physician at the time of the health evaluation. At this time, the physician should examine the optic fundi with an ophthalmoscope and should note any deviation in extra-ocular movements.

Strabismus testing can be performed by well trained staff or volunteers. The common tests for strabismus are the Cover Test and the Hirschberg Test. Frequently, strabismus testing is performed during the physical examination.

(3) Audiometric testing should be done every two years beginning at age three. Children will be better prepared for testing if the procedure is demonstrated in the classroom, where the whole class can be made familiar with the sounds and taught to make the desired response.

Children who cannot learn to respond to the test properly, or who give grossly inconsistent responses to sounds of any intensity, should be designated as "non-testable." A child is generally considered to have failed the screening test if he fails to respond at the recommended level at any frequency in either ear. The frequencies generally used in a limited hearing screening test are 1000, 2000, and 4000 Hz.

Although audiometric testings are effective and necessary, they do not always identify middle ear problems. Therefore, programs may wish to supplement information to the pure-tone testing with acoustic impedance screening.
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The acoustic impedance bridge instrument objectively evaluates the middle ear conductive mechanisms and is particularly valuable in identifying children with otitis media. The test is quick and does not require active participation of the child.

A large proportion of children who fail a hearing screening test have only temporary hearing impairment associated with upper respiratory conditions. Such children should be retested after a few weeks before they are referred for special medical or audiology care. For this reason, it is important to institute the hearing screening program as early as possible in the Head Start program or even before the Head Start classrooms begin to meet formally. Head Start officials may encourage school personnel to include hearing screening tests at part of the routine pre-school interview which many school systems conduct in spring before students will enter school.

Results of the preliminary hearing screening test should be recorded on the health form and be available to the physician at the time of the complete health evaluation.

The person performing a hearing screening test must have special training in the use of the equipment and in the interpretation of the various responses which children may make to the test. Most school health programs and health departments have both testing equipment and personnel trained in its use. If equipment and personnel are not available locally, help may be obtained from: (1) An audiologist in a neighboring community, (2) the regional and State health education department, (3) the State speech and hearing associations, (4) the American Speech and Hearing Association (10801 Rockville Pike, Rockville, Maryland 20852). It will usually be more economical for a Head Start program in a smaller community to obtain services from a trained technician in a nearby larger community than to purchase its own equipment and train its own personnel.

(4) Hemoglobin or hematocrit determination.

(4) A hemoglobin or hematocrit determination should be made at the beginning of the first year of the child's enrollment. An accurate test of hemoglobin concentration is the best screening test for anemia. However, accurate tests require trained technicians and equipment that is moderately expensive.

The microhematocrit test is somewhat less precise as an indicator of anemia. However, the laboratory determination itself is so simple and accurate that this test could often be more practical than a hemoglobin test. Most community hospitals
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will have equipment to perform this test, as will many health department clinics.

In using either of these tests, blood samples may be obtained at the Head Start center or at another convenient place by a technician or nurse. The blood samples can then be transported and tested in a central location.

Children with anemia and similar medical/nutrition problems need specific diagnoses and follow-up. A child with a hemoglobin of less than 11 or hematocrit of less than 34 is considered to be anemic. This is consistent with the standards of Public Health Service, Maternal and Child Health and with CDC National Nutrition Status Survey as well as EPSDT guidance material.

(5) Tuberculin testing where indicated.

(5) Tuberculin testing and reading of results should be performed in accordance with State health department policy and/or the health services advisory committee recommendations. Most Head Start programs will be able to obtain both test materials and personnel trained in their use through their school health program, the local health department, or the local, county, or State tuberculosis association. Initial tuberculin testing is usually done at approximately one year of age.

Routine periodic tuberculosis testing is part of screening only if (1) the child has had contact with a known case of tuberculosis or is a member of a family with a history of tuberculosis, (2) the child is living in a neighborhood or community in which the prevalence of tuberculin sensitivity in the school-age children is known to exceed 1%, or (3) the child presents symptoms consistent with tuberculosis.

A Head Start program conducting its own tuberculosis testing program will usually find the tuberculin tine test to be the most economical and convenient. Materials for this test are available through many health departments and through any pharmacy. Complete instructions for administering and reading this test are packed with the test materials. The test should be scheduled at such a time that the children will be in a class three days later to have the test read. Any swelling or induration surrounding any of the four needle punctures should be considered a positive reaction.

Children who react positively to the tuberculin tine test should have a Mantoux intracutaneous test performed using either intermediate strength, PPD 0.1 ml., or OT 1/1000 0.1 ml. The Mantoux test must be performed by a physician or a specially trained nurse or technician. It should be read on the second or third day.

Since children who are known to have been exposed to an active case of pulmonary tuberculosis
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(6) Urinalysis.

(7) Based on community health problems, other selected screenings where appropriate, e.g., sickle cell anemia, lead poisoning, and intestinal parasites.

(8) Assessment of current immunization status.

(9) During the course of health screening, procedures must be in effect for identifying speech problems, determining their cause, and providing services.

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may have large, uncomfortable reactions to the standard screening test, they should be referred to a physician for testing with a more dilute preparation of PPD or OT. Certain viral infections (such as measles, influenza, mumps), some viral vaccines (such as measles and influenza), administration of corticosteroids, and extreme malnutrition may all depress or suppress the tuberculin reaction for as long as four to six weeks. Children with a history of such conditions should be retested at a later date. The results of the test should be recorded and available to the physician at the time of the examination.

(6) A urinalysis need not be routinely performed as part of the health screening package unless required by State health department policy and/or the health services advisory committee. A simple and inexpensive screening test that may detect some urinary tract abnormalities is the use of a test paper which detects albumin, sugar, blood, and determines the pH of the urine. Urine can be obtained at the center or in the home using clean glass bottles or paper cups. The test paper is dipped in the urine and color changes on the paper are interpreted according to a chart enclosed on the test papers. Children whose test shows the presence of sugar, blood, more than 1+ albumin, or pH of more than 7.0 should have a complete urinalysis. Most children with abnormal screening urine tests will be found normal on careful retesting.

(7) The State health department, local board of health, the pediatric consultant, and the health advisory committee provide information to ascertain whether sickle cell anemia, lead poisoning, and intestinal parasites are community health problems or specific health problems in the population you serve. Problems such as head lice can also be dealt with in this manner.

(8) Staff should check medical records and consult with parents on child's current immunization status regarding diphtheria, pertussis, tetanus, measles, polio, German measles, and mumps.

(9) Many children talk very little during a medical examination, and the physician is in a poor position to judge the adequacy of their speech. Efficient screening of very young children can be done quickly and informally by having children talk about stimulus pictures, repeat key words containing a variety of speech sounds, and relate oral in-
(10) Identification of the special needs of handicapped children.

formation spontaneously. In general, remedial speech services should be provided only where conditions exist which suggest that, without attention, a handicapping disorder will continue into late childhood.

The teachers in the Head Start center should make note of any children in their class whose speech is substantially different from that of the average Head Start child. These observations should be available to the physician at the time of the examination. The physician then makes special evaluations of the ears, palate, and larynx, and may be able to give advice as to whether the speech pattern is normally immature or is pathological for the child. Whenever speech and hearing professionals are available to the Head Start program, they should work in cooperation with the physician and teacher in detecting, examining, and evaluating speech abnormalities.

Every language community or geographic area has certain differences from so-called standard speech in pronunciation, vocabulary, and grammar. It should be recognized that a sizeable number of pre-schoolers have unclear speech due to immature articulation patterns and will mature and develop normally if they receive the necessary developmental services. Therefore, a child who may speak a language other than English or ethnic colloquialisms should not be regarded as speech impaired.

The health advisory committee should develop this procedure including the utilization of speech and hearing professionals and outlining a schedule for checking suspect speech abnormalities.

Services include speech and language development, clinical services, and parent counseling services.

(10) Special needs of handicapped children can be identified from the screening and physical examination results, parent interviews, and teachers' and mental health professionals' observations.

When screening identifies a child who may require a more complete professional evaluation for handicapping conditions, the Health Coordinator should refer the child to the Handicap Coordinator who is responsible for arranging for diagnostic evaluations. Cooperation between the Health and Handicap Coordinators is essential to the identification of the special needs of handicapped children.

The plan to provide for these special needs could include modification of the physical facility, modification of the curriculum, development of
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(c) Medical examinations for children shall include:

(1) Examination of all systems or regions which are made suspect by the history or screening test.

(2) Search for certain defects in specific regions common or important in this age group, i.e., skin, eye, ear, nose, throat, heart, lungs, and groin (inguinal) area.

(d) The plan shall provide, also, in accordance with local and State health regulations that employed program staff have initial health examinations, periodic check-ups, and are found to be free from communicable disease; and that volunteer staff be screened for tuberculosis.

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new or different feeding skills, and continuation of special medical care.

A number of children may be receiving a predetermined set of screening services through public health clinics, neighborhood health centers, or Title XIX Medicaid Early and Periodic Screening, Diagnosis and Treatment, etc. If this set of screening services does not include all of those screenings herein required in the Performance Standards, Head Start must see that these screenings are provided.

(c) An undressed physical examination/assessment which includes blood pressure reading should be performed every two years beginning at age three.

NOTE: Physical examinations, hearing and vision tests need not be performed for enrolled children who have had these screenings within the required periodicity schedule and the program has records of the results.

(d) Staff and volunteers with respiratory infections, skin infections, or other types of communicable diseases should not have contact with the children.

Depending on conditions in the community, tuberculin testing, miniature chest X-rays or full-size chest films may be the most economical forms of screening.

Tuberculin screening is not necessary for the occasional volunteer.

§ 1304.3-4 Medical and dental treatment.

(a) The purpose of all examinations and screening tests is to identify children in need of treatment. Examinations which do not lead to needed remedial or rehabilitative treatment represents a waste of time and money.

A person on the staff should assume responsibility for assuring that all health defects discovered actually receive competent and continuing care until they are remedied or until a pattern of continuing care for them has been well established. This should include:

Aid for the parent to find the necessary services and to find funds to pay for the services.

Assistance so that the parent and child actually have transportation to the physician or clinic, and that other children in the family can be cared for during the visit. Community resources should be used for these services.
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(1) Obtaining or arranging for treatment of all health problems detected. (Where funding is provided by non-Head Start funding sources there must be written documentation that such funds are used to the maximum feasible extent. Head Starts funds may be used only when no other source of funding is available).

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Careful and repeated review of health records to assure that recommended treatment is actually taking place and plans are developed to ensure necessary treatment and follow-up.

(1) Medical and dental treatment should be completed at the end of the operating year. If completion is not possible, a system must be in place for continuing the treatment after the child leaves the program.

The program should coordinate and supplement existing resources for health care of children; it should not duplicate them. When existing service programs do not meet the standards because of inaccessibility, unacceptability, or poor professional quality, funds may be used to supplement the existing services and bring them to standard.

Head Start funds should be used only after all community resources and third party payments for which each child is eligible have been used. Only if existing services cannot be modified should new services be arranged or purchased.

Every community will have available many of the resources listed in the following table. The program may contract with existing agencies to provide some or all of the health services:

1. Private Practitioners of Medicine, Dentistry, Optometry, Psychology—individual or group.
   1. May provide all types of health services (consultation and planning, administrative, examinations and screening tests, treatment, immunization, health education, and continuing health supervision) on a volunteer, contract, or fee-for-service basis.

2. Health Departments—city, county, regional, or State.
   2. May provide all types of health services. Some may be free or contracted for all or some Head Start children. May provide funds to purchase services from other sources.

3. School Health Programs.
   3. Same possibilities as Health Department.

4. Clinics—run by hospitals, medical schools, or other agencies.
   4. May provide all types of health services, usually on contract or fee-for-service, but some services may be free for all or some Head Start children.

5. Prepaid Medical Groups.
   5. May provide complete range of services to children of members of group.

6. Armed Forces Medical Services.
   6. May provide medical preventive, diagnostic, and treatment services to children of Armed Forces personnel. Dental services available only at remote posts.
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7. Community Health Centers. 7. May provide comprehensive health services at no cost to Head Start for children living in geographically defined neighborhoods served by centers.

8. Comprehensive Child Health Centers (Example: Children and Youth Programs). 8. May provide comprehensive health services at no cost to Head Start children who are in the defined population served by the center.


10. Special Voluntary and Public Agencies. 10. May provide funds or services for screening or treatment and rehabilitation of certain health problems. Each is usually concerned with a single category of illness.

11. State Crippled Children’s Programs. 11. May provide funds for services for screening or treatment and rehabilitation of certain health problems. Limited to certain categories of illness which vary from State to State and within States.

12. Local and State Welfare or Public Assistance Programs. 12. May provide funds for any or all health services for children whose families receive or are eligible for public assistance. Eligibility and type of service paid for vary by State and locality.

13. Insurance and Pre-Payment Plans. 13. Provide payment for certain kinds of health services for children of families covered by policies.

14. Medical Assistance under Title XIX “Medicaid Early and Periodic Screening, Diagnosis and Treatment (EPSDT).” 14. The majority of Head Start children are eligible for Medicaid EPSDT. This provides preventive health services for eligible Medicaid children through screening, diagnosing and treating children with health problems. Exact services provided and paid for and rules for eligibility vary from State to State. At this time, Arizona does not participate in Title XIX.

SOME SPECIAL HEALTH AGENCIES WHICH MAY HELP WITH HEAD START HEALTH SERVICES

Catholic, Protestant, Jewish Welfare Associations. Money for health and social services.

Family Service Associations. Psychological, psychiatric and social services.

Lions Club. Eyeglasses for needy children.

Other fraternal organizations, Civic Clubs, Women’s Clubs, and Parent-Teachers Associations. Money or volunteer help for special projects.
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Associations for the blind or for prevention of blindness.

Vision screening, special services for vision-impaired children.

Associations for retarded children, cerebral palsy, crippled children and for children with special diseases.

Special services for retarded and handicapped children.

Tuberculosis Associations.

Tuberculin testing and follow-up

Mental Health Associations.

Psychological and social services, mental health consultations.

Resources need not be utilized solely because they are free. The utilization of community resources should be consistent with the Head Start goal of enhancing the sense of dignity and self-worth within the child and his/her family.

Ideally, each child should be examined by a private physician or by health facility staff who will institute corrective treatment for all defects discovered and who will also provide continuing health supervision for the child during the time that he/she is in Head Start and over the years to follow. One of the central goals of the Head Start program is to introduce the children and parents to a physician or health facility that will be able to meet all of their health needs over an extended period of time.

(2) Completion of all recommended immunizations—diphtheria, pertussis, tetanus (DPT), polio, measles, German measles. Mumps immunization shall be provided where appropriate.

(2) Immunization instructions:

(a) "complete" immunization is defined as follows:

(i) DPT—five doses of DPT (Diphtheria, Pertussis, Tetanus) vaccine.

(ii) Polio—at least four doses of trivalent oral vaccine or three doses of monovalent oral vaccine plus one dose of trivalent vaccine.

(iii) Rubeola/Measles—one dose of live measles vaccine. Naturally occurring measles provides complete immunity.

(iv) Rubella/German Measles—one dose of live Rubella vaccine or serologically documented immunity.

(v) Mumps—where mumps vaccine is part of a combined vaccine it is appropriate for use in the immunization program. Naturally occurring mumps provides complete immunity.

Refer to ACYF Information Memorandum 84-5 for the ages at which children should receive each dose.

(3) Dental providers should be made aware of the basic dental care services required by Head Start.

Arrange for basic dental care services with dentists who are accessible and available. Choose a dentist who is sensitive to the dental needs of Head Start families. "Fear of the dentist" is a common phenomenon that may be prevalent in Head Start children and families who have not received regular dental care. A considerate dental provider can help alleviate anxieties associated with visits to the dental provider.

A dental screening should be performed. The purpose of the dental screening is to check the
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(i) Dental examination.

(ii) Services required for the relief of pain or infection.

(iii) Restoration of decayed primary and permanent teeth.

(iv) Pulp therapy for primary and permanent teeth as necessary.

(v) Extraction of non-restorable teeth.

(vi) Dental prophylaxis and instruction in self-care oral hygiene procedures.

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child's mouth for readily observable oral health problems in order to establish priorities/categories for the subsequently required dental examination and dental treatment as needed. A dental screening is a general cursory inspection of the mouth. It may be performed by a dentist, dental student, dental hygienist, dental assistant or trained staff member.

Priorities/categories are as follows:

(1) Children who have special needs requiring immediate attention, i.e. painful teeth and/or gums, badly decayed teeth/obvious large cavities, swelling and bleeding or pus formation around the gums.

(2) Children with observable decayed teeth/cavities.

(3) Children with no observable disease who require a dental examination and any necessary preventive dental care services.

(i) The annual dental examination by a dentist is an oral diagnostic procedure which should include diagnostic radiographs (x-rays) only if the dentist determines that they are absolutely necessary. This examination should be performed within 90 days of the child's entrance into the program.

(ii) Services required for the relief of pain or infection.

(iii) Restoration of decayed primary and permanent teeth.

(iv) Pulp therapy for primary and permanent teeth as necessary.

(v) Extraction of non-restorable teeth.

(vi) Dental prophylaxis and instruction in self-care oral hygiene procedures.

(vii) Self-care oral hygiene procedures should be emphasized daily as part of the classroom experience. Supervised toothbrushing should be part of classroom teaching. This may take place after meals or at any appropriate time during the class day. A child-sized toothbrush with soft, nylon bristles should be available for each child. A pea-sized dab of fluoridated toothpaste should be used on the toothbrush. Dental flossing should be done by a parent or Head Start staff who has been shown how to correctly floss the child's teeth. It is also appropriate and necessary for the parent to brush the child's teeth at home during the preschool years. Parental involvement and example is essential for the child to form proper self-care oral hygiene habits.

Not all children will need a professional dental prophylaxis.
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(vii) Application of topical fluoride in communities which lack adequate fluoride levels in the public water supply.

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(vii) All children should receive the proven dental health benefits of fluoride. Fluoridation benefits occur most ideally if the community water supply is fluoridated adequately. The local, county, or State health department; or local, county, or State dental association; or the U.S. Public Health Service dental consultant should be contacted to determine the adequacy of community water fluoride levels. It is important to know if fluoride is or is not present naturally in the community water supply or in well water. If the community water supply lacks optimal fluoride levels, a fluoride supplement program should be implemented. A fluoride supplement program is usually a daily regimen of prescription fluoride tablets for the children. You can receive needed professional assistance in the fluoridation effort from the dentist who serves the program, or from: the U.S. Public Health Service dental consultant, the dental or medical professional on the health services advisory committee, the local pediatrician, or the health departments and dental associations mentioned above.

Application of topical fluoride is also appropriate in communities which do not have adequately fluoridated water supplies. In addition, even in those communities with adequately fluoridated water, children with rampant caries will benefit from topical application. The dentist can best make this determination.

Another beneficial dental health measure is the selective use and application of dental sealants, particularly for the older children in the program. A dental sealant is a plastic adhesive film material which is applied by the dental professional to the chewing surfaces of selected molar teeth to prevent dental decay. The dentist can best determine during the dental examination if dental sealants are indicated for a particular child. Programs are encouraged to ask the dentist and/or the dental consultants listed above, for information in regard to dental sealants.

(b) A plan should be developed with the parents to provide for emergency medical and dental care for their child. Written policy should deal with issues such as parental permission and consent forms to secure emergency care, transportation and available physicians/dentists, clinics and hospitals. A community physician/dentists, clinic or nurse should be available for telephone consultation at all times.

At least one member of the full-time staff should be knowledgeable or become trained in first aid.

(b) There must be a plan of action for medical and dental emergencies.
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§ 1304.3-5 Medical and dental records.

The plan shall provide for: (a) the establishment and maintenance of individual health records which contain the child's medical and developmental history, screening results, medical and dental examination data, and evaluation of this material, and up-to-date information about treatment and follow-up; (b) forwarding, with parental consent, the records to either the school or health delivery system or both when the child leaves the program; and (c) giving parents a summary of the record which includes information on immunization and follow-up treatment; and (d) assurance that in all cases parents will be told the nature of the data to be collected and the uses to which the data will be put, and that the uses will be restricted to the stated purposes.

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The health records should be used for: (1) identifying needed preventive and corrective care, (2) arranging for such care, and (3) providing an educational program suited to the individual child.

To aid the individual child, the record must completely and concisely, summarize health findings as determined from the history, screening tests, and medical and dental evaluation and must record all preventive measures in a way that clearly shows which recommended preventive measures have not yet taken place.

Whenever a child is referred for consultation or treatment, all of the information in the health record should be made available to the consulting or treating professional. If this is not done, the consultant must either obtain and record his own information, an unnecessary waste of time and effort, or proceed without such information, with possible ill effects for the child.

To aid physicians, dentists and health workers in providing needed health care, the record must provide a sufficient background of social, medical, and educational information of a general nature so that each health professional dealing with the child need not accumulate his own record and history.

To serve the educational needs of the child, health findings must be translated into classroom recommendations. This process should begin at the time the original health diagnoses are made. It must then be elaborated both by further written recommendations and by conferences between physicians, teachers, nurses, and other health personnel.

Following medical and dental examinations, a copy of the treatment plan, if needed, should be part of the child's health record. In addition, records should indicate the progress in completing treatment for all conditions in need of follow-up as a result of screenings, medical and dental examinations.

The Health Data Tracking Instrument (HDTI) should be used in the programs to see the individual child's health status. It is useful in identifying health services performed or yet to be done, follow-up (referral or treatment) needed and/or completed. The HDTI is available from the Head Start Bureau, Box 1182, Washington, D.C. 20013.

Records should indicate the progress in completing treatment for all conditions in need of follow-up as a result of screenings and medical examinations.

In order to be useful to health workers and individual children, the health records must contain a
§ 1304.3-6 Health education.

(a) The plan shall provide for an organized health education program for program staff, parents and children which ensures that:

(1) Parents are provided with information about all available health resources;

(2) Parents are encouraged to become involved in the health care process relating to their child. One or both parents should be encouraged to accompany their child to medical and dental exams and appointments;

(3) Staff are taught and parents are provided the opportunity to learn the principles of preventive health, emergency first-aid measures, and safety practices;

(b) Health personnel should devote a substantial amount of time in helping the Head Start staff and parents understand the implications of health findings for individual children, and for the program in general. Regularly scheduled consultations between the physician and the teachers are suggested for this purpose.

(1) A local health resource booklet or pamphlet should be prepared for distribution to parents. The information ought to be categorized by services.

(2) Parents can learn about health as a continuing process and not just as a physical and dental examination if they accompany the child to the examination.

(3) Procedures should outline measures to be taken in medical and dental emergencies at the center and in home. Preventive health topics can include prenatal and postnatal health, immunizations, sanitation, accident prevention, hazards of toxic lead paint, first-aid for cuts, bruises, insect bites, burns, prevention of dental cavities, use of fluorides and other specific community health problems.

Staff should be aware of common health practices in their community.
HEALTH

PERFORMANCE STANDARDS

(4) Health education is integrated into ongoing classroom and other program activities.

(5) The children are familiarized with all health services they will receive prior to the delivery of those services.

§ 1304.3-7 Mental health objectives.

The objectives of the mental health part of the health services component of the Head Start program are to:

(a) Assist all children participating in the program in emotional, cognitive and social development toward the overall goal of social competence in coordination with the education program and other related component activities;

(b) Provide handicapped children and children with special needs with the necessary mental health services which will ensure that the child and family achieve the full benefits of participation in the program;

(c) Provide staff and parents with an understanding of child growth and development, an appreciation of individual differences, and the need for a supportive environment;

(d) Provide for prevention, early identification and early intervention in problems that interfere with a child's development;

(e) Develop a positive attitude toward mental health services and a recognition of the contribution of psychology, medicine, social services, education and other disciplines to the mental health program; and

GUIDANCE

(4) The most important health education activity of a program is the example it sets by providing each child with pleasant, dignified, individualized care within the health program. Parents learn from the emphasis placed on careful examinations, immunizations, dental care, and other health measures that such health activities are important for their children.

Parents' participation in classroom activities and in the health care process related to the child (screening, examinations) can be an effective method of health education for the entire family.

Teachers should integrate health into the curriculum and daily activities of the children.

(5) Health education can build on the health services program in another way. Each screening test, immunization, and examination can be discussed in the classroom. This will serve both to prepare the children for an unusual experience and to give them a new knowledge about how each of these measures can contribute to their health.

Children love to act out the experiences they have had with the doctor or nurse.

These are the outcomes toward which the program efforts should be directed.
PERFORMANCE STANDARDS

(f) Mobilize community resources to serve children with problems that prevent them from coping with their environment.

§ 1304.3-8 Mental health services.

(a) The mental health part of the plan shall provide that a mental health professional shall be available, at least on a consultation basis, to the Head Start program and to the children. The mental health professional shall:

(1) Assist in planning mental health program activities;

(2) Train Head Start staff;

(3) Periodically observe children and consult with teachers and other staff;

GUIDANCE

(a) A mental health professional is a child psychiatrist, a licensed psychologist, or a psychiatric nurse or psychiatric social worker. Both the psychiatric nurse and psychiatric social worker should have experience in working with young children. A mental health aide may be a member of the mental health team provided the aide is under the supervision of one of the above professionals.

A mental health professional may be secured from a mental health center in the geographical areas, the school system, a university, or other appropriate vendors capable of providing comprehensive mental health services.

(1) The mental health professional should meet with the Head Start Director, the coordinator responsible for mental health services, and representative parents to assist in developing a plan for delivery of mental health services.

The planning should focus on the setting of priorities according to program needs and availability of trained personnel and resources.

Mental health program activities include:

- pre-service and in-service training of teachers and aides;
- consultation with teachers and teachers' aides;
- work with parents;
- screening, evaluation, and recommendations for intervention for children with special needs.

The mental health professional should meet annually with appropriate staff and parents to assist in evaluation of objectives of the plan and to assist in revision of objectives for the following year.

(2) Be involved in the assessment of mental health training needs, in designing the mental health training program, in the selection of trainers, and evaluating staff members' progress.

Provide information which will help staff members better understand normal development as well as the more common behavior problems seen in children.

Training should include observation techniques and methods in meeting the assessed needs of the child.

(3) The mental health professional can provide practical advice and help to the teaching staff by
HEALTH

PERFORMANCE STANDARDS

(4) Advise and assist in developmental screening and assessment;

(5) Assist in providing special help for children with atypical behavior or development, including speech;

(6) Advise in the utilization of other community resources and referrals;

(7) Orient parents and work with them to achieve the objectives of the mental health program; and

GUIDANCE

observing the children in their physical surroundings at least semi-annually.
Teachers can share their information, ideas, and suggestions about the children.

(4) Advise and assist staff in devising a process for screening children with atypical behavior, and in evaluating children needing further assessment. In addition, the mental health professional will train or assist in obtaining training for teachers in use of behavior checklists and other screening instruments.

Classroom observation and screening should be initiated within the early weeks of class attendance and then continued on a periodic basis—as considered necessary by staff and/or mental health professional.

Included in screening and evaluation are:

• Physical coordination and development;
• Intellectual development;
• Sensory development with special emphasis on sensory discrimination;
• Emotional development;
• Social development.

(5) Advise and assist in provision of special services for children with atypical behavior or development, including language and speech.

Through staff conferences, practical recommendations may be generated when working with the child with special needs. For example, the use of games aimed at increasing the child's verbal expression, how the staff may work with the overly shy or overly aggressive child, and how to curb impulsive behavior.

(6) The mental health professional should have a working knowledge of mental health resources in the community in order to assist in development of a file of community resources, including referral procedures and documentation of their use. Examples of such resource agencies include child guidance clinics, community mental health centers, psycho-educational clinics, and State or county children's services.

(7) Orient parents and work with them to achieve the objectives of the mental health program, including advising parents on how to secure assistance on individual problems, assisting center staff in developing an ongoing education in mental health for parents, and evaluating the effectiveness of the parent mental health education program.
PERFORMANCE STANDARDS

(8) Take appropriate steps in conjunction with health and education services to refer children for diagnostic examination to confirm that their emotional or behavior problems do not have a physical basis.

(b) The plan shall also provide

(1) attention to pertinent medical and family history of each child so that mental health services can be made readily available when needed;

(2) use of existing community mental health resources;

(3) coordination with the education services component to provide a program keyed to individual developmental levels;

(4) confidentiality of records;

(5) regular group meetings of parents and program staff;

GUIDANCE

The mental health professional should help parents to recognize a variety of ways in which they can further their children's intellectual, emotional, and social development at home. This may be accomplished through individual or group meetings.

(8) When a child is referred for emotional or behavioral problems, a physical examination should be included in the assessment in order to rule out a physical cause for the mental health problem which can be treated.

(1) The assessment of each child's medical records, family history and home visits by appropriate coordinators and teachers, for information, will indicate if the child or his family may need additional assistance from the mental health program. A plan for follow-through will be written for each child whose medical and/or family history and/or home visit suggests a potential for emotional or behavioral problems. The plan should include objectives to be evaluated monthly.

(2) Procedures for utilizing existing community mental health resources including specified contact persons. These procedures should be developed in conjunction with the mental health professional for identifying and contacting resources.

(3) The mental health professional and the educational coordinator should work closely with each teacher and the parents in designing an education program for each child based on his developmental level and in training teachers to be able to do such program planning.

Conferences should be held periodically with the staff to discuss particular children who have been identified as needing special help. The mental health professional should share ideas and suggestions with staff on helping the child benefit from the program.

(4) Only authorized persons should be permitted to see the records. Parents and staff should jointly decide if such records are forwarded to the school system.

(5) Periodic group meetings at least quarterly, between parents and staff can be used for identifying and discussing child development, discipline, childhood fears, complex family problems, and other parental and staff concerns. A mental health professional should be present at these sessions periodically.
HEALTH

PERFORMANCE STANDARDS

(6) parental consent for special mental health services;

(7) opportunity for parents to obtain individual assistance; and,

(8) active involvement of parents in planning and implementing the individual mental health needs of their children.

GUIDANCE

(6) There must be a written consent from the parent for special mental health service. A standard "informed consent" form should be used and should include the following: the name of the child, the name of the service provider, a description of the services to be provided, and the date the form was signed.

(7) Opportunities should be provided for parents to discuss individual problems of the child or the family with the mental health professional. This can be done on an appointment basis.

(8) There should be a parent orientation meeting to explain the mental health program and the available services. Ideally, the mental health professional should conduct this meeting. Parents should be involved in developing and evaluating the mental health program.
PERFORMANCE STANDARDS

§ 1304.3-9 Nutrition objectives.

The objectives of the nutrition part of the health services component of the Head Start program are to:

(a) Help provide food which will help meet the child's daily nutritional needs in the child's home or in another clean and pleasant environment, recognizing individual differences and cultural patterns, and thereby promote sound physical, social, and emotional growth and development.

(b) Provide an environment for nutritional services which will support and promote the use of the feeding situation as an opportunity for learning;

(c) Help staff, child and family to understand the relationship of nutrition to health, factors which influence food practices, variety of ways to provide for nutritional needs and to apply this knowledge in the development of sound food habits even after leaving the Head Start program;

(d) Demonstrate the interrelationships of nutrition to other activities of the Head Start program and its contribution to the overall child development goals; and

(e) Involve all staff, parents and other community agencies as appropriate in meeting the child's nutritional needs so that nutritional care provided by Head Start complements and supplements that of the home and community.

§ 1304.3-10 Nutrition services.

(a) The nutrition services part of the health services component of the performance standards plan must identify the nutritional needs and problems of the children in the Head Start program and their families. In so doing account must be taken of:

GUIDANCE

(a) The intended purpose of the written plan is to develop a system to:

• identify the problem areas and needs that must be addressed related to nutrition;
• meet total needs including providing the overall high quality feeding and nutrition education program expected for children, and
• bring parents and staff to a level of understanding and involvement in the area of nutrition to enable them to meet their various appropriate responsibilities.

It should be designed for the agency to use to develop and provide a high quality nutrition component and does not have to be elaborate.

The ACYF Handbook for Local Head Start Nutrition Specialists can provide additional guidance to the professional staff responsible for developing the written plan.
NUTRITION

PERFORMANCE STANDARDS

(1) The nutrition assessment data (height, weight, hemoglobin/hematocrit) obtained for each child;

(2) Information about family eating habits and special dietary needs and feeding problems, especially of handicapped children; and,

(3) Information about major community nutrition problems.

GUIDANCE

The Handbook is available from the Head Start Bureau, P.O. Box 1182, Washington, D.C. 20013.

(1) These data should be available from the child's current health evaluation record or his medical history record. Height and weight measurements should be plotted on growth charts. Measurements should be taken twice, at the beginning and the second time toward the end of the year. Other pertinent information can be obtained from the medical and dental records.

Underheight/underweight children may need additional food provided at the center along with follow-up at home.

Overweight children need follow-up to identify the specific factors involved in the weight problem and realistic interventions consistent with good child growth and development practices both at the center and at home.

Children with anemia and similar medical nutrition problems need specific diagnoses and follow-up. A child with a hemoglobin of less than 11 or hematocrit of less than 34 is considered to be anemic. This is consistent with the standards of Public Health Service, Maternal and Child Health and with CDC National Nutrition Status Survey as well as EPSDT guidance material.

Children with unresolved nutrition-related needs should be referred to appropriate agencies who have continuing contact with the child for follow-up after the child leaves Head Start.

(2) This information should be obtained by talking with parents early in the year. The interviewer should receive orientation and training on how to conduct such interviews from a nutritionist.

The information will be used to assure that the many good aspects of the family eating patterns are reinforced through food served in the center; that special dietary needs are met at the center; and that this information will be considered in developing a nutrition plan with families.

(3) Information about major community nutrition related problems may be obtained from the demographic characteristics of the target group such as family income, educational level, racial and ethnic composition, and from the quality of the local food and water supply such as availability of fluoridated water, etc. The State and local health department nutritionists are helpful in obtaining such information. The information should be used for developing the applied aspects of the nutrition program by determining the need for food supplementation, fluoridation of water, iodized salt, control of sale of
(b) The plan, designed to assist in meeting the daily nutritional needs of the children, shall provide that:

(1) Every child in a part-day program will receive a quantity of food in meals (preferably hot) and snacks which provides at least 1/3 of daily nutritional needs with consideration for meeting any special needs of children, including the child with a handicapping condition;

(b) The child's total daily nutritional needs should be supplied by the food served in the home, complemented by the food served at the center.

(1) The Recommended Dietary Allowance of the National Research Council, National Academy of Sciences are used as the basis for establishing the nutritional needs of the child. Calculations of nutrients in food served can be compared to the Recommended Dietary Allowances as a cross-check in assuring that one-third of the nutrient needs are met.

To meet one-third of the daily nutritional needs, use the lunch or supper pattern or a breakfast plus a snack pattern. If breakfast is served rather than a lunch it should contain a protein food in addition to milk, bread or cereal. In addition, the snack served must also be carefully planned to add fruit or vegetable and probably milk in order to meet the remaining nutrient needs.

Use of cycle menus (3 weeks or longer) are helpful in formulating balanced and varied menus and in planning purchasing orders and work schedules. Include hot and cold foods and variety in colors, flavors and textures. Seasonal foods and USDA donated commodities should be fully utilized to keep food costs down. Check children's acceptance of food items on menu periodically and make changes accordingly.

Menus should be dated and posted in the food preparation area as well as in the dining area. The food items should be identified by the kind of food not just the category of food group; for example, specify orange juice rather than fruit juice. All substitutions must be indicated on the menus.

Choose foods for meals and snacks that contribute not only to the child's nutrient needs but also to good dental health and support the dental education program. Do not serve overly sweet and sticky foods especially those high in refined sugars.

Children do not need salt added to their food. Reduce the salt in cooking and at the table. It will be beneficial to adults as well as children in helping to prevent hypertension.

Wherever possible reduce the amount of fat in recipes, and in food preparation.

The nutrient needs of handicapped children are the same as for other children. However, due to difficulties in chewing or swallowing or lack of feeding
NUTRITION

PERFORMANCE STANDARDS

(2) Every child in a full-day program will receive snack(s), lunch, and other meals as appropriate which will provide ½ to ⅔ of daily nutritional needs depending on the length of the program;

(3) All children in morning programs who have not received breakfast at the time they arrive at the Head Start program will be served a nourishing breakfast;

(4) The kinds of food served conform to minimum standards for meal patterns;

GUIDANCE

skills the texture and consistency of the foods may need to be modified. In other conditions which require modification of the menu such as in food allergies, digestive or metabolic disturbances, etc., this information should be part of the child's health record and a physician's prescription must be kept on file at the center and at the food preparation site and updated periodically. A qualified nutritionist should help plan for meeting these needs.

General use of special dietary foods such as vitamin fortified modified milk products either as snacks or as meal supplements are not allowed. They are not in keeping with Head Start nutrition program goals of (1) providing needed nutrients through well planned meals, (2) providing a variety of food and eating experiences, and (3) providing opportunities for children to participate in menu planning and wherever possible in simple food preparation and selection, (4) reinforcing cultural and ethnic practices found in the children's homes.

(2) To meet ⅔ of the child's nutrient needs will necessitate the use of the lunch or supper pattern plus breakfast and a snack or plus two well planned snacks, one of which contains milk.

(3) Since it is virtually impossible for small children to meet their nutrient needs without having 3 meals a day, breakfast is required to be available at the center for children who have not had it at home. Breakfast should be served immediately upon arrival of the child at the center. If only a small number of the children arrive without breakfast, concentrate on supplementing the snack with simple additional foods to meet the breakfast pattern and serve the snack early. All children should then have access to this. If a majority of the children come without breakfast, it may be simpler to serve breakfast to all children. Cake rolls, pastries, doughnuts, sugar-coated cereals, etc., because of their high sugar content, are not recommended.

(4) Meal Patterns

Snacks should be planned to supplement nutrient needs not met in the meals. Menus developed from the pattern can include cultural foods. For example, at lunch the meat substitute, vegetable and bread could be made into an enchilada, taco or burrito using the meat or cheese or bean, tomatoes or tomato sauce and onion and an enriched corn or flour tortilla.

Protein-rich foods are meat, poultry, fish, eggs, cheese, peanut butter, dried peas and beans.
### Meal Patterns*

<table>
<thead>
<tr>
<th>Meal</th>
<th>Children 1 up to 3 years</th>
<th>Children 3 up to 6 years</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Breakfast</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Milk, fluid</td>
<td>1/2 cup</td>
<td>3/4 cup</td>
</tr>
<tr>
<td>Juice or fruit or vegetable</td>
<td>1/4 cup</td>
<td>1/2 cup</td>
</tr>
<tr>
<td>Bread and/or cereal, enriched or whole grain</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bread or</td>
<td>1/2 slice</td>
<td>1/2 slice</td>
</tr>
<tr>
<td>Cereal: Cold dry or Hot cooked</td>
<td>1/4 cup</td>
<td>1/4 cup</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Midmorning or midafternoon snack (supplement)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Select 2 of these 4 components)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Milk, fluid</td>
<td>1/2 cup</td>
<td>1/2 cup</td>
</tr>
<tr>
<td>Meat or meat alternate</td>
<td>1/2 ounce</td>
<td>1/2 ounce</td>
</tr>
<tr>
<td>Juice or fruit or vegetable</td>
<td>1/2 cup</td>
<td>1/2 cup</td>
</tr>
<tr>
<td>Bread and/or cereal, enriched or whole grain</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bread or</td>
<td>1/2 slice</td>
<td>1/2 slice</td>
</tr>
<tr>
<td>Cereal: Cold dry or Hot cooked</td>
<td>1/4 cup</td>
<td>1/4 cup</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Lunch or supper</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Milk, fluid</td>
<td>1/2 cup</td>
<td>3/4 cup</td>
</tr>
<tr>
<td>Meat or meat alternate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Meat, poultry, or fish, cooked (lean meat without bone)</td>
<td>1 ounce</td>
<td>1 1/2 ounces</td>
</tr>
<tr>
<td>Cheese</td>
<td>1 ounce</td>
<td>1 ounce</td>
</tr>
<tr>
<td>Egg</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Cooked dry beans and peas</td>
<td>1/4 cup</td>
<td>3/8 cup</td>
</tr>
<tr>
<td>Peanut butter</td>
<td>2 tablespoons</td>
<td>3 tablespoons</td>
</tr>
<tr>
<td>Vegetable and/or fruit (two or more)</td>
<td>1/4 cup</td>
<td>1/2 cup</td>
</tr>
<tr>
<td>Bread or bread alternative, enriched or whole grain</td>
<td>1/2 slice</td>
<td>1/2 slice</td>
</tr>
</tbody>
</table>

1  1/4 cup (volume) or 1/3 ounce (weight), whichever is less.
2  1/3 cup (volume) or 1/2 ounce (weight), whichever is less.
3  3/4 cup (volume) or 1 ounce (weight), whichever is less.

* A Planning Guide for Food Service in Child Care Centers, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22332.

Fruit drinks and beverages made from fruit-flavored powders or syrups should not be used routinely. They do not contain many of the vitamins and minerals found in natural juices, and are high in sugar.

Bread includes tortillas, cornbread, rolls, muffins, bagel, fried bread, flat bread, etc., made of whole grain or enriched flour. Use whole grain breads and cereals often.

“Milk” should meet State and local standards. For the preschool child milk may be whole milk, buttermilk, or skim milk, if the child is gaining too much weight.
PERFORMANCE STANDARDS

(5) The quantities of food served conform to recommended amounts indicated in ACYF Head Start guidance materials; and,

(6) Meal and snack periods are scheduled appropriately to meet children’s needs and are posted along with menus; e.g., breakfast must be served at least 2½ hours before lunch, and snacks must be served at least 1½ hours before lunch or supper.

GUIDANCE

For the infant the use of skim milk or reduced fat milk isn’t recommended. The calories from fat are needed by the infant to help provide the high energy needs and to maintain a desirable rate of weight gain.

Raw vegetables contain larger amounts of vitamin C than cooked vegetables. Include both raw and cooked fruits and vegetables in the menu.

A good to excellent source of vitamin C should be served daily. Fruits and vegetables that are good to excellent sources of vitamin C are listed below:

*Excellent:* Orange, orange juice, grapefruit, grapefruit juice, broccoli, collards, cantaloupe, raw tomato and raw strawberries.

*Very Good:* Mustard, beet and turnip greens, kale, cauliflower, chard, tangerine, and tomato juice.

*Good:* Spinach, raw green pepper, dandelion greens, raw cabbage.

A dark yellow or leafy green vegetable should be served every other day to provide vitamin A. Fruits and vegetables that are good to excellent sources of vitamin A are:

Sweet potatoes, carrots, pumpkin, broccoli, winter squash, apricots, peaches, tomatoes, cantaloupe, dark green leafy vegetables: beet and turnip greens, spinach, kale, collard, etc.

(5) See page 42 for suggested size servings.

Quiet time should be scheduled before the meal so the children come to the table relaxed and ready to eat. Regularity in times of serving meals and snacks and the following of a daily routine help young children to establish good habits. Proper spacing of meals allows time for the child to be hungry enough to eat. Time should be allowed after meals for activities such as toothbrushing, handwashing, etc. This is especially important when the meal is served just before the children go home.

(c) Mealtimes should promote the physical, social and emotional development of children. This needs to take place in a quiet, well-lighted and ventilated area.
PERFORMANCE STANDARDS

(1) A variety of foods which broaden the child's food experience in addition to those that consider cultural and ethnic preferences is served;

(2) Food is not used as punishment or reward, and that children are encouraged but not forced to eat or taste;

(3) The size and number of servings of food reflect consideration of individual children's needs;

GUIDANCE

Meal-related activities provide opportunities for decision making, learning to take responsibility, sharing, communicating with others, muscle control and eye-hand coordination. Family style food service supports these efforts.

Food-related activities should be planned within the child's range of abilities. If food is not prepared on-site, special efforts will need to be made to assure that opportunities are available for food preparation activities in the classroom. These will need to be closely coordinated with the planned menus, and food service personnel.

(1) Start with familiar foods which make a child feel comfortable and promote good self-concept. Introduce new foods gradually. Offer a small amount of one new food along with a meal of familiar foods. Children should be prepared for the new food through classroom activities such as reading stories about the food, shopping for the food and helping in its preparation, growing the food or seeing it grow on a farm, etc. Snack time can be used to introduce a new food.

Explore various ways one food item is served in different cultures. For example, the many different types of breads used: tortillas, biscuits, pita (flat bread), bagels, soda bread, etc.

Explore the many ways one food can be prepared. For example: hard and soft cooked egg, fried, poached, coddled, egg salad, deviled, meringue, egg nog, etc.

(2) If a child refuses a food, offer it again at some future time, don't keep pestering the child. Forcing children to eat or using desserts or other food as reward or punishment may create problem eaters and unpleasant or undesirable associations with the food. Remember that all foods offered should contribute to the child's needs, including the dessert. "Clean plate" clubs, stars and other gimmicks to encourage children to eat are not appropriate.

(3) Appetites vary among children and in the same child from day to day. Start with small portions allowing for additional portions as desired. Permitting children to serve themselves gives them latitude to make decisions on the quantity they want and prevents waste. Family style food service is preferred.

Use of preplated meals does not allow opportunity for individualization of serving size, and usually allows little variety, especially in cultural foods.

Serve food in a form that is easy for the young child to manage. Bite-size pieces and finger food are well-liked and suitable for small hands. Meat
NUTRITION

PERFORMANCE STANDARDS

(4) Sufficient time is allowed for children to eat;

(5) Chairs, tables, and eating utensils are suitable for the size and developmental level of the children with special consideration for meeting the needs of children with handicapping conditions;

(6) Children and staff, including volunteers, eat together sharing the same menu and a socializing experience in a relaxed atmosphere; and

(7) Opportunity is provided for the involvement of children in activities related to meal service. (For example: family style service)

GUIDANCE

cut in bite-size pieces, bread, and raw vegetables cut in strips and fruit in sections are easy for children to handle.

(4) Serve children as soon as they come to the table. Slow eaters should be allowed sufficient time to finish their food (about 30 minutes). If children become restless before the meal period is over allow them to get up and move around, i.e., the children can take their plate to a cleaning area away from the table when finished. A leisurely meal time pace should be encouraged.

Some handicapped children may be eating at a different developmental level than the other children. For example, if the 3-year-old child is eating with skills of a 2-year-old, start where the child is and plan with a nutritionist or other therapist for helping the child reach an adequate level of self-feeding skill.

(5) Chairs should be of a size to allow the child's feet to rest on the floor or support should be provided in some way.

Plastic dishes and stainless steel flatware are practical for use with small children. Small plastic glasses or cups (4 oz.) are easy to hold and help avoid spills. Small pitchers can be handled by children for refills.

Children need experience using knives. These should have rounded tips.

If paper plates must be used they should be of sturdy weight so that they do not slide around and so juice does not soak through the surface and make eating difficult.

Use washable tabletops, covers or mats for easy cleaning of spills.

(6) Small groups of 5-7 persons are conducive to conversation and interaction. Interesting and pleasant table conversation centered about children's total experiences (not limited to food and nutrition) should be encouraged. Discourage talk about personal dislike of food. Teachers and other adults should set a good example by their attitude toward acceptance of food served. If the teacher must be on a special diet and cannot eat the same foods as the children, this should be explained to them. Good food habits are "caught rather than taught."

(7) Activities related to meal service include shopping for food, setting the table, serving the food to others or self, cleaning up, making place mats and table centerpieces, etc. Children should be allowed to help with all of these activities.
NUTRITION

PERFORMANCE STANDARDS

(d) The plan shall set forth an organized nutrition education program for staff, parents and children. This program shall assure that:

(1) Meal periods and food are planned to be used as an integral part of the total education program;

(2) Children participate in learning activities planned to effect the selection and enjoyment of a wide variety of nutritious foods;

(3) Families receive education in the selection and preparation of foods to meet family needs, guidance in home and money management and help in consumer education so that they can fulfill their major role and responsibility for the nutritional health of the family;

(4) All staff, including administrative, receive education in principles of nutrition and their application to child development and family health, and ways to create a good physical, social and emotional environment which supports and promotes development of sound food habits and their role in helping the child and family to achieve adequate nutrition.

GUIDANCE

(d) An organized program is based on identified needs and consists of planned activities to meet these needs. Nutrition education helps staff, children and parents increase knowledge, understanding and skills to achieve good nutrition.

(1) Meal periods are part of the flow of the day's activities. Foods serve as objects of observation and conversation for conceptual, sensory, and vocabulary development of children. Food related activities can be used as a means for teaching language arts, color, texture, arithmetic, science, social skills and hygienic practices; however, the primary purpose of these activities is to establish long term sound food habits and attitudes, and the food should be eaten.

There also may be a special nutrition focus in the education program with carry over into the menu and meal time activities. For example, if a trip is planned to an orchard, related emphasis should be placed on the fruit in the menus, meal time conversation, and classroom food preparation experiences.

(2) Examples of learning activities are field trips, tasting parties, food preparation, planting and growing food, reading stories about food; role playing as parents, grocer, making scrap books and exhibits, feeding classroom pets, planning menus to share with parents, etc.

(3) Staff should talk with parents to identify the nutrition information and food needs and develop the plan in response to their specific needs. Parents have much to offer each other.

Many ways can be used for parent involvement in education such as formal and informal presentations, individual counseling by nutritionist, nurse and other staff, attendance at local adult education programs and cook training sessions. Also, parents can participate in menu planning committees and staff can distribute pamphlets, newsletters and employ audio-visual aids.

(4) This education must be appropriate to the specific nutrition-related responsibilities of each staff member. For example, nutrition education for the classroom staff should have a different focus from that of the food service staff or that of the director. The staff training program should be coordinated and integrated with the total staff training and orientation program.
PERFORMANCE STANDARDS

(e) The plan shall make special provision for the involvement of parents and appropriate community agencies in planning, implementing, and evaluating the nutrition services. It shall provide that:

1. The Policy Council or Committee and the Health Services Advisory Committee have opportunity to review and comment on the nutrition services;

2. The nutritional status of the children will be discussed with their parents;

3. Information about menus and nutrition activities will be shared regularly with parents;

4. Parents are informed of the benefits of food assistance programs; and

GUIDANCE

(e) Parents should be encouraged to participate in nutrition program activities such as planning menus and working in classroom nutrition activities, to serve as volunteers or in jobs in food service and in on-going monitoring of the nutrition component.

Parents or members of the community who meet the following requirements should be encouraged to apply for food service positions:

- know how to prepare good food
- are willing to try out new foods
- meet health standards
- have good attitudes toward food
- like being and working with and around children
- are eager and flexible to learn the necessary competencies to carry out the functions required.

Appropriate agencies can provide professional input and resources for training teachers, staff and food service personnel as well as meeting needs of parents. It is important that these agencies understand the Head Start philosophy. Some agencies may be resources for additional funding equipment, food, etc. Examples are local health departments, schools, colleges, hospitals, county Extension Service, USDA, professional and trade organizations (The American Dietetic Association, Dairy Council, American Home Economics Association and Society for Nutrition Education).

1. The health advisory committee and policy council should review the nutrition program plan and advise on specific needs of the program with special reference to addressing identified community nutrition needs.

2. Any problem related to nutritional status identified by teachers' observations of feeding skills and habits should be discussed with parents. A plan to solve the problems should be developed with the parents. Opportunity should be taken to reinforce the positive food habits and good growth pattern of the child.

3. Information can be shared by sending menus to the home, periodic group meetings, parent-staff discussions, home visits, and periodic newsletters. Frequency of these activities will vary from agency to agency.

4. Food assistance programs include food stamps, free or reduced price school breakfast, lunch, and food programs for high risk categories (pregnant mothers, infants, children, the elderly).
PERFORMANCE STANDARDS

(5) Community agencies are enlisted to assist eligible families participate in food assistance programs.

(f) The plan shall provide for compliance with applicable local, State and Federal sanitation laws and regulations for food service operations including standards for storage, preparation and service of food, and health of food handlers, and for posting of evidence of such compliance. The plan shall provide, also, that vendors and caterers supplying food and beverages comply with similar applicable laws and regulations.

GUIDANCE

Contact USDA Child Nutrition Division for materials and information on these programs.
Child Nutrition Division
Food & Nutrition Service
U.S. Dept. of Agriculture
3101 Park Center Drive
Alexandria, Virginia 22302

(5) It is important to assure that families have food. This may involve utilization of emergency food banks, providing transportation to buy food stamps or food, etc.; but it should be remembered that the long term goal is to help families become independent. Work with the social service component on this.

(f) These are established to protect the health and safety of children being fed.

All food service personnel should possess a Health Card or Statement of Health from the local Health Department or physician.

Some States do not send inspectors to check Head Start facilities for compliance with local and State standards. In such a situation, designated program personnel—with knowledge of applicable sanitation laws and regulations or sanitation standards that assure provision of a safe food service should check annually for compliance with these regulations and be responsible for the correction of existing violations. Written evidence of this must be available.

Self-inspection reports should be completed quarterly to assure maintenance of standards.

The following areas should be addressed:

Cleanliness and safety of food before, during and after preparation including maintenance of correct temperature

Cleanliness and maintenance of food preparation, service, storage and delivery areas and equipment

Insect and rodent control

Garbage disposal methods

Dishwashing procedures and equipment

Food handling practices

Health of food service personnel

Water supply

Local or State sanitarians in health agencies can be most helpful in providing ideas on ways to meet sanitation standards.

Evidence must be available that food caterers have met codes. Vehicles used for transporting and holding food must be insulated so food meets temperature standards and transportation equipment must be able to be sanitized.
PERFORMANCE STANDARDS

The plan shall provide for direction of the nutrition services by a qualified full-time staff nutritionist or for periodic and regularly scheduled supervision by a qualified nutritionist or dietitian as defined in the Head Start Guidance material. Also, the plan shall provide that all nutrition services staff will receive preservice and in-service training as necessary to demonstrate and maintain proficiency in menu planning, food purchasing, food preparation and storage, and sanitation and personal hygiene.

GUIDANCE

The services that a nutritionist is expected to provide in developing, implementing and supervising a high quality feeding and nutrition program require a person with at least the minimal amount of nutrition training and experience as follows:

A qualified nutritionist or dietitian is one who (1) meets the educational and training requirements for membership and registration in the American Dietetic Association plus one year of experience in community nutrition including services to children 0-6 or (2) has a baccalaureate degree with a major in foods and nutrition, dietetics or equivalent hours of food and nutrition course work plus two years of experience in community nutrition including services to children 0-6. Required experience could have been concurrent with or a part of training.

A home economist who meets the requirements in item (2) above would also be qualified.

It is important that the same nutritionist be used to establish consistency and continuity in the services. The amount and frequency of supervision needed will depend on the size of the program and the help it needs in coming into compliance with the performance standards. A minimum of 8 hours of services per week per center is suggested. Field experience indicates that grantees with on-site food preparation facilities can effectively use the services of one full time nutritionist for every 5 sites. Grantees providing food from a centralized food preparation facility, including catered or contract services, can use one full time nutritionist for every 10 centers served. Nutritionists, even those meeting the qualifications outlined above should be oriented to the Head Start Performance Standards. Every nutritionist should be provided with the Handbook for Local Head Start Nutrition Specialists which is available from the Head Start Bureau, P.O. Box 1182, Washington, D.C. 20013.

The nutritionist provides the following types of services:

1. Assesses the nutritional status and special needs of children and their families from information provided by the family and from the health records, discussions with nurse, physician, dentist, and from knowledge of community nutrition problems; helps parents and staff in formulating plans for the nutrition program from this information.

2. Provides necessary counseling for parents.

3. Plans the nutrition education program with staff, parents and children. Participates in staff training.

4. Observes performance of food service personnel and provides for an ongoing training pro-
NUTRITION

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gram that will improve or develop competencies to
insure proficiency.

(5) Helps teaching staff plan and provide nutri-
tion-related learning experiences in classroom.

(6) Utilizes community resources in carrying out
the total nutrition program.

(7) Participates in menu planning and review
and takes other steps to assure a high quality feed-
ing program.

(8) Provides the food service unit with direction
in food budgeting, purchasing, storage, prepara-
tion, service, and setting up of efficient record sys-
tems.

(9) Assists in interpreting and meeting health,
sanitation, and safety standards related to nutri-
tion.

(10) Interprets Head Start nutrition service phi-
losophy to peers in other agencies and enlists
skills of such personnel.

(11) Assists in preparation of job descriptions
and schedules in food preparation facility to assure
an efficient food service operation.

(12) Assists in preparation of the budget and
any written plans for the nutrition component.

(13) Participates in the self-assessment pro-
cess.

The nutritionist should work at the grantee or
delegate agency level so that she can coordinate
all nutrition efforts across the board. She can func-
tion in several modes—using local resources in
each program independently, setting up a cluster
of model centers at which training of personnel can
be conducted, scheduling her own time to make a
monthly visit to each on-site facility (or however fre-
quently this is feasible depending on the need in
centers).

Training for food service staff must focus on
knowledge, skills and attitudes needed to do the
job as well as career development plans for those
interested. The training program can be designed
to meet the qualifications for a dietary technician or
assistant as defined by the American Dietetic As-
association and provide opportunity for career lad-
ders into hospital dietary departments and other
types of institutions.

Examples of duties which food service personnel
may be expected to perform and therefore need
training are:

• Plan menus with staff and parents
• Procure and store food, supplies, equipment
(h) The plan shall provide for the establishment and maintenance of records covering the nutrition services budget, expenditures for food, menus utilized, numbers and types of meals served daily with separate recordings for children and adults, inspection reports made by health authorities, recipes and any other information deemed necessary for efficient operation.

(h) The nutrition services budget includes costs of food, food service and nutrition staff, equipment and nutrition education materials and supplies for children and parent activities and staff training. Records should be kept on file for a minimum of 3 years and should be available to monitors, auditors and other agency personnel as needed.

Adequate numbers of staff and time are required to do this. What constitutes an adequate number of food service personnel depends on the size of the food operation (the number of children being fed), the type of equipment available, the level of competency of the employees, and the available auxiliary help such as janitorial service and volunteers. One full time cook on basis of past Head Start experience is suggested for centers serving 30-40 children supplemented by one full time aide for centers serving up to 80 children. For centers serving 15-30 children, a minimum of 6 hours per day of cook's time is needed.

Sufficient paid time should be allotted to food service personnel to attend staff meetings, training and for planning.

All food program costs should be recorded: quantity and cost of food, purchased or donated, labor including volunteers, expenditures for equipment, utilities and transportation.

Programs under the Child Care Food Program must supply reports according to the requirements of the agency administering the program.

A daily count of meals served to children and adults is a requirement of USDA as a condition for reimbursement.

Written inspection reports should be posted and indicate any sanitation violations and date of compliance or expected compliance.
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Suggested source of menus and recipes:

Child Nutrition Division
Food and Nutrition Service, USDA
3101 Park Center Drive
Alexandria, Virginia 22302

Tested recipes are recommended to insure uniform quality, prevent waste and serve as a guide to purchasing.

Other needed records include food and equipment inventories, personnel evaluation and training records.
SOCIAL SERVICES

Subpart D—Social Services Objectives and Performance Standards

§ 1304.4-1 Social services objectives.
The objectives of the social services component of the performance standards plan are to:
(a) Establish and maintain an outreach and recruitment process which systematically insures enrollment of eligible children.
(b) Provide enrollment of eligible children regardless of race, sex, creed, color, national origin, or handicapping condition.
(c) Achieve parent participation in the center and home program and related activities.
(d) Assist the family in its own efforts to improve the condition and quality of family life.
(e) Make parents aware of community services and resources and facilitate their use.

§ 1304.4-2 Social services plan content.
(a) The social services plan shall provide procedures for:
(1) Recruitment of children, taking into account the demographic make-up of the community and the needs of the children and families;
(2) Recruitment of handicapped children;
(3) Providing or referral for appropriate counseling;

GUIDANCE

In order to accomplish the comprehensive objectives of the Social Services component, the Head Start program should use some form of family needs assessment (FNA) with every family having a child enrolled in the program. The purpose of the Family Needs Assessment (FNA) is to develop a total profile or picture of the individual families being served by the Head Start program. The FNA will identify the interests, desires, goals, needs and strengths of the family, and will help the Social Services staff determine how Head Start can best work with the family to maximize and maintain its strengths, while strengthening areas of need and/or concern. This assessment process, beginning at the time of enrollment, and culminating when the family leaves the program, should result in the development of a family profile and assistance plan (FAP) which should be geared toward assisting families to reach their goals and aspirations. Reference is made to the Head Start Bureau/ACYF publication, *A Handbook For Providing Social Services in Head Start*, as a resource for staff in developing the FNA and FAP—available from the Head Start Bureau, P.O. Box 1182, Washington, D.C. 20013.

(a) Input into the plan should be made by staff and parents.
(1) The recruitment process should systematically seek out children from the most disadvantaged homes. Recruitment techniques include door to door contact, use of income eligibility lists, and use of recruitment staff who can identify with the community. Special emphasis should be placed on recruiting and enrolling from and coordinating with other agencies which are serving only some of the children's needs.
(2) The following factors will be taken into account:
• Number of handicapped children in the target population, including types of handicaps and their severity.
• Services provided by other community agencies.
(3) (4) Preferably, these services should be available directly from the local Head Start pro-
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(4) Emergency assistance or crisis intervention;

(5) Furnishing information about available community services and how to use them;

(6) Follow-up to assure delivery of needed assistance;

(7) Establishing a role of advocacy and spokesman for Head Start families;

(8) Contacting of parent or guardian with respect to an enrolled child whose participation in the Head Start program is irregular or who has been absent four consecutive days; and

(9) Identification of the social service needs of Head Start families and working with other community agencies to develop programs to meet those needs.

GUIDANCE

(1) (2) Some form of official communication could be established through designated liaison to maintain contact with public service agencies. Letters of intent should be sought from agencies cooperating with Head Start where possible. Staff should initiate the effort of finding out (inventorying) what services these agencies currently do offer and have the potential for offering in the future.

(3) Ways of facilitating communication with other social service providers in the community include visiting those providers, inviting those providers to visit the Head Start program, placing providers on a special Head Start mailing list to receive pertinent information, being placed on the providers’ mailing list to keep abreast of the providers’ activities, and developing a media relations program with local press, radio stations, and TV stations.

(b) The plan shall provide for close cooperation with existing community resources including:

(1) Helping Head Start parent groups work with other neighborhood and community groups with similar concerns;

(2) Communicating to other community agencies the needs of Head Start families, and ways of meeting these needs;

(3) Helping to assure better coordination, cooperation and information sharing with community agencies;

(4) The procedure should ensure that all available community resources are used to the maximum extent possible.

(5) Agencies to whom children or other family members were referred should be contacted to assure the services were satisfactorily provided.

(7) Head Start staff should, in a prudent and positive way, represent the best interests of Head Start families to the community and other community agencies, especially if the family has any problems in receiving benefits from local resources.

(8) Social services staff should make regularly scheduled family contacts (preferably home visits) and should assess and re-assess family needs on a continuing basis. These contacts should be coordinated with other component staff.

(9) The procedure should specify those services which will be provided directly by the local Head Start program; i.e., counseling and those services which will be provided by resource agencies other than the local Head Start program. Head Start staff should make every effort to involve parents in identifying individual family needs and in planning ways to meet those needs. Head Start staff should be provided training in how to identify families and children in need of social services.
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(4) Calling attention to the inadequacies of existing community services, or to the need for additional services, and assisting in improving the available services, or bringing in new services; and

(5) Preparing and making available a community resource list to Head Start staff and families.

(c) The plan shall provide for the establishment, maintenance, and confidentiality of records of up-to-date, pertinent family data, including completed enrollment forms, referral and follow-up reports, reports of contacts with other agencies, and reports of contacts with families.

GUIDANCE

(4) A Social Services Advisory Committee comprised of Head Start staff, staff from other community agencies, and Head Start parents could be formed to provide input concerning needed social services and to act as an advocacy group in obtaining these services.

(5) In communities where another agency prepares a community resource list, the Head Start program might update the list and make it more relevant for Head Start purposes.

(c) Adequate records should be kept and reviewed periodically at the center level. Social service staff can coordinate with teaching staff on class attendance and follow-up. Parents and staff should be involved in determining criteria for confidentiality.
PERFORMANCE STANDARDS
Subpart E-Parent Involvement Objectives and Performance Standards

§ 1304.5-1 Parent involvement objectives.

The objectives of the parent involvement component of the performance standards are to:

(a) Provide a planned program of experiences and activities which support and enhance the parental role as the principal influence in their child's education and development.

(b) Provide a program that recognizes the parent as:

(1) Responsible guardians of their children's well being.
(2) Prime educators of their children.
(3) Contributors to the Head Start program and to their communities.

(c) Provide the following kinds of opportunities for parent participation:

(1) Direct involvement in decision making in the program planning and operations.
(2) Participation in classroom and other program activities as paid employees, volunteers or observers.
(3) Activities for parents which they have helped to develop.
(4) Working with their own children in cooperation with Head Start staff.

§ 1304.5-2 Parent involvement plan content: parent participation.

(a) The basic parent participation policy of the Head Start program, with which all Head Start programs must comply as a condition of being granted financial assistance, is contained in Head Start Policy Manual, Instruction I-31—Section B2, The Parents (ACYF Transmittal Notice 70.2, dated August 10, 1970). This policy manual instruction is set forth in Appendix B to this part.

(b) The plan shall describe in detail the implementation of Head Start Policy Manual, Instruction I-31—Section B2. The Parents (Appendix B). The plan shall assure that participation of Head Start parents is voluntary and shall not be required as a condition of the child's enrollment.

GUIDANCE

(b) The written plan should include a general statement of objectives for the Parent Involvement component, a listing of specific goals, and the appropriate methodology for achieving these goals. An example of a goal might be Involving Parents in the Education Program and one technique of the methodology for achieving this goal could be Recruiting Parents to Serve as Classroom Volunteers. Emphasis should be placed on maintaining the Head Start philosophy in the home so that parents' lives are enriched and the objectives of Head Start
§ 1304.5-3 Parent Involvement plan content: enhancing development of parenting skills.

The plan shall provide methods and opportunities for involving parents in:

(a) Experiences and activities which lead to enhancing the development of their skills, self-confidence, and sense of independence in fostering an environment in which their own children can develop to their full potential.

(b) Experiences in child growth and development which will strengthen their role as the primary influence in their children’s lives.

(c) Ways of providing educational and developmental activities for children in the home and community.

(d) Health, mental health, dental and nutritional education.

(e) Identification, and use, of family and community resources to meet the basic life support needs of the family.

(a) Parents should be encouraged to participate in Head Start policy groups and on community boards of directors and committees. Parents should be given the opportunity and encouraged to conduct sessions for staff, children, and other parents in relevant activities for which they have special skills. Parents should be encouraged to participate as volunteers in social service activities making contact with community social agencies and making home visits as well as volunteering in the classrooms.

(b) Parents should be provided with guidance, information and training in the enhancement of their parenting skills, personal development, and child development concepts through such means as films, brochures, discussion groups, rap sessions, courses, books and parent-child interaction activities in the home or center. An excellent resource for accomplishing this goal would be the use of the twenty session Exploring Parenting curriculum, a parent education curriculum developed by the Head Start Bureau/ACYF in 1976 for use with Head Start parents.

(c) Parents could be exposed to specific activities which foster learning in children in the home, e.g., the use of common household items to teach the names of colors, as in "Bring me the blue towel," and in the community, e.g., planning a trip to the store.

(d) Training could be made available to parents, either in conjunction with staff training in these areas or as a unit by itself. To facilitate parental attendance at training sessions, parents should receive adequate notice and babysitting services should be provided.

(e) Parents should be provided or made aware of available community resources, such as adult classes in consumer education, financial assistance programs, and family and employment counseling. This ought to be coordinated with the social services component to avoid duplication of effort and to strengthen the family-centered approach of Head Start.
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(f) Identification of opportunities for continuing education which may lead towards self-enrichment and employment.

(g) Meeting with the Head Start teachers and other appropriate staff for discussion and assessment of their children's individual needs and progress.

GUIDANCE

(f) Educational opportunities might include basic adult education issues; continuing education programs, vocational training or child development associate (CDA) training, and self-enrichment programs. Resources in the local community and its immediate environs which offer programs in these and other educational areas should be identified and arrangements made for the participation of Head Start parents. Where these resources are inadequate or do not exist in close physical proximity, Head Start staff should seek assistance from the ACYF Regional Office. Many Head Start staff members are receiving training through the Head Start Supplementary Training Program.

(g) Head Start staff should encourage parental interest in their child's development. Parents should be given the opportunity to meet with teachers on a scheduled and as-needed basis throughout the year (e.g., three home visits are recommended, although only two are required, at the beginning, middle, and end of the school year).

At these meetings parents and teachers should discuss the child's physical, social/emotional, and intellectual development and review the child's progress. Such meetings can be used to arrive at agreement regarding desirable short-range goals and some discussion of specific activities and experiences which may contribute to the child's progress toward these goals.

Home visits should be planned to enable staff to acquire a fuller understanding of each child's abilities and experiences. Such visits may also be used to help parents consider the child's current needs, interests and ability in order to plan home activities and interactions which will contribute to the child's progress. In addition to regularly scheduled teacher conferences, parents should meet with other Head Start staff on an as-needed basis.

(a) Examples of specific communication techniques include newsletters; home visits; training sessions; and policy group meetings. These techniques should be programmed to occur on a regular and continuous basis—e.g., monthly newsletter, and bimonthly group meetings.

§ 1304.5-4 Parent Involvement plan content: communications among program management, program staff, and parents.

(a) The plan shall provide for two-way communication between staff and parents carried out on a regular basis throughout the program year which provides information about the program and its services; program activities for the children; the policy groups; and resources within the program and the community.

Communications must be designed and carried out in a way which reaches parents and staff effectively. Policy groups, staff and parents must participate in the planning and development of the communication system used.
PARENT INVOLVEMENT

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(b) The plan shall provide a system for the regular provision of information to members of Policy Groups. The purpose of such communication is to enable the policy group to make informed decisions in a timely and effective manner, to share professional expertise, and generally to be provided with staff support. At a minimum, information provided will include:

1. Timetable for planning, development, and submission of proposals;
2. Head Start policies, guidelines, and other communications from ACYF;
3. Financial reports and statement of funds expended in the Head Start account; and
4. Work plans, grant applications, and personnel policies for Head Start.

(c) The entire Head Start staff shall share responsibility for providing assistance in the conduct of the above activities. In addition, Health Services, Education, and Social Services staff shall contribute their direct services to assist the Parent Involvement staff. If staff resources are not available, the necessary resources shall be sought within the community.

§ 1304.5-5 Parent Involvement plan content: parents, area residents, and the program.

The plan shall provide for:

1. The establishment of effective procedures by which parents and area residents concerned will be enabled to influence the character of programs affecting their interests,
2. Their regular participation in the implementation of such programs and,
3. Technical and other support needed to enable parents and area residents to secure on their own behalf available assistance from public and private sources.

GUIDANCE

(b) Examples of ways in which this information may be transmitted include written handouts; written minutes of meetings; official correspondence; and oral presentations at policy group meetings and training sessions. Policy groups should have the opportunity to comment within a reasonable time.

1. Training in all program components, in a way which allows parents to understand the Head Start program as an interrelated whole and to facilitate parent participation in the preparation of the work plan and budget.
2. Ways in which parents can assist staff in setting the goals of the local program and the goals of other community institutions concerned with children and families, allowing parents and staff to see these goals as an interrelated system.
3. Training that occurs in a planned and continuous fashion, beginning with and continuing through the grantee's funding cycle, with adequate provision for parental input in the design and evaluation of the program.
Appendix IV—State Single Points of Contact

Alabama
Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125-0347, Telephone (205) 284-6905

Arizona
Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourth Floor, Phoenix, Arizona 85012, Telephone: (602) 290-1315

Arkansas
Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371-1074

Arizona
Lovetta Davis, State Single Point of Contact, Attn: Intergovernmental Relations, Room 506, 300 W. Washington Street, Phoenix, Arizona 85003, Telephone (602) 280-1315

California
Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323-7480

Colorado
State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866-2188

Connecticut
Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106-4459, Telephone (203) 560-3410

Delaware
Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 739-3326

District of Columbia
Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1550 Pennsylvania Avenue NW., Washington, DC 20004, Telephone (202) 727-9111

Florida
Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399-6001, Telephone: (904) 488-6114

Georgia
Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street SW., Atlanta, Georgia 30334, Telephone (404) 656-3855

Hawaii
Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol—Room 406, Honolulu, Hawaii 96813, Telephone (808) 548-5893, FAX (808) 548-8172

Illinois

Indiana
Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 255-5510

Iowa
Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281-3725

Kentucky
Debbie Anglin, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 504-2362

Maine
Jane H. Chretien, State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #36, Augusta, Maine 04333, Telephone (207) 289-3261

Maryland
Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2255, Telephone (301) 225-4490

Massachusetts
State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1903, Boston, Massachusetts 02202, Telephone (617) 727-7001

Michigan
Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373-7111

Mississippi
Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 990-4280

Missouri
Lois Fohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751-4834

Montana
Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444-5522

Nevada
Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Attn: John B. Walker, Clearinghouse Coordinator

New Hampshire

New Jersey
Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-0613

New Mexico
Aurelia M. Sandoval, State Budget Division, DPA, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3640, FAX (505) 827-3066

New York
New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605

North Carolina
Mrs. Chrya Boggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-0499

North Dakota
William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224-2094

Ohio
Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Telephone (614) 466-0988

Oklahoma
Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6001 Broadway Extension, Oklahoma City, Oklahoma 73118, Telephone (405) 543-9770

Rhode Island
Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 255 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277-2055
Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when HHS determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, HHS may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the HHS agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. 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 Exclusions—Nonprocurement List (of excluded parties). The prospective primary participant further agrees by submitting this proposal that it will include on its list of covered transactions and in all solicitations for lower tier covered transactions.

6. The prospective primary participant agrees by submitting this proposal that it will 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 HHS.

7. The prospective primary participant further agrees by submitting this proposal that it will include on its list of covered transactions and in all solicitations for lower tier covered transactions, “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions,” provided by HHS, without modification. In all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction or contract under public (Federal, State or local) transaction or contract under public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, and other remedies available to the Federal Government, HHS may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when HHS determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, HHS may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the HHS agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. 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 Exclusions—Nonprocurement List (of excluded parties). The prospective primary participant further agrees by submitting this proposal that it will include on its list of covered transactions and in all solicitations for lower tier covered transactions, “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions,” provided by HHS, without modification. In all lower tier covered transactions and in all solicitations for lower tier covered transactions.

6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction or contract under public (Federal, State or local) transaction or contract under public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery,
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: 45 CFR part 76. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations or the definitions.

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 its 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 this 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 (of excluded parties).

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 Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, declared ineligible, or voluntarily excluded from participation in its 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.

Definitions

From 45 CFR Part 76, Governmentwide Debarment and Suspension (Nonprocurement)

Covered transaction. For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

Primary covered transaction. Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other procurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specifically designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

Lower tier covered transaction. A lower tier covered transaction is a transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

Exclusion. Any transaction between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

Debarment and Suspension

Debarment. An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is called “debarred.”

Ineligibility. Excluded from participation in Federal procurement transactions pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal opportunity law, the small business regulations, the environmental protection acts, and executive orders. A person is ineligible where the determination of ineligibility affects such person’s eligibility to participate in more than one covered transaction.

Participant. Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

Person. Any individual, corporation, partnership, association, or other entity of any type, engaged in any business or profession, or any city, county, school district, or other governmental entity.
control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(i) Principal investigators.
(ii) Researchers.

Proposal. A solicited or unsolicited bid, application, request, invitation to consider or similar communications by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

Suspension. An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

Voluntary exclusion or voluntarily excluded. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

BILLING CODE 4130-01-M
Appendix VI

U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act (HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee’s drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees’ attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee’s payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, or if used to meet a matching requirement, consultants or independent contractors not on the grantee’s payroll, or employees of subrecipients or subcontractors in covered workplaces).

The grantee 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 ongoing 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 ten 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 every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. 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).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.
Appendix VII—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) 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 awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) 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 contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature
Title
Organization
Date

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any 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 commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL “Disclosure Form to Report Lobbying,” in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature
Title
Organization
Date

BILLING CODE 4130-01-M
## DISCLOSURE OF LOBBYING ACTIVITIES

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):

### 10. b. Individuals Performing Services (including address if different from No. 10a)
- (last name, first name, MI):

### 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:

### 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 $750,000 for each such failure.

**Signature:** __________________________________________

**Print Name:** _________________________________________

**Title:** ______________________________________________

**Telephone No.:** ___________ **Date:** ___________

**Authorized for Local Reproduction**

**Standard Form - LLL**

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**BILLING CODE 4130-01-C**
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 subawardee recipient. Identify the
tier of the subawardee, e.g., the first
subawardee of the prime is the 1st tier.

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/are attached.

16. The certifying official shall sign and
date the form, print his/her name, title, and
technique number.

Public reporting burden for this collection of
information is estimated to average 30
minutes per response, including time for
reviewing instructions, searching existing
data sources, gathering and maintaining the
data needed, and completing and reviewing
the collection of information. Send comments
regarding the burden estimate or any other
aspect of this collection of information,
including suggestions for reducing this
burden, to the Office of Management and
Budget, Paperwork Reduction Project (0348-
0040), Washington, D.C. 20503.
### Appendix VIII
#### APPLICATION FOR FEDERAL ASSISTANCE

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<th>4. DATE RECEIVED BY FEDERAL AGENCY</th>
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#### 5. APPLICANT INFORMATION

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<thead>
<tr>
<th>Legal Name:</th>
<th>Organizational Unit:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Address (give city, county, state, and zip code):</th>
<th>Name and telephone number of the person to be contacted on matters involving this application (give area code):</th>
</tr>
</thead>
</table>

#### 6. EMPLOYER IDENTIFICATION NUMBER (EIN):

<table>
<thead>
<tr>
<th>EIN:</th>
</tr>
</thead>
</table>

#### 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. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
</table>

#### 10. TITLE:

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
</table>

#### 11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
</table>

#### 12. AREAS AFFECTED BY PROJECT (CITIES, COUNTRIES, STATES, ETC.):

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
</table>

#### 13. PROPOSED PROJECT:

<table>
<thead>
<tr>
<th>Start Date</th>
<th>Ending Date</th>
<th>a. Applicant</th>
<th>b. Project</th>
</tr>
</thead>
</table>

#### 14. CONGRESSIONAL DISTRICTS OF:

<table>
<thead>
<tr>
<th>a. Applicant</th>
<th>b. Project</th>
</tr>
</thead>
</table>

#### 15. ESTIMATED FUNDING:

<table>
<thead>
<tr>
<th>a. Federal</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>b. Applicant</td>
<td>$</td>
</tr>
<tr>
<td>c. State</td>
<td>$</td>
</tr>
<tr>
<td>d. Local</td>
<td>$</td>
</tr>
<tr>
<td>e. Other</td>
<td>$</td>
</tr>
<tr>
<td>f. Program Income</td>
<td>$</td>
</tr>
<tr>
<td>g. TOTAL</td>
<td>$</td>
</tr>
</tbody>
</table>

#### 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 |
| b. NO. PROGRAM IS NOT COVERED BY EO 12372 |
| c. OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW |

#### 17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

| Yes | No |

#### 18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULLY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

<table>
<thead>
<tr>
<th>a. Typed Name of Authorized Representative</th>
<th>b. Title</th>
<th>c. Telephone number</th>
</tr>
</thead>
<tbody>
<tr>
<td>d. Signature of Authorized Representative</td>
<td></td>
<td>a. Date Signed</td>
</tr>
</tbody>
</table>

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Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102
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 and 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 description 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.

12. List only the largest political entities affected (e.g., State, counties, cities).


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.)
## BUDGET INFORMATION — Non-Construction Programs

### SECTION A — BUDGET SUMMARY

<table>
<thead>
<tr>
<th>Grant Program Function or Activity (a)</th>
<th>Catalog of Federal Domestic Assistance Number (b)</th>
<th>Estimated Unobligated Funds</th>
<th>New or Revised Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Federal (c)</td>
<td>Non-Federal (d)</td>
</tr>
<tr>
<td>1.</td>
<td></td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>4.</td>
<td></td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>5. TOTALS</td>
<td></td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

### SECTION B — BUDGET CATEGORIES

<table>
<thead>
<tr>
<th>Object Class Categories</th>
<th>GRANT PROGRAM, FUNCTION OR ACTIVITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Personnel</td>
<td>(1) $</td>
</tr>
<tr>
<td>b. Fringe Benefits</td>
<td>(2) $</td>
</tr>
<tr>
<td>c. Travel</td>
<td>(3) $</td>
</tr>
<tr>
<td>d. Equipment</td>
<td>(4) $</td>
</tr>
<tr>
<td>e. Supplies</td>
<td>(5) $</td>
</tr>
<tr>
<td>f. Contractual</td>
<td></td>
</tr>
<tr>
<td>g. Construction</td>
<td></td>
</tr>
<tr>
<td>h. Other</td>
<td></td>
</tr>
<tr>
<td>i. Total Direct Charges (sum of 6a - 6h)</td>
<td>(6) $</td>
</tr>
<tr>
<td>j. Indirect Charges</td>
<td></td>
</tr>
<tr>
<td>k. TOTALS (sum of 6i and 6j)</td>
<td>(7) $</td>
</tr>
</tbody>
</table>

| 7. Program Income       | (8) $                                |

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**Standard Form 424A (4-64)**
## SECTION C - NON-FEDERAL RESOURCES

<table>
<thead>
<tr>
<th></th>
<th>(a) Grant Program</th>
<th>(b) State</th>
<th>(c) Other Sources</th>
<th>(d) Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>8</td>
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<tr>
<td>9</td>
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<td></td>
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<tr>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## SECTION D - FORECASTED CASH NEEDS

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1st Quarter</td>
<td>2nd Quarter</td>
<td>3rd Quarter</td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

## SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

<table>
<thead>
<tr>
<th></th>
<th>16. TOTAL (sum of lines 13 and 14)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1st Quarter</td>
</tr>
<tr>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

## SECTION F - OTHER BUDGET INFORMATION

<table>
<thead>
<tr>
<th></th>
<th>20. TOTALS (sum of lines 15-19)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1st Quarter</td>
</tr>
<tr>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

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BILING CODE: 4136-51-C
Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which describe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, budget lines may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget period. All applications should contain a breakdown by the object class categories shown in Lines 4-5 of Section A.

Section A. Budget Summary

Lines 1-4, Columns (a) and (b): For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single grant program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g): For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the approximate amounts of funds needed to support the project for the first funding period (usually a year).

For existing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (o) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period. If Federal grantor agency instructions provide for this, otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the total of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total of Line 1 for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

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. §§ 4728-4738) relating to prescribed standards 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 1685-1689), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (28 U.S.C. § 794), which prohibits discrimination on the basis of handicap; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 9001-9017), 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. §§ 2000e-2(e)), 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. 91-648) 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.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to 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 11968; (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 Clean 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.
14. Will comply with Public Law 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 (Pub. L 89-544, as amended, 7 U.S.C. 2151 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. 4901 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 —
Applicant Organization —
Date Submitted —

BILLING CODE 4130-01-M

[FR Doc. 92-14025 Filed 6-18-92; 8:45 am]
Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 348
Male Genital Desensitizing Drug Products for Over-the-Counter Human Use; Final Monograph; Final Rule
DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 348

[Docket No. 79N-0301]

RIN 0905-AA06

Male Genital Desensitizing Drug Products for Over-the-Counter Human Use; Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph establishing conditions under which over-the-counter (OTC) male genital desensitizing drug products (premature ejaculation remedies) are generally recognized as safe and effective and not misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on OTC male genital desensitizing drug products that have come to the agency's attention. This final monograph is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: June 19, 1993.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-258-8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 7, 1982 (47 FR 39412), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), as part of the rulemaking for OTC external analgesic drug products, an advance notice of proposed rulemaking to establish a monograph for OTC male genital desensitizing drug products. The agency also published the recommendations on OTC male genital desensitizing drug products that were made by the Advisory Review Panel on OTC Miscellaneous External Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in these drug products. Interested persons were invited to submit comments by December 6, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by January 5, 1983.

In accordance with § 330.10(a)[10], the data and information considered by the Panel, after deletion of a small amount of trade secret information, were placed on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

The agency’s proposed regulation, in the form of a tentative final monograph, for OTC male genital desensitizing drug products was published in the Federal Register of October 2, 1985 (50 FR 40260). Interested persons were invited to file by December 2, 1985, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency’s economic impact determination by January 30, 1986. New data could have been submitted until October 2, 1986, and comments on the new data until December 2, 1986.

The OTC drug procedural regulations (§ 330.10) provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA is no longer using the terms “Category I” (generally recognized as safe and effective and not misbranded), “Category II” (not generally recognized as safe and effective or misbranded), and “Category III” (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but is using instead the terms “monograph conditions” (old Category I) and “nonmonograph conditions” (old Categories II and III).

In the proposed regulation for OTC male genital desensitizing drug products (50 FR 40260), the agency advised that the conditions under which the drug products that are subject to this monograph will be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication in the Federal Register. Therefore, on or after June 19, 1993, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is relabeled or repackaged after the effective date of the monograph must be in compliance with the rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In response to the proposed rule on OTC male genital desensitizing drug products, one distributor of these products submitted a comment. A copy of the comment received is on public display in the Dockets Management Branch (address above). Additional information has come to the agency’s attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

All “OTC Volumes” cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notices published in the Federal Register of November 19, 1973 (38 FR 31867), and August 27, 1975 (40 FR 38179), or to additional information that has come to the agency’s attention since publication of the notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency’s Conclusions on the Comment

One comment suggested that the word “aids” in the indications statements in proposed § 340.50(b)(4) (50 FR 40260 at 40265) be changed to “helps” because of the undesirable association of the word “aids” with the disease acquired immunodeficiency syndrome (AIDS). The comment was concerned with this negative association of male genital desensitizing drug products that are used in connection with sexual activity, which is also a suspected manner in which the disease AIDS is transmitted. The comment concluded that its proposed substitution of words in no way changes the meaning of the indications statements because the word “help(s)” is a recognized synonym for the word “aids.” The agency agrees that the change suggested by the comment can be made. The word “help(s)” is a recognized synonym for the word “aids” (Ref. 1). In view of the possible negative association of the word “aids” with the disease AIDS, the substitution of words can be done without impairing the intent of the labeling of male genital desensitizing drug products. Accordingly, the agency is amending the indications statements in proposed § 340.50(b)(4)(i) and
The agency also provided five other allowable indications that could be used in addition to the above indication, which are as follows: (1) "For temporary male genital desensitization, helping to slow the onset of ejaculation." (2) "Aids in temporarily retarding the onset of ejaculation." (3) "Aids in temporarily slowing the onset of ejaculation." (4) "Aids in temporarily prolonging time until ejaculation." (5) "For reducing oversensitivity in the male in advance of intercourse." Except for the use of the word "aids" in these statements, the agency did not receive any comments regarding the content of these statements. The agency has determined that several of the indications statements can be combined to allow for a choice of words to be used, and that any one or more of the statements would be acceptable as indications statements for these OTC drug products. Therefore, the agency is providing in § 348.50(b)(1) of this final monograph that the labeling of OTC male genital desensitizing drug products may contain any one or more of the following indications statements: (1) "Helps in the prevention of premature ejaculation." (2) "For temporary male genital desensitization, helping to slow the onset of ejaculation." (3) "Helps in temporarily (select one of the following: "retarding the onset of," "slowing the onset of," or "prolonging the time until") followed by "ejaculation." (4) "For reducing oversensitivity in the male in advance of intercourse." 2. The agency is revising the format of the indications statements in proposed § 348.50(b)(4) to replace the word "aids" with the word "helps." (See section I.) 3. The agency is combining several of the proposed indications statements and providing that any one or more of these statements may be used for these products. (See section II.)
expected to pose such an impact on small businesses. This final rule will require some relabeling for products containing monograph ingredients. Manufacturers will have 1 year to implement this relabeling. No reformulations should be necessary, and there are no additional nonmonograph ingredients. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 348

External analgesic drug products, Labeling. Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs. 21 CFR Part 348 is added to read as follows:

PART 348—EXTERNAL ANALGESIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

§ 348.1 Scope.

Subpart B—Active Ingredients

§ 348.10 Analgesic, anesthetic, and antipruritic active ingredients.

The active ingredient of the product consists of any of the following within the specified concentration established for each ingredient:

(a) Male genital desensitizers. (1) Benzocaine, 3 to 7.5 percent in a water-soluble base.

(2) Lidocaine in a metered spray with approximately 10 milligrams per spray.

(b) [Reserved]

Subpart C—Labeling

§ 348.50 Labeling of external analgesic drug products.

(a) Statement of identity. The labeling of the product contains the established name of the drug, if any, and identifies the product as follows:

(1) For products containing any ingredient identified in § 348.10(a)(1). "Male genital desensitizer."

(2) [Reserved]

(b) Indications. The labeling of the product states, under the heading "Indications," any of the phrases listed in paragraph (b) of this section. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in paragraph (b) of this section, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(i) For products containing any ingredient identified in § 348.10(a)(1). "Helps in the prevention of premature ejaculation."

(ii) "For reducing oversensitivity in the male in advance of intercourse."

(iii) "Helps in temporarily" (select one of the following: "retarding the onset of," "slowing the onset of," or "prolonging the time until") followed by "ejaculation."

(iv) "For reducing oversensitivity in the male in advance of intercourse."

(2) [Reserved]

(c) Warnings. The labeling of the product contains the following warnings under the heading "Warnings":

(1) For products containing any ingredient identified in § 348.10(a)(1). "Premature ejaculation may be due to a condition requiring medical supervision. If this product, used as directed, does not provide relief, discontinue use and consult a doctor."

(ii) "Avoid contact with the eyes."

(iii) "If you or your partner develop a rash or irritation, such as burning or itching, discontinue use. If symptoms persist, consult a doctor."

(d) Directions. The labeling of the product contains the following information under the heading "Directions":

(1) For products containing any ingredient identified in § 348.10(a)(1). "Apply a small amount to head and shaft of penis before intercourse, or use as directed by a doctor. Wash product off after intercourse."

(ii) For products containing lidocaine identified in § 348.10(a)(2). "Apply 3 or more sprays, not to exceed 10, to head and shaft of penis before intercourse, or use as directed by a doctor. Wash product off after intercourse."

(2) [Reserved]

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.


Michael R. Taylor,
Deputy Commissioner for Policy.

[FR Doc. 92-14354 Filed 6-18-92; 8:45 am]
Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 341

Cold, Cough, Allergy, Bronchodilator, and Anti-Asthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment for Tentative Final Monograph for OTC Nasal Decongestant Drug Products; Proposed Rule
DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 76N-052N]

Food and Drug Administration

HUMAN SERVICES

SUMMARY

ACTION: Notice of proposed rulemaking.

The Food and Drug Administration (FDA) is proposing that nasal decongestant drug products. This rule is part of the ongoing review of over-the-counter (OTC) nasal decongestant drug products to modify the drug interaction precaution statement required in the labeling of oral nasal decongestant drug products. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments on the proposed regulation by August 18, 1992; written comments on the agency's economic impact determination by August 18, 1992. FDA is proposing that the final rule based on this proposal be effective 12 months after the date of publication of the final rule in the Federal Register.

ADRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 1224 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-258-6000.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 9, 1976 (41 FR 38312), FDA published an advance notice of proposed rulemaking for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products. The Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel) recommended the following statement for the labeling of oral nasal decongestant drug products: "Drug Interaction Precaution. Do not take this product if you are presently taking a prescription antihypertensive or antidepressant drug containing a monoamine oxidase inhibitor." (41 FR 38312 at 38404). The Panel noted that patients taking other drugs whose action can intensify the sympathomimetic drug action, e.g., monoamine oxidase inhibitors, should not take nasal decongestants orally except under the advice and supervision of a physician (41 FR 38312 at 38396 to 38397).

The agency discussed this statement in the tentative final monograph for OTC nasal decongestant drug products (January 15, 1985, 50 FR 2220). In response to the Panel's recommendation, two comments contended that terms such as "antihypertensive," "antidepressant," and "monoamine oxidase inhibitor" (MAOIs) are highly technical; that only a small percentage of the population is likely to understand this warning; and that including such a warning in the labeling of an OTC drug is contrary to the well-established principle that unnecessary or confusing precautions tend to dilute the significance of all instructions in the labeling and, hence, should be avoided (50 FR 2220 at 2231).

The agency acknowledged that the Panel's proposed drug interaction precaution might not be readily understood by all consumers. However, the agency considered a statement of this type to be necessary to alert consumers because antihypertensive and antidepressant drugs are widely prescribed. The agency proposed to simplify the precaution statement by substituting the term "high blood pressure" for "antihypertensive," and the term "depression" for "antidepressant." The agency also believed that the words "monoamine oxidase inhibitor" would be confusing to consumers and need not be included in the precautionary statement to convey the intended message. Accordingly, the agency proposed the following: "Drug Interaction Precaution. Do not take this product if you are presently taking a prescription drug for high blood pressure or depression, without first consulting your doctor." (See proposed § 341.80(c)(1)(i)(d)).

Several other comments on the Panel's report pointed out that OTC drug products containing oral nasal decongestants may be labeled and marketed for use only in pediatric populations, and that the drug interaction precaution should not be required on products labeled strictly for use in children. The agency disagreed with these comments because hypertension and depression do occur in children and a physician might prescribe MAOI drugs for children (50 FR 2220 at 2231). Therefore, the agency proposed to add new § 341.80(c)(1)(iii)(f) as follows: "Drug Interaction Precaution: Do not give this product to a child who is taking a prescription drug for high blood pressure or depression, without first consulting the child's doctor." A final monograph for OTC nasal decongestant drug products has not been published to date.

Elsewhere in this issue of the Federal Register, the agency is proposing to amend the final monograph for OTC antitussive drug products to include a drug interaction precaution statement about MAOI drugs in the labeling of OTC drug products containing dextromethorphan or dextromethorphan hydrobromide and proposing to amend the final monograph for OTC bronchodilator drug products to revise the drug interaction precaution involving MAOI drugs. The agency is aware of a resurgence in the use of MAOIs drugs after a period of decline in the 1970's (Refs. 1, 2, and 3). While tricyclic and other antidepressants are the most widely used drugs for patients with major depression, MAOIs drugs may be used in selected patients with dysthymia or atypical depression (Refs. 3, 4, and 5). There is evidence that MAOIs drugs are also being used to treat bulimia and panic disorders (Refs. 3 and 5 through 8), phobic disorders (Refs. 3, 4, 5, and 7), anxiety (Refs. 3, 4, and 5), and obsessive compulsive disorders (Refs. 3 and 6). On the other hand, use of these drugs in hypertension has essentially ceased. Therefore, the agency has reconsidered the wording of the drug interaction precaution statement proposed for oral nasal decongestant drug products. The agency now believes that the reference to "high blood pressure" is not needed and that "depression" is too narrow a description to convey the intended warning to most people being treated with MAOI drugs for other conditions. In addition, while some patients may not understand the term "monoamine oxidase inhibitor," many will; and if in doubt, patients being given psychotropic drugs can ask their doctor or other health professional.

The agency is aware that "monoamine oxidase inhibitor" and "MAOIs" are highly technical terms that the average consumer may not recognize or understand. On the other hand, the agency believes that use of these terms in the precaution statement is justified because the more general term "depression" may not alert everyone who is taking a MAOI drug, for bulimia or phobic disorders, for example (Refs. 3 through 8). OTC drug product labeling cannot accommodate a listing of every condition that an MAOI could be used for. Thus, the agency is adding a sentence to the drug interaction
precaution advising consumers to seek help if they are uncertain whether or not their prescription drug is an MAOI. The new sentence is similar to the one used to warn pregnant women or nursing women about using an OTC drug. (See 21 CFR 201.63.) During the development of a warning to pregnant or nursing women who are considering using an OTC drug (47 FR 54750, December 3, 1982), the agency considered the preference of wording to designate persons who could provide information concerning OTC drugs to consumers. The agency concluded that at that time that "health professional" is the preferred term, because the woman who is considering using an OTC drug is in the best position to consult a specific health professional to help her, and the warning should not limit her sources of information. The agency believes that other health professionals, such as pharmacists or nurses, can help consumers determine whether the drug they are taking contains an MAOI. Accordingly, the agency is proposing to amend § 341.80(c)(1)(ii)(d) of the tentative final monograph for OTC nasal decongestant drug products to read: "Drug interaction precaution. Do not take this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI consult a health professional before taking this product." Also, the agency is proposing to amend § 341.80(c)(1)(ii)(d) to read: "Drug interaction precaution. Do not give this product to a child who is taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting the child's doctor. If you are uncertain whether your child's prescription drug contains an MAOI consult a health professional before giving this product." The agency is inviting comment on the specific wording of these warnings, and the best way to convey this information to persons who are taking MAOI drugs.

References
The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m. Monday through Friday.


The agency is proposing that these revised drug interaction precautions become effective 12 months after the date of publication of the final rule in the Federal Register. Manufacturers of OTC nasal decongestant drug products are encouraged to voluntarily implement this labeling as of the date of publication of this proposal, subject to the possibility that FDA may change the wording of the drug interaction precautions as a result of comments filed in response to this proposal. Because FDA is encouraging the proposed drug interaction precaution to be used on a voluntary basis at this time, the agency advises that manufacturers will be given ample time after publication of a final rule to use up any labeling implemented in conformance with this proposal. The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the Federal Register of February 8, 1983 (48 FR 5006), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency, therefore concludes that none of these rules, including this proposed rule for OTC nasal decongestant drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC nasal decongestant drug products is not expected to pose such an impact on small businesses. The only action needed will be minor labeling revisions at the time that the final monograph becomes effective. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC nasal decongestant drug products. Comments regarding the impact of this rulemaking on OTC nasal decongestants drug products should be accompanied by appropriate documentation.

A period of 60 days from the date of publication of this proposal for rulemaking in the Federal Register will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 226.4(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before August 18, 1992, submit written comments on the proposed rulemaking to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before August 18, 1992. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday.

List of Subjects in 21 CFR Part 341

Labeling, Nasal decongestant drug products, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21
CFR Part 341 (as proposed in the Federal Register of January 15, 1985 (50 FR 2220)) be amended as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR Part 341 continues to read as follows:


2. Section 341.80 is amended by revising paragraphs (c)(1)(i)(d) and (c)(1)(ii)(d) to read as follows:

§ 341.80 Labeling of nasal decongestant drug products.

(1) *

(d) "Drug Interaction Precaution. Do not take this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product.”


Michael R. Taylor,
Deputy Commissioner for Policy.

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BILLING CODE 4160–01–F
Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 341

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph for OTC Bronchodilator Drug Products; Proposed Rule
O ver-the-Counter Human Use; and Antiasthmatic Drug Products for Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph for OTC Bronchodilator Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking amending the final monograph for over-the-counter (OTC) bronchodilator drug products to modify the drug interaction precaution statement required in the labeling of OTC bronchodilator drug products. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments on the proposed regulation by August 18, 1992; written comments on the agency's economic impact determination by August 18, 1992. FDA is proposing that the final rule based on this proposal be effective 12 months after the date of publication of the final rule in the Federal Register.

ADDRESSES: Written comments on the proposed regulation to the Dockets Management Branch [HFA-305], Food and Drug Administration, Rm. 1-23, 12240 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-258-7000.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 9, 1976 (41 FR 30312), FDA published an advance notice of proposed rulemaking for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products. The Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel) recommended the following warning statement for the labeling of OTC bronchodilator drug products: “Drug Interaction Precaution. Do not take this product if you are presently taking a prescription antihypertensive or antidepressant drug containing a monoamine oxidase inhibitor” because of marked and potentially dangerous increases in blood pressure that were known to occur in patients taking monoamine oxidase inhibitor (MAOI) drugs and sympathomimetic amine bronchodilator drugs (41 FR 38312 at 38370 through 38373).

The agency discussed this statement in the tentative final monograph for OTC bronchodilator drug products (47 FR 47520 at 47523, October 26, 1982). In response to the Panel’s recommendation, one comment contended that terms such as “antihypertensive,” “antidepressant,” and “monoamine oxidase inhibitor” are highly technical; that only a small percentage of the population is likely to understand this warning; and that including such a warning in the labeling of an OTC drug is contrary to the well-established principle that unnecessary or confusing precautions tend to dilute the significance of all instructions in the labeling and, hence, should be avoided (47 FR 47520 at 47523).

The agency acknowledged that the Panel’s proposed drug interaction precaution might not be readily understood by all consumers. However, the agency considered a statement of this type to be necessary to alert consumers because antihypertensive and antidepressant drugs are widely prescribed. The agency proposed to simplify the precaution statement by substituting the term “high blood pressure” for “antihypertensive,” and the term “depression” for “antidepressant.” The agency also believed that the words “monoamine oxidase inhibitor” would be confusing to consumers and need not be included in the precautionary statement to convey the intended message. Accordingly, the agency proposed the following: “Drug interaction precaution. Do not take this product if you are presently taking a prescription drug for high blood pressure or depression, without first consulting your doctor.” (See proposed § 341.276(c)(3)). In the final monograph for OTC bronchodilator drug products, published in the Federal Register of October 2, 1986 (51 FR 35326 at 35338), the agency substituted the word “use” for the word “take” in this statement because the word “use” is more appropriate for inhalation drug products and is also appropriate for oral dosage forms. This statement appears in § 341.276(c)(4) of the final monograph.

Elsewhere in this issue of the Federal Register, the agency is proposing to amend the final monograph for OTC antitussive drug products to include a drug interaction precaution statement about MAOI drugs in the labeling of OTC drug products containing dextromethorphan or dextromethorphan hydrobromide and proposing to amend the tentative final monograph for OTC nasal decongestant drug products to revise the drug interaction precaution involving MAOI drugs. The agency is aware of a resurgence in the use of MAOI drugs after a period of decline in the 1970’s (Refs. 1, 2, and 3). While tricyclic and other antidepressants are the most widely used drugs for patients with major depression, MAOI drugs may be used in selected patients with dysthymic and atypical depression (Refs. 3, 4, and 5). There is evidence that MAOI drugs are also being used to treat bulimia and panic disorders (Refs. 3 and 5 through 8), phobic disorders (Refs. 3, 4, 5, and 7), anxiety (Refs. 3, 4, and 5), and obsessive compulsive disorder (Refs. 3 and 8). On the other hand, use of these drugs in hypertension has essentially ceased.

Therefore, the agency has reconsidered the wording of the drug interaction precaution statement currently required for OTC bronchodilator drug products. The agency now believes that the reference to “high blood pressure” is not needed and that “depression” is too narrow a description to convey the intended warning to most people being treated with MAOI drugs for other conditions. In addition, while some patients may not understand the term “monoamine oxidase inhibitor,” many will, and if in doubt, patients being given psychotropic drugs can ask their doctor or other health professional.

The agency is aware that “monoamine oxidase inhibitor” and “MAOI” are highly technical terms that the average consumer may not recognize or understand. On the other hand, the agency believes that use of these terms in the precaution statement is justified because the more general term “depression” may not alert everyone who is taking an MAOI drug, for bulimia or phobic disorders, for example (Refs. 3 through 8). OTC drug product labeling cannot accommodate a listing of every condition that an MAOI could be used for. Thus, the agency is adding a sentence to the drug interaction precaution advising consumers to seek help if they are uncertain whether or not their prescription drug is an MAOI. The new sentence is similar to the one used to warn pregnant or nursing women about using an OTC drug. (See 21 CFR 201.53.) During the development of a warning to pregnant or nursing women who are considering using an OTC drug (47 FR 54750, December 3, 1982), the agency considered the preference of wording to designate persons who could provide information concerning OTC drug use. The wording was changed to “persons who could provide information concerning OTC drug use” to better express the intended meaning. Further, the agency is revising the current drug interaction precaution involving MAOI drugs to be more consistent with the new MAOI precaution, which is discussed below.
drugs to consumers. The agency concluded at that time that "health professional" is the preferred term, because the woman who is considering using an OTC drug is in the best position to choose the specific health professional to help her, and the warning should not limit her sources of information. The agency believes that other health professionals, such as pharmacists or nurses, can help consumers determine whether the drug they are taking contains an MAOI.

Accordingly, the agency is proposing to amend § 341.65(c)(4) of the final monograph for OTC bronchodilator drug products to read: "Drug interaction precaution. Do not take this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product." The agency is inviting comment on the specific wording of this warning, and the best way to convey this information to persons who are taking MAOI drugs.

References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.


The agency is proposing that this revised drug interaction precaution become effective 12 months after the date of publication of the final rule in the Federal Register. Manufacturers of OTC bronchodilator drug products are encouraged to voluntarily implement this labeling as of the date of publication of this proposal, subject to the possibility that FDA may change the wording of the drug interaction precaution as a result of comments filed in response to this proposal. Because FDA is encouraging the proposed drug interaction precaution to be used on a voluntary basis at this time, the agency advises that manufacturers will be given ample time after publication of a final rule to use up any labeling implemented in conformance with this proposal.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the Federal Register of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC bronchodilator drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC bronchodilator drug products is not expected to pose such an impact on small businesses. The only action needed will be minor labeling revisions at the time that the final monograph amendment becomes effective. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC bronchodilator drug products. Comments regarding the impact of this rulemaking on OTC bronchodilator drug products should be accompanied by documentation. A period of 60 days from the date of publication of this proposed rulemaking in the Federal Register will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before August 18, 1992, submit written comments on the proposed regulation to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before August 18, 1992. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 341 be amended as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 341 continues to read as follows:


2. Section 341.76 is amended by revising paragraph (c)(4) to read as follows:

§ 341.76 Labeling of bronchodilator drug products.

(c) * * *

(4) "Drug interaction precaution. Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your
prescription drug contains an MAOI, consult a health professional before taking this product."

* * * * *


Michael R. Taylor,
Deputy Commissioner for Policy.

[FR Doc. 92-14356 Filed 6-18-92; 8:45 am]

BILLING CODE 4160-01-M
Part VIII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 341

Cold, Cough, Allergy, Bronchodilator, and Anti-Asthmatic Drugs for Over-the-Counter Human Use; Proposed Amendment of Final Monograph for OTC Antitussive Drug Products; Proposed Rules
Cold, Cough, Allergy, Bronchodilator, and Antihistamtic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph for OTC Antitussive Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking amending the final monograph for over-the-counter (OTC) antitussive drug products to require a drug interaction precaution statement in the labeling of OTC antitussive (relieves cough) drug products containing dextromethorphan or dextromethorphan hydrobromide. These drug products should not be used by individuals who are taking a prescription antihypertensive or antidepressant drug containing a monoamine oxidase inhibitor, without first consulting their doctor. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments on the proposed regulation by August 18, 1992; written comments on the agency's economic impact determination by August 18, 1992; final rule based on this proposal be effective 12 months after the date of publication of the final rule in the Federal Register.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12240 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 9, 1976 (41 FR 38312), FDA published an advance notice of proposed rulemaking for OTC cold, cough, allergy, bronchodilator, and antihistamtic drug products. The Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antihistamtic Drug Products (the Panel) placed the ingredients dextromethorphan and dextromethorphan hydrobromide in Category 1 (generally recognized as safe and effective for OTC use) as an antitussive. The Panel recommended a number of warnings for OTC antitussives, but none included an interaction with monoamine oxidase inhibitor (MAOI) drugs. These drugs, which inhibit monoamine oxidase (MAO), are available by prescription only. They are primarily used to treat depression or high blood pressure.

At the time of the Panel's review, the only known interaction with MAOI drugs that was pertinent to cough-cold drug products involved the sympathomimetic amines, which are used as bronchodilators (41 FR 38332 at 38370 to 38371) and nasal decongestants (41 FR 36312 at 38396 to 38397). The Panel proposed the following labeling for bronchodilator drug products containing sympathomimetic amines: "Drug interaction precaution. Do not take this product if you are presently taking a prescription antihypertensive or antidepressant drug containing a monoamine oxidase inhibitor." The Panel proposed the same labeling for oral nasal decongestant drug products containing sympathomimetic amines but added the following words at the end of the above statement: "except under the advice and supervision of a physician."

In the tentative final monograph for OTC bronchodilator drug products, published in the Federal Register of October 28, 1982 (47 FR 47520 at 47526), the agency proposed to simplify the precautionary statement as follows: "Drug interaction precaution. Do not take this product if you are presently taking a prescription drug for high blood pressure or depression, without first consulting your doctor." (See proposed § 341.76(c)(3)). In the final monograph for OTC bronchodilator drug products, published in the Federal Register of October 2, 1986 (51 FR 35326 at 35338), the agency substituted the word "use" for the word "take" in this statement because the word "use" is more appropriate for inhalation drug products and also is appropriate for oral dosage forms. This statement appears in § 341.76(c)(4) of the final monograph.

In the tentative final monograph for OTC nasal decongestant drug products, published in the Federal Register of January 15, 1985 (50 FR 2220 at 2231), the agency proposed the same precautionary statement as proposed in the tentative final monograph for OTC bronchodilator drug products. (See proposed § 341.80(c)(1)(i)(D).) A final monograph for OTC nasal decongestant drug products has not been published to date.

Although some information on dextromethorphan-MAOI drug interactions was present in the literature (see below), neither the Panel nor the agency was aware of this information, and the subject of such interactions did not arise during the course of the rulemaking for OTC antitussive drug products. Since publication of the final monograph for OTC antitussive drug products on August 12, 1987 (52 FR 30042), the agency has received information that it believes supports the need for a MAOI drug interaction precaution statement in the labeling of OTC drug products containing the ingredients dextromethorphan or dextromethorphan hydrobromide (hereafter referred to generally as dextromethorphan). This information includes reports of adverse reactions, including fatalities, following the ingestion of prescription MAOI drugs and OTC drug products containing dextromethorphan.

Rivers and Horner (Ref. 1) described the death of a 26-year-old female which they believed resulted from a reaction between the drug phenelzine (an MAOI) and dextromethorphan. The woman had been taking phenelzine 15 milligrams (mg) four times daily for 1 month. In the event that led to her death, she had taken 30 mg because she had missed an earlier dose. About 6 hours later she ingested approximately 2 ounces of a cough preparation containing dextromethorphan. Her initial symptoms of the interaction were nausea, dizziness, and collapse. She was brought to the hospital within an hour and was severely hypotensive; her systolic pressure did not rise above 70 millimeters (mm) of mercury. Her temperature varied from 42 °C to 42.2 °C. Four hours and 15 minutes after arriving at the hospital she had a cardiac arrest and died.

Shamsie and Barriga (Ref. 2) reported that a 15-year-old female died of anaphylactic crisis after taking capsules containing dextromethorphan hydrobromide 15 mg, phenindamine tartrate 6.25 mg, phényléphrine hydrochloride 5 mg, and acetaminophen 120 mg per capsule while she was being treated for depression with the MAOI drug phenelzine. She had been taking phenelzine 15 mg three times a day for 6 weeks before she took the dextromethorphan. She was also taking thiouracil 25 mg three times a day and 15 mg at bedtime, procyclidine 5 mg twice daily, and metronidazole suppositories for vaginal discharge. She had taken eight capsules of the dextromethorphan compound initially, followed by another five capsules 3 hours after. Prior to her transfer to the hospital, her vital signs were a temperature of 103 °F, blood pressure of...
100/60, pulse approximately 160 and strong, with a pulse deficit of 20. Her lungs were clear and her abdomen was soft. A neurological examination revealed bilateral fixed and dilated pupils, absent gag reflex, mild spasticity, and hyperreflexia of the upper limbs. While in the ambulance she became semicomatose and mildly cyanotic and started to show signs of trismus (spasm of the masticatory muscles). She was given oxygen and external cardiac massage. She arrived at the hospital in coma; resuscitation efforts were performed for 55 minutes but to no avail. The autopsy report showed the following: acute cerebral edema with mild tonsillar and uncal notching; marked acute pulmonary edema; petechiae of the epicardium, thymus, and gastric mucosa; hemodynamorthax (left 100 millliters [mL], right 20 mL); and, evidence of fresh thoracotomy (open cardiac massage). Histopathological examination showed acute passive congestion of the kidneys and liver; a granuloma of the right middle lobe of lung; obsolete granulomata of left pulmonary hilar lymph nodes; mild plasmatic vasculitis of splenic arteries; and mild follicular lipidosis of the spleen.

Soever and Wolfe (Ref. 3) reported an interaction between dextromethorphan and the MAOI drug isocarboxazid. In this case, a 32-year-old woman with a history of chronic atypical depression had been taking isocarboxazid 30 mg daily for 8 weeks, then ingested diazepam 1 mg and 10 mL of a cough syrup containing dextromethorphan hydrobromide 15 mg and guaifenesin 100 mg per 5 mL. Twenty minutes later she was nauseated and dizzy. Within 45 minutes, a fine bilateral leg tremor and muscle spasms of the abdomen and lower back developed. These were followed by bilateral and persistent myoclonic jerks of the legs, occasional choreathetoid movements of the feet, and marked urinary retention. Nineteen hours after ingesting the cough suppressant, her condition had greatly improved. At followup 2 months later, occasional myoclonic jerks persisted.

Harrison et al. (Ref. 4) reported two cases of interactions between MAOI drugs and OTC drug products containing dextromethorphan. In one case, a 23-year-old depressed woman who was taking phenelzine 60 mg daily ingested 10 mL of a cough syrup containing guaifenesin 300 mg, phenylpropanolamine 37.5 mg, and dextromethorphan hydrobromide 30 mg per 15 mL. She had a hypertensive reaction (systolic blood pressure of 210 mm of mercury and diastolic of 130 mm of mercury) that was treated without sequelae. In the other case, a 35-year-old woman who was taking phenelzine also took two tablets of an OTC drug product containing acetaminophen 325 mg, chlorpheniramine maleate 2 mg, pseudoephedrine hydrochloride 30 mg, and dextromethorphan hydrobromide 15 mg per tablet. She developed a severe hypertensive reaction with intracerebral bleeding. No other information was provided. The authors recommended that manufacturers of OTC drug products provide consumers of those products more complete product information, including specific warnings against concomitant use of certain products containing MAOI drugs.

Laird (Ref. 5) reported an interaction that occurred in a 54-year-old woman who had taken phenelzine for 3 weeks prior to taking an OTC drug product containing dextromethorphan. Exact dosages were not provided. The patient was placed in an intensive care unit in critical condition; she ultimately recovered.

Nine other adverse interactions between MAOI drugs and dextromethorphan have been reported to the agency. In one case (Ref. 6), a woman being treated for major depression with tranylcypromine sulfate took 10 mL of an OTC drug product containing dextromethorphan 15 mg and guaifenesin 100 mg per 5 mL and experienced psychotic episodes. The dextromethorphan cough mixture was discontinued while tranylcypromine was continued. Symptoms abated and the condition resolved. In another case (Ref. 7), a 65-year-old female being treated with phenelzine took one OTC cough lozenge containing 5 mg dextromethorphan. Shortly afterward, she became drowsy and exhibited bizarre behavior. She was admitted to a hospital emergency room where behavior, physical examination, and vital signs were within normal limits. She recovered and was released the next morning. In another case (Ref. 8), a 61-year-old man had been taking 10 mg isocarboxazid four times a day for an undetermined number of years. Concomitant medications were chlorpropamide for diabetes and prednisone and naproxen for arthritis. Dosages were not stated. Approximately 1 day after taking 10 mg of isocarboxazid four times per day, the man was taken to a hospital emergency room in an unresponsive state. Two days later, the man was alert, but exhibited severe myoclonic movements of both legs and was severely diaphoretic. Isocarboxazid was discontinued. On the following day, the man was almost completely recovered, with residual slight tremor of the hands. Approximately 16 days after the onset of the reaction, the man was discharged from the hospital and his problem was completely resolved. Another case (Ref. 9) described a phenelzine sulfate-dextromethorphan polisitrex interaction in an adult woman who was characterized by increased heart rate, increased blood pressure, and loss of strength in the legs. No additional information was provided. Dosages, duration of therapy, duration of reaction, and final outcome are unknown. In another case (Ref. 10), a 32-year-old woman on phenelzine therapy for depression became lethargic and unresponsive approximately 45 minutes after taking an unstated amount of a guaifenesin-dextromethorphan hydrobromide cough mixture. The woman was taken to an emergency room and found to be unarousable and in a coma. This state continued for approximately 12 hours. With supportive medical care (unspecified), the woman subsequently recovered and was discharged. In another case (Ref. 11), a 62-year-old man had taken 52.5 to 60 mg phenelzine daily for approximately 1 month. Other drugs used concomitantly were 100 mg trazodone at bedtime, 0.25 mg levothyroxine, and 10 mg prednisone per day. Within 15 minutes of taking 10 to 15 mL of a guaifenesin-dextromethorphan cough mixture, the man developed shaking, diaphoresis, and elevated temperature and respiration rate. The man was admitted to an intensive care unit where treatment consisted of intravenous fluids, cooling blanket, and four doses of dantrolene at 0.6 mg per kilogram (kg) per dose. The ultimate outcome of this case was not reported. In another case (Ref. 12), a 28-year-old woman who had been taking phenelzine for depression and bulimia (and propoxyphene napsylate with acetaminophen) took 5 to 10 mL of a cough mixture containing 30 mg iodinated glycerol and 10 mg dextromethorphan hydrobromide per 5 mL. Approximately 30 minutes later, the woman experienced abdominal cramps, wheezing, tightness in the chest, and appeared panicky and stimulated. Symptoms persisted for 30 to 60 minutes. In another case (Ref. 13), a 20-year-old woman who had taken phenelzine for several months when she took one dose of a cough mixture containing dextromethorphan. Shortly thereafter, the woman was admitted to an emergency room with tachycardia, diaphoresis, muscular rigidity, temperature of 101°F, and blood
pressure of 130/90. Treatment involved unspecified doses of valium and labetalol; the hospital course was uneventful, and the woman recovered and was discharged. In another case (Ref. 14), a 28-year-old woman being treated for depression had taken tranylcypromine sulfate, 20 mg every morning and 10 mg every evening, for 3 years without adverse reaction. Minutes after initiation of a cough suppressant containing 7.5 mg dextromethorphan hydrobromide per 5 mL, the woman experienced shakiness and diaphoresis. The woman was admitted to an emergency room with dilated pupils, shaking, hallucinations, temperature of 99.3 °F, pulse 84, blood pressure 132/88, and respiration rate 20. Treatment involved the use of diazepam and diphenhydramine intravenously. The woman remained in the intensive care unit for 12 hours (vital signs were stable throughout this time) and then was released. Based upon these reports, the agency has revised the labeling of the prescription antidepressant MAOI drugs isocarboxazid, phenelzine, and tranylcypromine to include the following statement: "The combination of MAOI inhibitors and dextromethorphan has been reported to cause brief episodes of psychosis or bizarre behavior" (Ref. 15).

In addition, the agency is aware of a study by Sinclair (Ref. 16) in which he examined the effects of dextromethorphan in MAOI-pretreated rabbits. New Zealand white rabbits of both sexes were treated with phenelzine sulfate 30 mg per kg intraperitoneally, pargyline hydrochloride 40 mg per kg intraperitoneally, and naltrexone hydrochloride 1 mg per kg intraperitoneally, on 2 successive days. On the following day, the animals were monitored for temperature, and when the temperature was stable for 30 minutes, dextromethorphan 5 mg per kg was slowly administered via a marginal ear vein. Dextromethorphan produced motor restlessness, shivering-like tremors, hyperexcitability, dilated pupils, tachypnea, and hyperpyrexia in phenelzine-pretreated rabbits. Five of seven rabbits died within 1 hour of being given dextromethorphan. The same dose of dextromethorphan in rabbits that were not pretreated with phenelzine produced none of the signs exhibited in the pretreated rabbits. A lower dose of 3 mg per kg dextromethorphan produced similar but generally less intense symptoms of the interaction that occurred in phenelzine-pretreated rabbits. One of four rabbits receiving this dose exhibited a 3 °C rise in temperature and death. Animals pretreated with pargyline succumbed to the interaction when challenged with dextromethorphan less consistently than did phenelzine-pretreated animals. One hour after the dextromethorphan injection, the mean temperature increase in pargyline-pretreated animals was 0.36 °C + 0.48 °C. However, two of the seven animals tested died. Nalidixic acid-pretreated rabbits developed intense symptoms of the interaction when dextromethorphan was administered. The mean temperature increase in these animals at one hour was 3.78 °C + 0.03 °C, and all four animals died.

A number of other authors and general references warn of MAOI-dextromethorphan interactions (Refs. 17 through 22). Reactions described in these sources include central nervous system stimulation, hyperpyrexia (a highly elevated body temperature), hypertension (abnormally high blood pressure), hypotension (abnormally low blood pressure), peripheral vascular collapse, and possible death.

Magurno and Board (Ref. 23) report that one manufacturer has, of its own volition, included an MAOI warning in the "Drug Interaction Precautions" section of its physician labeling (information provided to health care professionals but not to the general public) for its antitussive products that contain dextromethorphan. That warning states: "Serious toxicity may result if dextromethorphan is used with MAOIs." (See Ref. 24.) The authors report that while most patients do not see this specific contraindication, the manufacturer has also added a "Drug Interaction Precaution" to the immediate (consumer-purchased) container of these products. This precaution states: "Do not take this product if you are presently taking a prescription drug for high blood pressure or depression, without first consulting your doctor." (See Ref. 24.) This is the same drug interaction precaution statement proposed in the tentative final monographs for OTC bronchodilator and OTC oral nasal decongestant drug products. (See discussion above.)

The agency is aware of a resurgence in the use of MAOI drugs after a period of decline in the 1970's (Refs. 21, 22, and 25). While tricyclic and other antidepressants are the most widely used drugs for patients with major depression, MAOI drugs may be used in selected patients with dysthyemic or atypical expression (Refs. 19, 25, and 26). There is evidence that MAOI drugs are also being used to treat bulimia and panic disorders (Refs. 19, 25, 27, and 28), phobic disorders (Refs. 19, 25, 26, and 27), anxiety (Refs. 19, 25, and 28), and obsessive compulsive disorder.

(Refs. 25 and 28). On the other hand, use of these drugs in hypertension has essentially ceased. Therefore, the agency has reconsidered the wording of the drug interaction precaution statement currently required for OTC bronchodilator drug products and proposed for OTC oral nasal decongestant drug products. The agency now believes that a reference to "high blood pressure" is not needed and that "depression" is too narrow a description to convey the intended warning to most people being treated with MAOI drugs for other conditions. In addition, while some patients may not understand the term "monoamine oxidase inhibitor," many will; and if in doubt, patients being given psychotropic drugs can ask their doctor or other health professional.

The agency is aware that "monoamine oxidase inhibitor" and "MAOI" are highly technical terms that the average consumer may not recognize or understand. On the other hand, the agency believes that use of these terms in the precaution statement is justified because the more general term "depression" may not alert everyone who is taking an MAOI drug, for bulimia or phobic disorders, for example (Refs. 4 and 19). OTC drug product labeling cannot accommodate a listing of every condition that an MAOI could be used for. Thus, the agency is adding a sentence to the drug interaction precaution advising consumers to seek help if they are uncertain whether or not their prescription drug is an MAOI. The new sentence is similar to the one used to warn pregnant women about using an OTC drug. (See 21 CFR 201.63.) During the development of a warning to pregnant or nursing women who are considering using an OTC drug (47 FR 54750, December 3, 1982), the agency considered the preference of wording to designate persons who could provide information concerning OTC drugs to consumers. The agency concluded at that time that "health professional" is the preferred term, because the woman who is considering using an OTC drug is in the best position to choose the specific health professional to help her, and the warning should not limit her sources of information. The agency believes that other health professionals, such as pharmacists or nurses, can help consumers determine whether the drug they are taking contains an MAOI.

The agency tentatively concludes that there is sufficient evidence of serious MAOI-dextromethorphan drug interactions that a drug interaction precaution statement is needed in the labeling of OTC drug products.
containing dextromethorphan. Accordingly, the agency is proposing to amend the final monograph for OTC antitussive drug products to require an MAOI drug interaction precaution statement in the labeling of OTC drug products containing dextromethorphan by adding new Sec. 341.74(c)(4)(vi) for oral antitussives to read: "For products containing dextromethorphan or dextromethorphan hydrobromide as identified in Sec. 341.74(c)(3) and (c)(4) when labeled for adults or for adults and children under 12 years of age. Drug Interaction Precaution. Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product." The agency is also proposing to require the MAOI drug interaction precaution statement in the labeling of OTC drug products containing dextromethorphan or dextromethorphan hydrobromide when labeled for children by adding new Sec. 341.74(c)(4)(vi) for oral antitussives to read: "For products containing dextromethorphan or dextromethorphan hydrobromide as identified in Sec. 341.74(c)(3) and (c)(4) when labeled only for use by children under 12 years of age. Drug Interaction Precaution. Do not give this product to a child who is taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting the child’s doctor. If you are uncertain whether your child’s prescription drug contains an MAOI, consult a health professional before giving this product." The agency is inviting comment on the specific wording of these warnings, and the best way to convey this information to persons who are taking MAOI drugs.

References
The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.


(15) Approved labeling for isocarboxazid (Hoffman-La Roche Laboratories), phenelzine sulfate (Parke-Davis), and tranylcypromine sulfate (SmithKline & French Laboratories), and letters from P. Leber, FDA, to above firms, in OTC Vol. 04TFMA2, Docket No. 90N-0420, Dockets Management Branch.


The agency is proposing that these revised drug interaction precautions become effective 12 months after the date of publication of the final rule in the Federal Register. Manufacturers of OTC antitussive drug products are encouraged to voluntarily implement this labeling as of the date of publication of this proposal, subject to the possibility that FDA may change the wording of the drug interaction precaution as a result of comments filed in response to this proposal. Because FDA is encouraging the proposed drug interaction precaution to be used on a voluntary basis at this time, the agency advises that manufacturers will be given ample time after publication of a final rule to use up any labeling implemented in conformance with this proposal.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the Federal Register of February 8, 1980 (48 FR 5800), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC antitussive drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking is not expected to pose such an impact on small businesses. The only
action needed will be a labeling revision at the time that the final monograph amendment becomes effective. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC antitussive drug products. Comments regarding the impact of this rulemaking on OTC antitussive drug products should be accompanied by appropriate documentation. A period of 60 days from the date of publication of this proposed rulemaking in the Federal Register will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before August 18, 1992, submit written comments on the proposed regulation to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before August 18, 1992. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR Part 341 be amended as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR Part 341 continues to read as follows:


2. Section 341.74 is amended by adding new paragraphs (c)(4)(v) and (c)(4)(vi) to read as follows:

§ 341.74 Labeling of antitussive drug products.

(c) For products containing dextromethorphan or dextromethorphan hydrobromide identified in § 341.14(a)(3) and (a)(4) when labeled for adults or for adults and children under 12 years of age. "Drug Interaction Precaution. Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product."

(v) For products containing dextromethorphan or dextromethorphan hydrobromide identified in § 341.14(a)(3) and (a)(4) when labeled only for children under 12 years of age. "Drug Interaction Precaution. Do not give this product to a child who is taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting the child's doctor. If you are uncertain whether your child's prescription drug contains an MAOI, consult a health professional before giving this product."


Michael R. Taylor,
Deputy Commissioner for Policy.

[FR Doc. 92–14352 Filed 6–18–92; 8:45 am]

BILLING CODE 4160–01–F
Part IX

Department of Interior

Fish and Wildlife Service

50 CFR Part 20
Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings; Proposed Rules
DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service

50 CFR Part 20

RNA: 1018-AA24

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposed in an earlier document to establish annual hunting regulations for certain migratory game birds. This supplementary document describes proposed changes and provides additional information that will facilitate establishment of the 1992-93 hunting regulations. This document also announces the meetings of the Service Migratory Bird Regulations Committee.

DATES: The Service Migratory Bird Regulations Committee will meet to consider and develop proposed regulations for early seasons on June 23, 24, and 25, and for late seasons on August 4, 5, and 6. Public hearings on proposed early- and late-season frameworks will be held at 9:00 a.m. on June 25 and August 6, 1992, respectively. The comment period for proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons will end on July 20, 1992; and for late-season proposals will end on August 30, 1992.

ADDRESSES: Meetings of the Service Migratory Bird Regulations Committee will be held in the Board Room of the American Institute of Architects Building, 1735 New York Avenue (at the corner of 18th and E Streets, NW.), Washington, DC. Both public hearings will be held in the Auditorium of the Department of the Interior Building, 1849 C Street, NW., Washington, DC. Written comments on the proposals and notice of intention to participate in either hearing should be sent to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.


SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1991

On May 8, 1992, the Service published in the Federal Register (57 FR 19865) a proposal to amend 50 CFR part 20. The proposal dealt with establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of part K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. Comment periods on this second document are specified above under DATES. Early-season frameworks will be proposed in late June and late-season frameworks in early August. Final regulatory frameworks for early seasons are targeted for publication on or about August 17, 1992, and those for late seasons on or about September 23, 1992.

On June 25, 1992, a public hearing will be held in Washington, DC, to review the status of migratory shore and upland game birds. Recommended hunting regulations for these species and other early seasons will be discussed at that time.

On August 6, 1992, a public hearing will be held in Washington, DC, to review the status of waterfowl and recommended hunting regulations for early-season waterfowl seasons, and other species and seasons not previously discussed at the June 25 public hearing.

Announcement of Service Regulations Committee Meetings for Early-Season Regulations

The meeting on June 23 is to review information on the 1991 status of migratory game birds and to develop 1992-93 migratory game bird regulations recommendations. The June 24 meeting is to assure that the Service's regulation recommendations are developed with the benefit of full consultation on the issues.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee that are attended by any person outside the Department, these meetings will be open to public observation. Members of the public may submit to the Director written comments on the matters discussed.

Announcement of Flyway Council Meetings

Service representatives will be present at the following meetings of Flyway Councils:

Atlantic Flyway—July 29-30, Wrightsville, North Carolina (Shell Island Hotel)
Mississippi Flyway—July 29-30, Springfield, Missouri (Ramada Hotel - Hawthorn Park)
Central Flyway—July 30-31, Yellowknife, NWT (Discovery Inn)
Pacific Flyway—July 30-31, Reno, Nevada (Peppermill Inn)

Although agendas are not yet available, these meetings usually commence at 8:30 to 9 a.m. on the days indicated.

Review of Public Comments

This supplemental rulemaking describes changes which have been recommended based on the preliminary proposals published May 8, 1992, in the Federal Register. Only those recommendations that would require either new proposals or substantial modification of the preliminary proposals to facilitate effective public participation are included herein. Those that support or oppose but do not recommend alternatives to the preliminary proposals are not included, but will be considered later in the regulations-development process. The Service will publish responses to proposals, written comments, and public-hearing testimony when final frameworks are developed, at which time additional data about the status of affected species will be available.

The Service seeks additional information and comments on the recommendations contained in this supplemental proposed rule. These recommendations and all associated comments will be considered during development of the final frameworks.

New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the May 8, 1992, Federal Register (57 FR 19865).

1. Ducks.

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special/Species Management. Only those categories containing substantial recommendations are included below.

B. Framework Dates

The Atlantic Flyway Council recommended that the framework opening date may be used as a tool for managing harvests of certain duck populations in the Atlantic Flyway.
Under normal circumstances, the opening date in the Atlantic Flyway should be October 1. Framework closing dates should not be used as a tool for managing duck harvest and should be fixed indefinitely at no earlier than January 15 for the Atlantic Flyway. The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that framework dates be fixed dates not subject to annual fluctuations and that the fixed dates should be the Saturday nearest October 1 through January 20.

The Committee had previously recommended that framework dates be the Saturday nearest October 1 to the Sunday nearest to January 20. They stated that framework dates should be fixed indefinitely at no earlier than October 1. Framework closing dates have failed to provide evidence of regulatory fairness throughout the flyway. The Central Flyway Council noted that the Service's review of framework dates has failed to provide evidence of measurable benefits from the use of framework dates to regulate harvests. The Council stated that the use of framework dates for harvest management is selective in its impact on various impacts of framework dates. The Committee had previously recommended that framework dates be the Saturday nearest October 1 to the Sunday nearest to January 20. They stated that framework dates cannot be separated from other past regulatory changes and that the current framework application may not provide equal regulatory fairness throughout the flyway.

The Central Flyway Council noted that the Service's review of framework dates has failed to provide evidence of measurable benefits from the use of framework dates to regulate harvests. The Council stated that the use of framework dates for harvest management is selective in its impact on northern and southern States. In the North, early migrations of some species are complete before seasons open. In the South, seasons are closed before migrations are complete. The Council believes that harvest management should focus on more equitable regulations, such as season length and daily bag limits. Framework dates should not be used to regulate annual harvests, but should be used to establish an appropriate biological framework for duck hunting.

The Pacific Flyway Council recommended that manipulation of hunting-season framework dates should continue to be an option in regulating duck harvest. The Service should not eliminate any duck harvest management options, although the evaluation conducted by the Service to assess the impact of utilizing framework dates to regulate harvest was inconclusive.

G. Special/Species Management

Canvasback Harvest Management

The Atlantic Flyway Council recommended that the Service develop an interim strategy for canvasbacks to be used until the resolution of stabilized regulation guidelines. This interim strategy should be based on current biological data, including information that indicates the East/West delineation of the canvasback population is no longer warranted. The Council stated that this interim strategy should be equitable among the 4 flyways.

The Central Flyway Council recommended that a season be initiated when the continental breeding population index exceeds 450,000 (3-year average) and the pond index exceeds 3 million. This season would continue until the continental breeding population index falls below 400,000 (3-year average). The Council stated that banding data suggest the canvasback population is not comprised of two distinct subpopulations and that all flyways should be given an opportunity to conduct a season. The Council recommended that this interim strategy be used until the concept of stabilized regulations becomes operational. The Pacific Flyway Council recommended that the Service continue to manage Canvasback harvest by subunits. They strongly believe that management actions are most effective when they recognize biological differences among and within populations. Although Western and Eastern canvasback populations are not completely distinct, biological differences do exist that should be recognized in management design. The Council specifically recommended that the quality of the midwinter survey be improved with respect to canvassbacks in the western United States, that the aggregate canvasback/redhead bag should be maintained, that the Service evaluate the cost of trapping and banding required to better determine distribution and derivation of canvasback harvests, and that population harvest strategies be developed that distinguish between Western and Eastern populations, but remain sensitive to population overlap.

ii. Pintail Harvest Management

The Central Flyway Council recommended that the Service maintain the current harvest regulations unless a significant decline occurs in the breeding population index. If such a decline should occur, coordination should be initiated between the Service and the flyways to develop options for conservation of the pintail. The Council recognized the low population status of the pintail but indicated that sport harvest was not the cause of the decline. There is no biological justification for closing the pintail season, and a closed season for pintails would complicate regulations and hamper habitat-management efforts.

The Pacific Flyway Council recommended that harvest management options short of season closures should be pursued. Total season closure seems inappropriate because of the lack of evidence that demonstrates population levels have been or are now being regulated by harvest. Closure also may negatively impact support for ongoing habitat-enhancement efforts.

iii. Experimental September Duck Seasons

Several recommendations addressing increased harvest opportunities for teal in September referenced the experimental September duck seasons. These seasons are currently limited to wood ducks. Recommendations regarding increased opportunities for blue-winged teal are summarized under September Teal Seasons.

iv. September Teal Seasons

The Atlantic Flyway Council recommended that Florida be allowed to hold a September teal season (in conjunction with their experimental September wood duck season) when and if September teal seasons are restored in the Central and Mississippi Flyways.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended interim criteria for reinstatement of the September teal seasons as follows:

"Breeding population indices were viewed as the most appropriate basis for development of interim guidelines for reinstatement of September teal seasons. Final guidelines for September teal seasons should include a range of criteria, including breeding populations, habitat conditions, harvest rates, and development of an approach to evaluate harvest south of the United States."

"In the interim (1992), reinstatement of September teal seasons is recommended if the breeding population is sustained at 1991 levels (3.779 + 0.245 million). This criterion includes consideration of the precision of population surveys for blue-winged teal. Thus, a breeding population of 3.5 million breeding blue-winged teal would be considered sufficient to recommend reinstatement of the season for 1992. The Service and the Mississippi Flyway Council should jointly develop final implementation criteria (in conjunction with development of stabilized regulations strategies) by March 1994."

In addition, the Lower-Region Regulations Committee recommended that if the full September teal season is reinstated, teal be incorporated into...
Kentucky's and Tennessee's September wood duck season daily bag limit and that the bag limit be 4 birds, including no more than 2 wood ducks. If an abbreviated September teal season is offered, the Committee recommended a daily bag limit of 2 teal or wood ducks, singly or in the aggregate.

The Central Flyway Council recommended reinstatement of the September teal season when the 3-year running average of the breeding population index equals or exceeds 3 million. The season length and daily bag limits should be the same as used in past years — a 9-day season with a 4-bird daily bag limit. The September teal season should be reviewed if the 3-year running average of the breeding population index falls below 3 million.

4. Canada Geese

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service closely monitor existing regular and special seasons for the impact on the Southern James Bay Population of Canada geese. They further recommend that the Service fully analyze data from existing seasons before expanding seasons that might cause cumulative harvest on this population of geese. They emphasized that special seasons should adhere to the criteria established by the Service.

A. Special Seasons

Since establishing the Criteria for Special Canada Goose Seasons on September 26, 1991, (at 56 FR 49110), the Service has become aware of the need to clarify certain terms and to include provisions for special early seasons to be held after the established dates. The Service herein proposes to modify the established special-season criteria. The revised criteria would clarify that special seasons may be held only after the close of the regular Canada goose season in that geographic area. Special early Canada goose seasons will be considered after the established dates but prior to the opening of the regular Canada goose season provided that at least 2 years of data gathered during the time period being considered are available to justify such a season. The Service expresses its concern for the protection of nontarget Canada goose populations during this later period and emphasizes that these data, and information from subsequent evaluations, must strongly indicate that such a season will successfully meet all established criteria for special early Canada goose seasons.


The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service approve operational status of the seasons in the Upper Peninsula and Northern Lower Peninsula portions of Michigan which were part of the original 1986-89 experimental season and that the Service approve a 3-year expanded eastern-Upper-Peninsula experiment.

The Committee further recommended that the experimental seasons in the Fergus Falls/ Alexandria and Southwest Border goose zones in Minnesota be extended pending completion of the final report. Preliminary final reports indicate that these seasons meet the criteria outlined in the Memorandum of Understanding between Minnesota and the Service; however, Minnesota is unable to complete the final report until 1991 band-recovery and parts-collection survey data are obtained. The final reports will be completed prior to the March 1993 Council Meeting.

The Pacific Flyway Council recommended that the hunt area in Oregon be enlarged to include Youngs Bay, its tributaries south and east of the city of Astoria, and adjacent agricultural lands.

ii. Late Seasons. No recommendations received.

B. Regular Seasons

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service establish a 3-year experimental season in Boone, Callaway, Cole, and Howard Counties of central Missouri. This season would be 9-15 days long and would be held prior to October 15. The daily bag limit would be 3 geese. All geese harvested would be checked at mandatory check stations and a special permit would be required for hunters to participate. The recommended season would be in addition to the regular Canada goose season.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Canada goose frameworks in Wisconsin be modified as follows: Eliminate the Pine Island and Theresa Zones and incorporate these areas into the Horicon Zone. Establish permit-issuance procedures and liberalize hunting authorizations if Wisconsin's Federally-assigned harvest quota for Canada geese exceeds 300,000 and 200,000, respectively. When Wisconsin's quota exceeds 160,000 birds, tag-zone hunters will be authorized to harvest a limited number of birds (controlled by tags) in the Exterior Zone. In the Interior Zone, hunting will be allowed to harvest a limited number of birds (controlled by tags) in the Horicon Zone. When Wisconsin's quota exceeds 200,000 birds, all zone restrictions will be dropped and hunters will be permitted to hunt anywhere in the State if they first obtain a Canada goose hunting permit, as long as an acceptable harvest-monitoring system is in place.

The Central Flyway Council recommended that an interim harvest strategy be developed for dark geese in the Central Flyway. This strategy should endorse attempts to increase harvest of all dark geese in the western tier and increase harvest on large Canada geese, while maintaining harvest of small Canada geese and white-fronted goose, in the eastern tier. During the interim, management plans will be revised.

5. White-fronted Geese

The Central Flyway Council recommendation regarding an interim harvest strategy for dark geese in the Central Flyway involves white-fronted goose. See item 4. Canada Geese.

9. Sandhill Cranes

The Central Flyway Council recommended no changes in the mid-continent sandhill crane hunting frameworks. The management plan is currently being revised. The Council believes that frameworks should not be modified prior to the revision and that future frameworks should abide by the revised management plan.

The Management Plan for Mid-Continent Sandhill Cranes was approved by the Central Flyway Council in 1981. The Service notes that substantial efforts were made during March 1992 to update this cooperative management plan. The Service suggests that the final revision should be completed prior to June 1993 in the interim, the Service also recommends that the Central Flyway Council submit a draft plan to the Pacific Flyway Council for joint concurrence because management of this population in both flyways is currently being guided by this management plan.

The Central and Pacific Flyway Councils recommended that an experimental season be initiated in Montana for the Rocky Mountain Population of sandhill cranes. All hunts would follow guidelines as outlined in the revised Pacific and Central Flyway Management Plan for Rocky Mountain Greater Sandhill Cranes.
The Central Flyway Council recommended that the portion of the Texas Special White-winged Dove Area from Del Rio to Fort Hancock be discontinued and that this area be transferred from the South Zone to the Central Zone. Transferring this area to the Central Zone would permit the hunting of both white-winged doves and mourning doves to begin in this area on September 1, rather than limiting the hunt prior to September 20 to weekends during the special season.

The Central Flyway Council recommendation regarding the number of white-winged doves allowed in the aggregate daily bag limit involves mourning doves as well. See item 17, White-winged and White-tipped Doves.

The Central Flyway Council recommendation regarding realignment of zone boundaries involves white-winged doves. See item 16. Mourning Doves:

The Council further recommended that the number of white-winged doves permitted in the aggregate daily bag limit during the Texas mourning dove season in Cameron, Hidalgo, Starr, and Willacy Counties in the Lower Rio Grande Valley be increased from 2 to 6 to match the statewide daily bag limit.

Finally, the Council recommended that the special white-winged dove season be increased from 2 to 4 days in September if the Valley white-winged population increases to over 350,000 breeding birds.

23. Other.

A. Stabilized Regulations Development

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service improve the regulations-setting process with objectives of reducing costs of setting regulations while still maintaining a complete 3-year to 5-year periodic review.

The Pacific Flyway Council supported cooperative development of prescriptive regulations that will guide harvest strategies for duck populations. The Council believes expeditious development of harvest guidelines that incorporate habitat variables will lead to a more productive, concerted, and meaningful approach to management, particularly as populations recover.

Public Comment Invited

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability before mid-June of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with EPA on June 9, 1988. Notice of Availability was published in the Federal Register on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988, (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption ADDRESSES.

Endangered Species Act Consideration

As in the past, hunting regulations this year will be designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. Consultations are presently under way to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. It is possible that the findings from the consultations, which will be included in a biological opinion, may cause modification of some regulatory measures proposed in this document. Any modifications will be reflected in the final frameworks. The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for public inspection in the Division of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act, Executive Order 12291, and Paperwork Reduction Act

In the Federal Register dated May 8, 1992, (57 FR 19865), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. This information is included in the present document by reference. As noted in the above Federal Register reference, the Service plans to issue its Memorandum of Law for the migratory bird hunting regulations at the same time the first of the annual hunting rules is finalized. This rule does not contain any information collection requiring approval by the Office of Management and Budget under 44 U.S.C. 3504.

Authorship

The primary authors of this supplemental proposed rulemaking are Robert J. Blohm and William O. Vogel, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting, and recordkeeping requirements, Transportation, Wildlife.

Dated: June 2, 1992.

James F. Spagnole,
Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 92-14503 Filed 6-18-92; 8:45 am]

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