AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

6-30-92
Vol. 57 No. 126

federal register

Tuesday
June 30, 1992

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

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

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

6-30-92
Vol. 57 No. 126
Pages 28997-29180

federal register

Tuesday
June 30, 1992

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WHO: The Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
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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
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Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 722

Appraisals

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is issuing an amendment to exempt certain transactions from the requirements of the appraisal regulation. The amendments will: Permit federally-insured credit unions to use appraisals prepared for loans insured or guaranteed by an agency of the federal government if the appraisal conforms to the requirements of the federal insurer or guarantor; and add a definition of "real estate" and "real property" to clarify that the appraisal regulation does not apply to a loan collateralized by mineral rights, timber rights, or growing crops.

EFFECTIVE DATE: June 30, 1992.

ADDRESSES: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Office of General Counsel, at the above address or telephone: (202) 682–9630, or Alonzo Swann, Office of Examination and Insurance, at the above address or telephone: (202) 682–9640.

SUPPLEMENTARY INFORMATION:

Discussion

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) directed NCUA and the other financial institution regulatory agencies, to publish appraisal rules for federally related real estate transactions within the jurisdiction of each agency. In accordance with statutory requirements, NCUA's final rule set minimum standards for appraisals used in connection with federally related real estate transactions and identified those transactions that require a state certified appraiser and those that require either a state certified or licensed appraiser.

The final rule was published July 25, 1990 (55 FR 30199).

On January 22, 1992, the NCUA published a proposed rule (57 FR 2485) to exempt additional transactions from the requirements of the appraisal regulation to alleviate perceived confusion concerning particular transactions. NCUA proposed to: (1) Permit the use of appraisals prepared for loans insured or guaranteed by an agency of the federal government if the appraisal conforms to regulations or other written requirements of the federal insurer or guarantor; and (2) add a definition of "real estate" and "real property" to clarify that the appraisal regulation does not apply to loans collateralized by mineral rights, timber rights, or growing crops.

Comments

Ten comment letters were received. Three comments were received from federal credit unions, one was from a state credit union, two were from national credit union trade associations, and two were from state credit union leagues. Comments were also received from an appraisal organization and a national private mortgage insurance industry trade association. These comments are discussed below.

Government Guaranteed Loans

Five commenters favored the proposed amendment to permit federally-insured credit unions to use appraisals prepared for loans insured or guaranteed by an agency of the federal government if the appraisal conforms to the requirements of the federal insurer or guarantor. These commenters believe the amendment will reduce costs to credit unions and their members without compromising safety and soundness. They also stated that without this exemption credit unions would be placed at a competitive disadvantage in granting these types of loans since other financial institutions have this exemption.

One commenter objected to this proposed amendment. The commenter believes that Congress wanted uniformity in appraisals and the qualifications of appraisers to protect federal financial and public policy interests. This commenter also believes the amendment would violate Title XI of FIRREA because NCUA lacks the authority to delegate to another agency the determination of appraisal standards and appraiser qualifications for real estate collateral for transactions involving government guaranteed loans. NCUA does not agree.

Neither Title XI of FIRREA nor the committee reports issued in connection with therewith indicate that Congress intended the financial institution regulatory agencies to impose their appraisal standards on all other federal agencies. Instead, Title XI of FIRREA requires the use of a state certified or licensed appraiser and adherence to specific appraisal requirements only when necessary to protect federal financial and public policy interests. One of the principal concerns which prompted Congress to enact Title XI of FIRREA—the risk of loss to the deposit insurance funds—is minimized for loans insured or guaranteed by an agency of the federal government. For these reasons, NCUA believes the commenter's argument is without merit. Therefore, the NCUA Board is adopting this amendment as proposed.

Definition of "Real Estate" and "Real Property"

Six commenters favored the proposed amendment to add a definition of "real estate" and "real property" to clarify that the appraisal regulation does not apply to loans collateralized by mineral rights, timber rights or growing crops. These commenters believe that it is appropriate for such loans to be subject to the appraisal regulation.

Three commenters objected to the addition of the definition. Two of these commenters stated that without an appraisal on loans proposed to be excluded by the definition, a credit union could not determine the value of the collateral securing the loan. NCUA agrees that such collateral must be valued before the loan is granted but that the requirements of the appraisal regulation are inappropriate and unnecessary for loans secured by such collateral. Such loans must meet the requirements of § 701.21(h)(i)(I) of NCUA's Regulations, the business loan rule, which requires the board of directors of a federally insured credit

union to adopt written policies addressing appraisal requirements.

Another commenter requested including timber and mineral rights in the definition, but with a clearly defined exception for those instances when such rights are the sole collateral for the loan. NCUA intended this amendment to clarify that credit unions are not required to obtain appraisals on tracts of land to which mineral rights, timber rights for growing crops are attached, if the transaction only involves such rights rather than the tract of land itself. Where minerals rights, timber rights, or growing crops, and the associated tract of land, are the subject of a real estate-related financial transaction, then the services of an appraiser would be required in connection with that transaction, unless otherwise exempted under the regulation. In addition, the contribution of relevant mineral rights, timber rights, or growing crops should be included when appraising a tract of land which possesses any of these features. However, valuation of these interests would not be required if they are not part of the transaction, or if they are not relevant to analyses which the appraiser needs to perform to arrive at an estimate of value for a tract of land. The definition adopted in the final rule has therefore been changed to clarify that mineral rights, timber rights, growing crops and other severable interests in a tract of land are excluded from the definition of real estate when the transaction involves only those interests.

The final amendment will allow NCUA's rule to remain consistent with the other regulatory agencies' rules with respect to the definition of real property and real estate. Few, if any, federally insured credit unions make loans secured by mineral or timber rights. A limited number of credit unions, with agriculturally-based fields of membership, make loans secured by growing crops. In those cases, NCUA will continue to monitor, through the normal examination process, the credit unions' methods for establishing the value of their security interests.

Regulatory Issues

Since these amendments do not have an adverse or restrictive affect on credit unions lending activities, this rule change is effective immediately.

On January 28, 1992, President Bush issued a memorandum requesting federal agencies to take certain steps to reduce unnecessary regulatory burden and foster economic growth. Although not covered by the memorandum, NCUA is complying with the spirit of the President's request. This amendment complies with the President's request since it fosters economic growth by reducing credit union appraisal costs without compromising safety and soundness.

Paperwork Reduction Act

The Office of Management and Budget has approved the collection requirements contained in part 722 of NCUA's Regulations (OMB No. 3133–0125) relating to appraisal requirements in federally related transactions for federally-insured credit unions. The final amendments do not change or may minimally reduce the paperwork requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). Overall, the NCUA Board expects the changes to benefit consumers and federally-insured credit unions regardless of size by reducing costs without substantially increasing the risk of loss for federally insured credit unions from fraudulent or inaccurate appraisals of real estate collateral. In addition, most small credit unions do not offer real estate loans. Accordingly the Board determines and certifies that these final amendments do not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. FIRREA requires that the appraisal regulation apply to all federally insured credit unions. The final amendments reduce regulatory requirements for state-chartered federally-insured credit unions. Therefore, the NCUA Board has determined that the final amendments will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 722

Appraisals, Credit unions, Mortgages, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on June 23, 1992.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR chapter VII as follows:

PART 722—APPRAISALS

1. The authority citation for part 722 is revised to read as follows:

Authority: 12 U.S.C. 1766, 1789 and 3339.

2. In § 722.2 existing paragraphs (g) through (k) are redesignated as paragraphs (h) through (l), respectively, and a new paragraph (g) is added to read as follows:

§ 722.2 Definitions.

* * * * *

(g) *Real estate or real property* means an identified parcel or tract of land, including easements, rights of way, undivided or future interests and similar rights in a parcel or tract of land, but does not include mineral rights, timber rights, and growing crops, water rights and similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

* * * * *

3. In § 722.3, paragraphs (a)(4)(iv) and (a)(5) are revised and a new paragraph (a)(6) is added to read as follows:

§ 722.3 Appraisal not required; transactions requiring a State-certified or licensed appraiser.

(a) * * *

(4) * * *

(iv) There has been no obvious and material deterioration in market conditions or physical aspects of the property which would threaten the institution's collateral protection;

(5) A regulated institution purchases a loan or interest in a loan, pooled loans, or interest in real property, including mortgage—backed securities, provided that the appraisal prepared for each pooled loan or real property interest met the requirement of this regulation, if applicable, at the time of origination; or

(6) A regulated institution makes or purchases a loan secured by real estate, which loan is insured or guaranteed by an agency of the United States government and is supported by an appraisal that conforms to the requirements of the insuring or guaranteeing agency.

* * * * *

[FR Doc. 92–15255 Filed 6–29–92; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AWA-5]

Alteration of VOR Federal Airway V-352; ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters Federal Airway V-352 by extending the airway between Houlton, ME, and Fredericton, New Brunswick, Canada. This action is requested by the Canadian government to improve and enhance the flow of air traffic in that area. Extending this airway will involve airspace, approximately 4 nautical miles, within the United States border.

EFFECTIVE DATE: 0901 u.t.c., August 20, 1992.

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

SUPPLEMENTARY INFORMATION:

History

On March 25, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter V-352 between Houlton, ME, and Fredericton, New Brunswick, Canada (57 FR 10306). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. VOR Federal airways are published in § 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The amended designation of the airway listed in this document will be published subsequently in Section 71.123 of the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters V-352 between Houlton, ME, and Fredericton, New Brunswick, Canada. This extension to the airway will enhance the flow of air traffic in that airspace.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, VOR Federal airways.

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Section 71.123 Domestic VOR Federal Airways

* * * * *

V-352

From Beauce, Quebec, Canada; via Houlton, ME; to Fredericton, NB, Canada, excluding the airspace within Canada.

* * * * *

Issued in Washington, DC, on June 12, 1992.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 92-15288 Filed 6-29-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 26902; Amdt. No. 1498]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification, and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts The circumstances which created the need for all these SIAP amendments requries making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unncessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on June 19, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
06/08/92	GA	Cairo	Cairo-Grady County	FDC 2/3229	NDB RWY 12, AMDT 3
06/08/92	WV	Elkins	Elkins-Randolph County-Jennings Randolph FLD.	FDC 2/3226	LDA-C AMDT 6
06/08/92	WV	Elkins	Elkins-Randolph County-Jennings Randolph FLD.	FDC 2/3227	VOR/DME–B AMDT 3
06/10/92	KS	Garden City	Garden City Muni	FDC 2/3274	VOR RWY 35 AMDT 7
06/10/92	TX	Marlin	Marlin	FDC 2/3276	VOR-DME–A AMDT 4
06/11/92	AK	Delta Junction	Allen AAF	FDC 2/3310	VOR/DME OR TACAN RWY 18 AMDT 2A
06/15/92	OR	Portland	Portland-Hillsboro	FDC 2/3365	ILS RWY 12, AMDT 5

NFDC Transmittal Letter Attachment

Delta Junction

Allen AAF
Alaska
VOR/DME OR TACAN RWY 18 AMDT 2A...
Effective: 06/11/92
FDC 2/3310/BIG/ FI/P Allen AAF, Delta Junction, AK. VOR/DME OR TACAN RWY 18 AMDT 2A...Missed APCH... Climb to 2000, then climbing RT. TO 5000 VIA BIG VORTAC R–281 TO 15 DME AND HOLD W, LT 101 INBND. DELETE... Holding Patern at TRUDI/BIG 5 DME. This becomes VOR/DME OR TACAN RWY 18 AMDT 2B.

Cairo

Cairo-Grady County
Georgia
NDB RWY 12 AMDT 3...
Effective: 06/08/92
FDC 2/3229/7OJ/ FI/P Cairo-Grady County, Cairo, GA. NDB RWY 12 AMDT 3...TRML Route Renoe Int to CYR NDB 2000. Delete note...Activate MIRL RWY 12–30 AND VASI RWYS 12–30 AND VASI RWYS 12 AND 30–CTAF. This becomes NDB RWY 12, AMDT 3A.

Garden City

Garden City Muni
Kansas
VOR RWY 35 AMDT 7...
Effective: 06/10/92
FDC 2/3274/GCK/ FI/P Garden City Muni, Garden City, KS. VOR RWY 35 AMDT 7...Missed APCH instructions should read... Climb to 4000 then climbing RT TO 4700 direct GCK VORTAC and hold. This becomes VOR RWY 35 AMDT 7A.

Portland

Portland-Hillsboro
Oregon
ILS RWY 12 AMDT 5...
Effective: 06/15/92
FDC 2/3365/HIO/ FI/P Portland-Hillsboro, Portland, OR. ILS RWY 12, AMDT 5...Change TCH TO 59 FT. This becomes ILS RWY 12, AMDT 5A.

Marlin

Marlin
Texas
VOR/DME-A AMDT 4...
Effective: 06/10/92
FDC 2/3276/T15/ FI/P Marlin, Marlin, TX. VOR/DME-A AMDT 4...MSA from ACT VORTAC /29 NM/ 090–270 3600, 270–090 2400. This is VOR/DME-A AMDT 4A.

Elkins

Elkins-Randolph County-Jennings Randolph Fld
West Virginia
LDA-C AMDT 6...
Effective: 06/08/92
FDC 2/3226/EKN/ FI/P Elkins-Randolph County-Jennings Randolph Fld, Elkins, WV. LDA-C AMDT 6...Delete note... Obtain...thru...FSS. This becomes LDA–C AMDT 6A.

Elkins

Elkins-Randolph County-Jennings Randolph Fld
West Virginia
VOR/DME-B AMDT 3...
Effective: 06/08/92
FDC 2/3227/EKN/ FI/P Elkins-Randolph County-Jennings Randolph Fld, Elkins, WV. VOR/DME-B AMDT 3...Delete note... Obtain...thru...LCL. This becomes VOR/DME–B AMDT 3A.

[FR Doc. 92–15293 Filed 6–29–92; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 812

[Docket No. 85N–0331]

Cardiovascular Devices; Extension of Effective Date of Requirement for Premarket Approval; Replacement Heart Valve Allograft

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of applicability of a final rule; extension.

SUMMARY: The Food and Drug Administration (FDA) is extending the effective date of a notice which was announced in the Federal Register of June 26, 1991 (56 FR 29177), for requiring an approved premarket approval application (PMA) or investigational device exemption (IDE) for replacement heart valve allografts. The June 1991 notice stated that replacement heart valve allograft devices are subject to a final rule issued by FDA on May 13, 1987 (52 FR 18162), which required the filing of a PMA for all preamendment replacement heart valves and those substantially equivalent to preamendment replacement heart valves.

The June 1991 notice provided a grace period until August 26, 1991, for processors of replacement heart valve allografts to comply with the law by obtaining an approved PMA or an effective IDE. A subsequent notice, issued by FDA on July 29, 1991 (56 FR 35815), extended the effective date for requiring an approved PMA or an effective IDE until November 25, 1991. The notice of April 14, 1992 (57 FR 12875), further extended the effective date for requiring an approved PMA or an effective IDE until May 31, 1992. The current notice extends the effective date until June 30, 1992.

EFFECTIVE DATE: FDA is extending the effective date for an approved PMA or effective IDE until June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Kenneth Palmer, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1205.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 26, 1991 (56 FR 29177), FDA stated that § 870.3925 (21 CFR 870.3925) (52 FR 18162, May 13, 1987), which regulates replacement heart valves, applies to allograft heart valves, i.e., human tissue valves, as well as to replacement valves made of mechanical or animal tissue components. The regulation requires the filing, under section 515(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(b)), of a PMA for replacement heart valve allograft devices. As an exercise of its enforcement discretion (see *Heckler* v. *Chaney*, 470 U.S. 821 (1985)) FDA allowed allograft processors a grace period (56 FR 29177) until August 26, 1991, to comply with the law by obtaining either an approved PMA or an effective IDE.

On July 17, 1991, FDA received a petition on behalf of six nonprofit tissue banks that process heart valve allografts requesting a stay of the effective date for requiring an approved PMA or effective IDE for a period of 30 months, until February 26, 1994. The petition recited a number of legal and policy grounds for the requested relief, but explained that assurance of availability of heart valve allografts was its principal reason. Petitioners argued in part that the final step of an operational IDE, that of institutional review board (IRB) approval, could not be obtained by August 26, 1991. Similar concerns about the difficulty of obtaining IRB approval by August 26, 1991, were raised in a July 15, 1991, letter to the agency by attorneys for CryoLife, Cardiovascular, Inc. (CryoLife), a laboratory that specializes in the low temperature preparation of human heart valves for implantation.

In response to this petition, in the Federal Register of July 29, 1991 (56 FR 35815), FDA extended the August 26, 1991, date until November 25, 1991.

On November 14, 1991, FDA received a petition on behalf of the six nonprofit tissue banks requesting an extension of the effective date for a period of 6

months (May 31, 1992) and another petition on behalf of CryoLife requesting an extension for a period of 4 months (March 31, 1992). The petitions cited numerous reasons for delays in the IRB approval process, including various IRB scheduling problems, the unusually large number of IRB's involved (over 100 for the 6 nonprofit tissue banks and over 300 for CryoLife), and negotiations with the IRB's over the wording of informed consent forms.

On February 24, 1992, as an exercise of its enforcement discretion, FDA granted both petitions and extended the grace period for complying with the law by obtaining an approved PMA or effective IDE until May 31, 1992. The agency concluded that this time period was reasonably calculated to deal with the expected problems in obtaining IRB approvals at such a large number of institutions. In the interest of uniformity, the agency set a single date of May 31, 1992, for all allograft producers, rather than different dates for CryoLife and the six nonprofit tissue banks. FDA expected this extension would provide the allograft producers with ample time to obtain enough IRB approvals to permit continued availability of allografts.

The six nonprofit tissue banks have filed two suits against FDA challenging the applicability of § 870.3925 to heart valve allografts. *Alabama Tissue Center et al.* v. *Sullivan et al.*, No. 91-2738 (7th Cir.) and *Alabama Tissue Center et al.* v. *Department of Health and Human Services et al.*, No. 91 C 6515 (N.D.Ill.). The Court of Appeals for the Seventh Circuit heard oral arguments in February 1992. The action in the district court is stayed pending the decision by the seventh circuit.

On March 6, 1992, the six nonprofit tissue banks submitted a petition to FDA seeking to delay the effective date until August 31, 1992. The principal basis cited for the request was "* * * to give the Seventh Circuit and/or the District Court time to resolve the legal issues." If the seventh circuit has not ruled by August 31, 1992, petitioners would be likely to seek still a further stay.

The petitioners did not indicate how such a stay is related to either the public interest or the interest of justice, which are the grounds on which FDA may grant a stay. FDA's position is that the long-term public interest is best served by regulating the availability of heart valve allografts pursuant to FDA regulatory requirements. FDA believes that if it were to stay enforcement of its regulations each time its action applying a regulation is challenged in court, the courts would be thronged with petitioners seeking to avoid enforcement, and FDA's ability to enforce its statutory obligation would be compromised severely.

The petitioners identified three additional factors to support their request for a further stay: (1) The difficulty in obtaining IRB approvals; (2) the increased costs of the valves attributable to the additional expenses of the IDE; and (3) the potentially harmful effect of IDE status on third party reimbursement for the valves and the surgery to implant them.

FDA has examined each of these factors to determine their potential impact on public access to allograft valves. First, reports to FDA from petitioners and CryoLife in April 1992 indicated that IRB approval has been obtained at more than 350 hospital facilities across the country. Second, as petitioners know, FDA has no statutory authority to exempt items from regulation for cost alone. Third, in light of the history and regulatory status of the allograft valves, FDA has recommended to Health Care Financing Administration (HCFA) that it consider continued coverage of these devices while they are available under IDE's. On the basis of FDA's recommendation, HCFA has notified FDA by letter dated May 22, 1992, that it will continue coverage of these devices during the IDE period. While HCFA coverage determinations are not binding on other third party payors, such as insurance companies and health maintenance organizations, these determinations are often used as guidelines by such payors.

Under these circumstances, FDA determined there is no basis for delaying the effective date until August 31, 1992, as petitioners request. By letter dated May 22, 1992, FDA informed petitioners of this decision. Since the time between May 22 and May 31 was short, FDA also informed petitioners that, in the interest of justice and the public health, the effective date is extended to June 30, 1992. This additional period should allow petitioners ample time to obtain approval from the remaining IRB's and to comply fully with all IDE requirements on July 1, 1992. The petitions and responses are available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 25, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-15350 Filed 6-25-92; 4:52 p.m.]

BILLING CODE 4160-01-F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1313

[Docket No. 89-02; Notice 4]

RIN 2127-AD01

Incentive Grant Criteria for Drunk Driving Prevention Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Interim final rule; request for comments.

SUMMARY: On December 18, 1991, the Highway Safety Act of 1991 was signed into law. Section 2004 of that Act revised the Drunk Driving Prevention Act of 1988, which authorized an incentive grant program for States with comprehensive drunk driving prevention programs. The revision changed, among other things, some of the criteria States must meet to qualify for an incentive grant under this program. Today's interim final rule amends portions of the agency's regulation implementing section 410, to reflect these statutory changes.

This notice is being published as an interim final rule, which will go into effect prior to providing notice and the opportunity for comment. However, NHTSA requests comments on the rule. Following the close of the comment period, NHTSA will publish a separate notice responding to the comments and, if appropriate, will amend provisions of the regulation.

DATES: This interim final rule becomes effective June 30, 1992. Comments on this interim rule are due no later than July 30, 1992.

ADDRESSES: Written comments should refer to the docket number and the number of this notice and be submitted (preferably in ten copies) to: Docket Section, National Highway Traffic Safety Administration, room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. James Hedlund, Director, Office of Alcohol and State Programs, NTS-20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-2753.

SUPPLEMENTARY INFORMATION: The Anti-Drug Abuse Act of 1988, Public Law 100-690, was signed into law on November 18, 1988. Section 9001 of the

Act, et seq., entitled the Drunk Driving Prevention Act of 1988, amended chapter 4 of title 23 United States Code, by adding section 410, which established a two-tiered incentive grant, under which States could qualify for basic and supplemental grant funds for adopting and implementing comprehensive drunk driving prevention programs which met certain specified statutory criteria.

On January 12, 1990, NHTSA publshed a final rule in the **Federal Register** (55 FR 1185) to implement this new incentive grant program. When this rule had been in place for nearly a year, and no State had submitted an application to NHTSA under the regulation's certification requirements, Congress made technical corrections to the statutory requirements contained in section 410. Section 336 of Public Law 101–516, which was signed into law on November 5, 1990, made three technical corrections to the statute. Corresponding changes were made to the agency's regulation, by final rule published in the **Federal Register** on May 1, 1991 (56 FR 19930).

The Highway Safety Act of 1991, signed into law on December 18, 1991, further revised section 410 (Section 2004, Pub.L. 102–240). The "new" section 410 includes a number of features of the section 408 (alcohol safety) and the "old" section 410 (drunk driving prevention) programs (such as administrative license suspension, per se laws, self-sustaining drunk driving prevention programs and open container laws), as well as some additional impaired driving prevention initiatives (such as increased use of sobriety checkpoints and efforts to videotape impaired drivers).

This interim rule changes the agency's implementing regulation to conform to the 1991 amendments. Each of these changes is discussed in detail below.

Award Procedures

The "new" section 410 modifies the manner in which grants are awarded. Under the new law, the amount authorized for the section 410 program is first apportioned to all the States (after a deduction for administrative expenses) under the same formula that governs the distribution of highway safety grant (section 402) funds (75 percent on the basis of population, 25 percent on the basis of road mileage). The agency intends to notify each State of its apportionment on an annual basis.

Out of these apportioned funds, basic and supplemental grants will be awarded to qualified States, in accordance with the limitations of funds described below. At the end of each fiscal year, the funds that were apportioned to States that did not qualify for section 410 funding in that fiscal year will be withdrawn from apportionment and reapportioned on the first day of the succeeding fiscal year to the States that did qualify. If ten States, for example, were to qualify for section 410 funding in FY 1992, all previously apportioned funds (to these and the remaining States) that had not been obligated, would be withdrawn from apportionment on September 30, 1992. Then, on October 1, 1992, these funds would be reapportioned to those ten States in accordance with the formula specified in subsection (g)(1) of the statute. NHTSA estimates that, in FY 1992, the amount reapportioned to each qualifying State could be several times greater than the amount apportioned initially to that State.

Basic and supplemental grants will then be awarded out of these reapportioned funds, subject to the same limitations of funds referenced above and discussed at greater length below.

Section 1313.7 of the agency's regulation has been modified by today's interim final rule to reflect this new award process. Other aspects of the award procedures have not been changed.

As before, upon receipt and subsequent approval of a State's certification and plan, NHTSA will award grant funds to the State and will authorize the State to incur costs subject to available funds.

Vouchers must be submitted to the appropriate NHTSA Regional Administrator and reimbursement will be made to States for authorized expenditures. The funding guidelines applicable to the section 402 Highway Safety Program and the section 408 Alcohol Incentive Grant Program (NHTSA Order 462–13A) will continue to be used to determine reimbursable expenditures under the section 410 program. As with requests for reimbursement under the section 402 and 408 programs, States should indicate on the vouchers what percentage of the funds expended are eligible for reimbursement under section 410.

Limitations on Grant Amounts

Under the "old" section 410, an eligible State could receive, as a basic grant, up to 30 percent of its FY 1989 highway safety grant (section 402) apportionment. An eligible State also could receive up to 55 percent of its FY 1989 section 402 apportionment in supplemental grants.

Under the "new" section 410, an eligible State may receive, as a basic grant, 65 percent of the amount apportioned to it in that fiscal year. To be eligible for a basic grant, under the new statute, a State must provide for four of the following five criteria: an expedited administrative driver's license suspension or revocation system; a specified BAC level, at or above which a person is deemed to be driving while intoxicated (for the first three fiscal years, that level must be 0.10 or lower; for subsequent fiscal years, that level must drop to 0.08 or lower); a statewide program for stopping motor vehicles on a nondiscriminatory, lawful basis for the purpose of determining whether the drivers are under the influence of alcohol; a self-sustaining drunk driving prevention program; and an effective system for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages.

If a State meets the basic grant requirements, and also the requirements for one or more of the seven supplemental grants, it may be eligible for supplemental grant funds under section 410.

An eligible State may receive a supplemental grant of 5 percent of the amount of funds apportioned to the State in that fiscal year under section 410 for each of the following seven programs: providing that any person under age 21 with a BAC of 0.02 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated; an open container and consumption law; a suspension of registration and return of license plate program for certain offenders; mandatory BAC testing programs for drivers involved in fatal and serious crashes who are believed to have committed an alcohol-related traffic offense; a comprehensive drugged driving prevention program that meets specified criteria; providing that any person with a BAC of 0.08 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated (during the first three fiscal years in which a basic grant is received); and a program for the acquisition of video equipment for the detection of drunk and drugged drivers.

A State that meets the criteria for a basic grant and all seven supplemental grants will receive grant funds equal to 100 percent of that State's apportionment in that fiscal year under this section.

These percentages apply to grants awarded out of both initial apportionments and reapportionments. Any State that qualifies in FY 1992 for only a basic grant, for example, will receive only a basic grant of 65 percent of its share of reapportioned funds in FY

1993. The State will receive additional supplemental grants of 5 percent of these reapportioned funds for each supplemental grant for which it had qualified in the previous fiscal year.

The "old" section 410 provided that States could receive grants for up to three fiscal years. Under the "new" section 410 program, there is no such limitation. States can, therefore, receive funds in an unlimited number of years, provided they meet the criteria and Congress continues to authorize and appropriate funds for this program. Section 410 is currently authorized through FY 1997.

Under the "old" section 410, States were required to match the grant funds they received as follows: the Federal share could not exceed 75 percent of the cost of implementing and enforcing the drunk driving prevention program adopted to qualify for these funds in the first fiscal year the State receives funds, 50 percent in the second fiscal year and 25 percent in the third. Under the new statute, the matching requirements of chapter 1 of title 23, United States Code, apply. As provided in section 120 of that chapter, the Federal share shall be 80 percent of the cost, except that special provisions apply to States containing nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved) exclusive of national forests and national parks and monuments, exceeding 5 percent of the total area of all lands therein. This matching requirement applies to grants awarded out of both apportioned and reapportioned funds.

Section 1313.4(c), formerly § 1313.4(b), of the agency's implementing regulation has been amended to reflect these new limitations.

The agency will continue to accept a "soft" match in section 410's administration, as it does for both the section 402 and section 408 programs. By this, NHTSA means the State's share may be satisfied by the use of either allowable costs incurred by the State or the value of in-kind contributions applicable to the period to which the matching requirement applies. A State could not, however, use any Federal funds, such as its section 402 or 408 funds, to satisfy the matching requirements. In addition, a State could use each non-Federal expenditure only once for matching purposes. In other words, State funds expended to support drunk driving enforcement activities, if used to match section 402 Federal funds, could not be used also to match section 408 or 410 funds.

Certification Procedures

The certification procedures for section 410 incentive grants have been modified to account for the new award procedures. Today's interim final rule provides that the certification procedures for receiving a grant out of the initial apportionment under the "new" section 410 are essentially the same as those under the "old" section 410 certification requirements for receiving a grant. It provides for abbreviated certification procedures for receiving a grant out of reapportioned funds.

To receive a grant out of the initial apportionment in any fiscal year, the State is required to submit an application to NHTSA, which demonstrates that it meets the requirements of the grants being requested. The particular requirements of these grants continue to be defined in detail in §§ 1313.5 and 1313.6 of the regulation. The State also must submit certification that: (1) It has a drunk driving prevention program that meets the grant requirements; (2) it will use the funds awarded only for the implementation and enforcement of drunk driving prevention programs; (3) it will administer the funds in accordance with relevant regulation and OMB Circulars; and (4) it will maintain its aggregate expenditures from all other sources for its drunk driving prevention programs at or above the average level of such expenditures in fiscal years 1990 and 1991. (Under the "old" section 410, the State was required to maintain its aggregate expenditures at or above the average level of such expenditures in FY 1987 and 1988.)

If found to be eligible for a grant, the State continues to be required to submit, within 120 days, a drunk driving prevention plan, similar in form to its section 408 alcohol safety plan. The agency's regulation implementing the "old" section 410 program provided that a State could choose to submit a drunk driving prevention plan that covers the period of one, two or three years in which it is potentially eligible for section 410 grants. As explained earlier, the "new" section 410 statute does not limit the States to three years of funding. Accordingly, the regulation has been amended to provide that a State may choose to submit a plan that covers a period of one or more years. The regulation continues to require that, in subsequent years, States must update the plan to demonstrate that they meet subsequent year requirements.

To receive a grant out of the reapportioned funds in any fiscal year, the State is required to submit to NHTSA the certifications listed above, including a certification that the State has a drunk driving prevention program that qualified for a grant under § 1313.5 and, if applicable, § 1313.6 of the regulation in the previous fiscal year, but the State need not resubmit an application. The State must also submit a drunk driving prevention plan covering the additional funds for which the State is applying. The plan must be submitted along with the certifications, rather than 120 days after the State is informed that it is eligible for a grant.

All other aspects of these procedures will remain unchanged. For a more detailed discussion on these procedures, interested persons are encouraged to review the final rule published on January 12, 1990 (55 FR 1185) and the NPRM published on June 26, 1989 (54 FR 26783), which discussed them at greater length.

Basic Grant Criteria

To be eligible for a basic grant, under the new section 410 statute, a State must provide for four of the following: an expedited administrative driver's license suspension or revocation system; a specified BAC level, at or above which a person is deemed to be driving while intoxicated (for the first three fiscal years, that level must be 0.10 or lower; for subsequent fiscal years, that level must drop to 0.08 or lower); a statewide program for stopping motor vehicles on a nondiscriminatory, lawful basis for the purpose of determining whether the drivers are under the influence of alcohol; a self-sustaining drunk driving prevention program; and an effective system for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages. Under the statute, an eligible State may receive, as a basic grant, 65 percent of the amount of funds apportioned to the State in that fiscal year under this section.

The elements of these basic grant criteria and the manner in which States must demonstrate compliance are explained fully below.

1. Expedited Administrative Driver's License Suspension or Revocation System

To qualify under section 410(c)(1), States must provide for "an expedited [administrative] driver's license suspension or revocation system for persons who operate motor vehicles while under the influence of alcohol * * *"

This criterion is essentially the same as the expedited license suspension criterion under the "old" section 410. There are two modifications. The first of

these related to the period of time by which administrative reviews must be held and the second to the time by which licenses must be suspended or revoked.

When section 410 was enacted originally, on November 18, 1988, the statute required that States must suspend or revoke an offender's driver's license and hold an administrative review (if the offender requested one) within a period of time that was defined by the statute.

On November 5, 1990, Congress enacted three technical corrections to section 410. One of these corrections removed the requirement that the administrative review must be held withint he statutory time frame. Under the correction, States were still required to provide offenders with the right to an administrative review of a license suspension or revocation action and the officer was required to provide the offender with notice of this right, but the review was no longer required to be conducted within a defined period of time. The statute continued to require that the suspension or revocation occur within the statutory time frame.

With regard to this element of the criterion, the provisions of the "new" section 410 track the original language in section 410, rather than the amended language that was corrected in November 1990. Accordingly, to meet this aspect of this criterion, States must once again hold administrative reviews (if requested) as well as suspend or revoke licenses within the period of time that is defined by the statute. The administrative review need not amount to a full hearing, but it must provide the offender with some opportunity to be heard.

While this change to section 410 may make it slightly more difficult for States to qualify for section 410 incentive grant funds, the second modification should facilitate the States' ability to comply. Until now, the statutory time frame was defined as 15 days, or 30 days if the State could show that meeting the 15-day requirement would impose a hardship on the State. In other words, States were required to suspend or revoke licenses (and hold administrative reviews, under the original statute), not later than 15 days after the individual received notice of the suspension or revocation (30 days if the State could show that meeting the 15-day requirement would impose a hardship on the State). Under the "new" section 410, these events must take place not later than 30 days after the individual receives notice. States are no longer required to meet a 15-day requirement or to make a showing of hardship.

Under the "old " section 410 implementing regulation, States that qualified for funding by meeting the 15-day requirement were eligible for a 30 percent basic grant. States that qualified by meeting the 30-day requirement and demonstrating hardship were eligible for only a 20 percent grant. Under today's final rule, all States that qualify for a basic grant will be eligible for 65 percent of the amount of funds apportioned to the State in that fiscal year under this section.

The statute now requires, under this criterion, that eligible states must provide for an administrative driver's license suspension or revocation system that contains the following elements: (1) Law enforcement officers must take possession of a person's driver's license if the person fails a chemical test or refuses to take one; (2) officers must serve offenders with notice of the suspension or revocation and of their rights, including the right to an administrative review; (3) the officers must immediately forward a report to the appropriate licensing agency within the State; (4) due process must be ensured by providing offenders with the right to an administrative review; (5) the period of suspension or revocation must be not less than 90 days for first offenders and not less than 1 year for repeat offenders; and (6) the administrative review must take place and the suspension or revocation, if any, take effect not later than 30 days after the individual receives notice.

Portions of § 1313.5 of the agency's implementing regulation, relating to the expedited administrative driver's license suspension requirements, have been changed accordingly. Other portions of this section of the regulation have remained unchanged.

For example, States will still be permitted to meet this criterion as either "Law States" or "Data States." To qualify as a Law State, the State must have a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the expedited administrative suspension system criterion. Law States may demonstrate compliance in the first fiscal year the State receives a basic grant based on this criterion, by submitting a copy of its conforming law, regulation or binding policy directive.

A State that does not have a conforming law, regulation or binding policy directive may qualify as a Data State. To demonstrate compliance, however, such a State must also submit data.

For a full discussion on these portions of the regulation, interested parties are encouraged to review the agency's NPRM dated June 26, 1989 (54 FR 26783) and final rules dated January 12, 1990 (55 FR 1185) and May 1, 1991 (56 FR 19930).

2. Per se Level of 0.10 and 0.08

To qualify under section 410(c)(2), States must provide:

(A) For each of the first three fiscal years in which a grant is received, any person with a blood alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated; and

(B) For each of the last two fiscal years in which a grant is received, any person with a blood alcohol concentration of 0.08 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

This criterion is modeled after one of the basic requirements under the agency's section 408 program. Under section 408, States must provide that any person with a blood alcohol concentration (BAC) of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated. In other words, States must establish a 0.10 per se law, that makes driving with a BAC of 0.10 percent or above itself an offense. The "new" section 410 varies this requirement, by providing that States must reduce the per se level to 0.08 or above to continue to qualify under this basic criterion after the third year of funding.

In this and in other sections of the statute, section 410 uses the term "blood alcohol concentration." In its implementing regulation, the agency has used instead the term "alcohol concentration," since the law enforcement community more commonly uses samples of substances other than blood, particularly breath, to determine an individual's alcohol concentration level.

As they do under the agency's section 408 program, States must demonstrate compliance with this requirement by submitting to the agency a copy of their laws adopting this per se level.

3. Statewide Program for Stopping Motor Vehicles

To qualify under section 410(c)(3), States must provide for: A statewide program for stopping motor vehicles on a nondiscriminatory, lawful basis for the purpose of determining whether or not the operators of such motor vehicles are driving while under the influence of alcohol.

This is a new criterion that was not previously in the agency's section 408 or

410 program. Today's final rule provides that States may demonstrate compliance with this criterion by submitting a comprehensive plan to conduct a program under which: (1) Motor vehicles are stopped on a Statewide basis; (2) stops are made not less than monthly; (3) stops are made by both State and local (county and city) police agencies and (4) effective public information efforts are made to inform the public about these enforcement efforts. Alternatively, if a State already has a program in place, the agency will accept, in lieu of a comprehensive plan, a comprehensive description of the State's current year's activities and a brief statement that similar activities will continue in the following year.

By requiring that States conduct a program on a Statewide basis not less than monthly, NHTSA does not mean to require that States must conduct their programs in each geographic area of the State in each calendar month, but that some activity must be conducted in the State in each month and the program must not be limited in its geographic scope. The program must be conducted in a number of and at varied locations throughout the State.

States must also submit guidelines, policies or operation procedures governing the Statewide program for stopping motor vehicles and provide dates, approximate locations and participating police agencies for programs planned in the upcoming year.

To qualify for funding in subsequent years, the State must submit information documenting that the prior year's plan was effectively implemented. The information must document that programs were conducted, and identify which police agencies were involved and the dates, times and duration of these programs. It must also report public information events used to publicize these programs. The State need not follow its plan precisely, but must show that it conducted a statewide program with similar frequency and geographic distribution to that described in its plan. In addition, the State must submit an updated plan for conducting its Statewide program during the upcoming year.

The agency expects most States will meet this criterion by describing their plans for conducting a Statewide checkpoint or roadblock program. NHTSA is aware, however, that the courts in some States have declared the use of checkponts or roadblocks to be unconstitutional under their State constitution. The agency does not wish to penalize these States unduly and, for this reason, has attempted in this final rule to provide some flexibility to enable these States to describe other Statewide programs for stopping motor vehicles, using alternative methods.

To be acceptable, however, these programs must meet all the criteria noted above. In addition, they must authorize law enforcement officers to stop individuals, in a nondiscriminatory and lawful manner, for the purpose of determining whether those individuals are driving while under the influence of alcohol, without requiring that the officer first observe behavior that would give rise to probable cause or a reasonable suspicion to believe such an offense had been committed. NHTSA is not aware of any State program currently being conducted that meets these requirements, but invites States to develop programs that accomplish these objectives.

4. Self-Sustaining Drunk Driving Prevention Program.

To qualify under section 410(c)(4), States must provide for: A self-sustaining drunk driving prevention program under which a significant portion of the fines or surcharges collected from individuals apprehended and fined for operating a motor vehicle while under the influence of alcohol are returned, or an equivalent amount of non-Federal funds are provided, to those communities which have comprehensive programs for the prevention of such operations of motor vehicles.

This criterion is identical to the second basic criterion under the "old" section 410 program, as amended on November 5, 1990. The three most essential elements of this criterion are: (1) The State, through its communities, must institute a "comprehensive" drunk driving prevention program; (2) while the program may not be completely "self-sustaining," a significant portion of its costs must be supported with non-Federal funds; and (3) a significant portion of the fines or surcharges generated by drunk driving prevention programs, or an equivalent amount, must be used for the program's continued operation.

The portion of the agency's regulation that implements this criterion has not been changed, except that it has been reorganized to make it more readable. NHTSA would like to take this opportunity to provide clarification regarding certain aspects of this portion of the regulation, to assist States in developing their applications and to expedite the agency's review of applications in the future.

The regulation provides that to qualify a State must, among other things, describe its criteria and procedures for reviewing community programs to determine whether they are comprehensive, as defined in § 1313.3(b).

Section 1313.3(b) details the minimum requirements of a comprehensive drunk driving prevention program. NHTSA would like to clarify that, for the purpose of this incentive grant program, it is not sufficient for a State to have comprehensive traffic safety programs that contain an element dedicated to alcohol or drug issues. To meet the minimum requirements, such programs must be comprehensive programs to prevent drunk driving. The programs must also contain all the components listed in § 1313.3(b) of the agency's regulation.

For the purpose of this criterion, the agency has defined "centralized States" to mean those States that collect revenues at the State level and then distribute those revenues to communities. "Other States" include States that do not have a purely centralized system.

The regulation provides that "centralized States" must describe their criteria and procedures for reviewing community programs. They may do so, for example, by submitting their regulations or binding policy guidelines that require communities to have comprehensive drunk driving prevention programs that meet the minimum requirements established in NHTSA's definition of that term, to be eligible for receiving revenues for these programs.

"Other" States may satisfy this requirement instead by showing with detailed examples of specific community programs that such programs are comprehensive. The agency encourages all States to submit at least one detailed example of a representative comprehensive program. In our past reviews of section 410 applications, these examples have greatly assisted the reviewers to understand the State's program and to determine its compliance. These examples should provide sufficient detail to show that activities were conducted in each of the four areas described in the regulation's definition for comprehensive drunk driving prevention program, that public and private entities were involved, and that activities are sustained over time. This information can be provided by submitting the community program's annual plan, its annual report or specific program materials from activities covering each of the four areas.

In addition, States must describe their procedures for returning or providing revenues to communities that have comprehensive drunk driving prevention programs. These procedures must cover

the application process, eligibility requirements that meet the minimum criteria for a comprehensive drunk driving program as defined in the agency's regulation, payment process, review and approval procedures as well as the procedures for collecting and dispersing revenues to qualified communities.

For a complete discussion on other portions of the agency's implementing regulation regarding this criterion, interested persons are encouraged to review NHTSA's final rules published on January 12, 1990 (55 FR 1185) and May 1, 1991 (56 FR 19930).

5. Minimum Drinking Age Prevention Program

To qualify under section 410(c)(5), States must provide for: An effective system for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages.

This criterion is virtually identical to one of the four supplemental grant criteria contained in the "old" section 410 program. However, in this interim final rule, NHTSA has modified the agency's regulation to simplify the minimum requirements States are required to meet and to facilitate the States' ability to demonstrate compliance with these requirements.

States are still required to issue driver's licenses to individuals under age 21 that are easily distinguishable in appearance from driver's licenses issued to individuals 21 years of age and older. In addition, States must have programs that meet the following four elements:

States must provide public information to underage drivers. States may decide how best to accomplish this. Methods of providing this information include mandatory licensing ceremonies, relevant questions on licensing examinations, and distribution of brochures or pamphlets at the time of licensing.

States must also have a program for alcohol beverage retailers and servers addressing both on- and off-premise consumption. For example, retailers and servers should be informed of the laws and the criminal, civil and administrative penalties regarding the sale of alcoholic beverages to persons under the age of 21. Retailers and servers should work to train all persons who sell or serve alcoholic beverages, and include in such training information on the laws applicable to underage drinkers, techniques in recognizing and confiscating fake or altered identification and procedures for refusing to sell alcoholic beverages to underage purchasers. In addition, retailers and servers should use point-of-sale signage as appropriate to indicate that alcoholic beverages will not be sold to underage customers. States may wish to coordinate this program with the State's alcohol control agency.

In addition, States must have an overall enforcement strategy directed at the sale and purchase of alcoholic beverages involving individuals under the age of 21. This strategy may include elements such as: Periodic "sting" operations to identify retail establishments that are selling alcoholic beverages to underage customers; focused patrols that target areas or activities where youth are likely to consume alcoholic beverages; a "keg ID" program that matches all kegs sold with the purchaser; requesting all youth involved in alcohol-related offenses to identify how and where alcohol was obtained; a procedure for tracking retailers found to be in violation of age 21 laws; and training for police line and management personnel in effective enforcement of age 21 laws.

Finally, States must provide for a prevention program which enlists the aid of individuals under the age of 21. Examples of such programs include a States youth advisory board, Statewide youth prevention conferences, a Statewide student safety organization and a State project graduation program. This program should include public information regarding the legal, health and social consequences of underage drinking.

To demonstrate compliance with this criterion in the first fiscal year the State receives a basic grant, the State must submit a plan to conduct a program that includes the four elements described above. In addition, the State must submit sample driver's licenses issued to persons both under and over 21 years of age. To demonstrate compliance in subsequent fiscal years, the State must also submit an updated plan for conducting its underage drinking program in the following year and information documenting that the prior year's plan was effectively implemented.

The information should address the following types of questions: How was public information distributed to young drivers on a Statewide basis? How were alcohol retailers informed of the law? What efforts were made to train alcohol retailers? What point of sale signage was distributed Statewide? What Statewide enforcement strategies were employed? What police training was developed in effective underage drinking enforcement? What Statewide prevention program involving youth was employed to address the underage drinking problem?

Since these changes relax the requirements that States must meet to qualify for an incentive grant based on this criterion, they are effective immediately. The agency requests comments on these proposed changes. Any further modifications made to this portion of the regulation would be published in a separate final rule. Until such a document is published, the requirements set forth in today's interim final rule will govern.

Supplemental Grant Criteria

In section 410(e), the Act provides for seven separate supplemental grant programs. States that are eligible for basic grants and also meet one or more of the supplemental criteria, may receive supplemental grants. These supplemental grant programs include: (1) Per se level of 0.02 for persons under age 21; (2) open container and consumption law; (3) suspension of registration and return of license plates of certain offenders; (4) mandatory blood alcohol concentration testing programs for certain drivers; (5) drugged driving prevention program; (6) per se level of 0.08 and (7) program for acquiring and using video equipment for the detection of drunk and drugged drivers.

Under the statute, a State is eligible to receive a supplemental grant for having a per se level of 0.08 percent during the first three fiscal years in which a basic grant is received, but not in subsequent years. There is no such restriction on any of the other supplemental grants. A State that is eligible for any of these supplemental grant programs may receive 5 percent of the amount apportioned to the State in the fiscal year under this section for each grant.

The elements of these supplemental grant criteria, and the manner in which States must demonstrate compliance are explained fully below.

1. Per se Level of 0.02 for Persons Under Age 21.

To qualify for a supplemental grant under section 410(e)(1), a State must be eligible for a basic grant and provide that: any person under age 21 with a blood alcohol concentration of 0.02 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

In other words, States must establish a 0.02 per se law for persons under the age of 21, that makes driving with a BAC of 0.02 percent or above itself an offense for such persons. A State, of course, may choose to establish a per se law at less

than 0.02. Such a State would also be eligible.

While the agency's section 408 program required that States establish an illegal per se level, a criterion for a lower per se level for persons under the age of 21 is new and was not previously included in either the section 408 or 410 program.

Under section 408, to be eligible for a basic grant, States are required to establish 0.10 as the illegal per se level for the purpose of both administrative and criminal sanctions. The section 410 criteria for a basic grant, described elsewhere in today's final rule, continue to call for States to adopt per se levels at 0.10 and 0.08 for administrative and criminal sanctions. However, the agency believes it is unwarranted to require that States apply criminal sanctions to youth found to be driving with an alcohol concentration level of 0.02. NHTSA believes that licensing sanctions are sufficiently effective for these offenses. Accordingly, the regulation reflects this distinction.

A State must demonstrate compliance with this requirement by submitting to the agency a copy of its law adopting this per se level.

2. Open Container and Consumption Law

To qualify for a supplemental grant under section 410(e)(2), a State must be eligible for a basic grant and make: unlawful the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway or the right-of-way of a public highway, except—

(A) As allowed in the passenger area, by persons (other than the driver), of any motor vehicle designed to transport more than 10 passengers (including the driver) while being used to provide charter transportation of passengers; or

(B) As otherwise specifically allowed by such State,with the approval of the Secretary, but in no event may the driver of such motor vehicle be allowed to possess or consume an alcoholic beverage in the passenger area.

This criterion is identical to the supplemental open container and consumption law requirement in the "old" section 410 statute. What has changed is the amount of funds that qualifying States are eligible to receive. The provisions of the "old" law provided that eligible States could receive a supplemental grant for up to 25 percent of its FY 1989 section 402 apportionment. (States were eligible for a 10 percent grant for each of the other supplemental criteria.) The agency's implementing regulation provided that States could qualify for a 10 percent grant by submitting a law, regulation or binding policy directive which provides for each element of the unlawful open container and consumption of alcohol requirement. States could qualify for a 25 percent grant by showing also that its law provides for meaningful penalties and submitting data demonstrating that the State maintains an effective and highly visible enforcement program.

Under the "new" section 410, a State may qualify for only 5 percent of the amount apportioned to the State in the fiscal year under this section for each grant, which is the same amount available for complying with each of the other supplemental grants. NHTSA believes the additional information and data States were required to submit to qualify for the 25 percent grant are unwarranted now that States are eligible for a grant of only 5 percent. In this interim final rule, NHTSA has deleted these additional requirements and adopted instead the requirements States previously had to meet to qualify for a 10 percent grant.

For a full discussion of these requirements, interested persons are encouraged to read the agency's NPRM, published on June 26, 1989 (54 FR 26783) and final rule, published on January 12, 1991 (55 FR 1185).

3. Suspension of Registration and Return of License Plate Program

To qualify for a supplemental grant under section 410(e)(3), a State must be eligible for a basic grant and provide for: the suspension of the registration of, and the return to such State of the license plates for an individual who—

(A) has been convicted on more than 1 occasion of an alcohol-related traffic offense within any 5-year period following the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991; or

(B) has been convicted of driving while his or her driver's license is suspended or revoked by reason of a conviction for an alcohol-related traffic offense. A State may provide limited exceptions in certain circumstances.

This supplemental criterion is essentially the same as the suspension of registration and return of license plate program criterion in the "old" section 410. The portion of the regulation implementing this provision will, therefore, be adopted with only technical modifications.

In its final rule dated January 12, 1990 (55 FR 1185, 1198), NHTSA indicated that it would accept under this criterion a program under which motor vehicles, rather than motor vehicle licenses, are confiscated. The agency wishes to clarify that it will also accept other methods of immobilizing a vehicle, such as "booting" a vehicle as well as suspending a person's registration or impounding or confiscating his or her license plates or vehicle.

As before, to demonstrate compliance in the first year a State receives this grant, the State must submit a copy of its law, regulation or binding policy directive (which may include Statewide published guidelines) governing its suspension of registration and return of license plate program. This document must establish the conditions under which license plates may be released by the State and provide that releases are made only in exceptional circumstances specific to the offender's motor vehicle. In addition, the agency must be able to determine, based on the information provided, that these exceptions do not result in unrestricted reinstatement of registrations or the unrestricted returns of license plates or motor vehicles.

In subsequent years, a State must submit, in addition to the information described above, data showing the number of registrations suspended and license plates returned, that the average length of suspension terms meets the regulatory definition, and the number, reasons for and conditions under which hardship exemptions were granted. The State may provide the necessary data based on a representative sample.

For additional information on this portion of the regulation, interested persons are encouraged to read the agency's NPRM, published on June 26, 1989 (54 FR 26783) and final rule, published on January 12, 1991 (55 FR 1185).

4. Mandatory Blood Alcohol Concentration Testing Programs

To qualify for a supplemental grant under section 410(e)(4), a State must be eligible for a basic grant and provide for: mandatory blood alcohol concentration testing whenever a law enforcement officer has probable cause under State law to believe that a driver of a motor vehicle involved in a crash resulting in the loss of human life or serious bodily injury, has committed an alcohol-related traffic offense.

This criterion also is based on a supplemental grant criterion under the "old" section 410. In this interim final rule, NHTSA has adopted this portion of the implementing regulation without any substantive changes.

As explained in greater detail in the agency's final rule dated January 12, 1990 (55 FR 1185, 1195), if a State requires that testing be conducted, the

agency will permit the State (which would be considered to be a "Law" State under this particular grant) to demonstrate compliance in the first year it receives the grant by submitting a copy of its law, regulation or binding policy directive governing the State's mandatory BAC testing program. The State will not be required to submit data to demonstrate compliance in the first fiscal year. Data must be submitted in subsequent years, however, showing the number of drivers involved in fatal and serious bodily injury crashes and that, when there was probable cause to believe that the driver had committed an alcohol-related traffic offense, substantially all of these drivers were tested for alcohol content and the results were reported to the State. The State can provide the necessary data based on a representative sample.

A State that does not require testing (a "Data" State under this particular grant) must demonstrate compliance in the first and in subsequent years by submitting a copy of its law, regulation or binding policy directive governing the State's BAC testing program, plus data showing the number of drivers involved in fatal and serious bodily injury crashes and that, when there was probable cause to believe that the driver had committed an alcohol-related traffic offense, substantially all of these drivers were tested for alcohol concentration and the results were reported to the State. The State can provide the necessary data based on a representative sample. While a Data State's law does not need to make post-crash BAC testing mandatory, it must give law enforcement officers authority to conduct this testing and establish all other elements of this criterion. In other words, a Data State need not require its enforcement officers to order testing in every instance in which probable cause exists, but the State must provide officers with authority to require that drivers submit to testing.

Interested persons may obtain additional information regarding this criterion by reading the agency's NPRM, published on June 26, 1989 (54 FR 26783) and final rule, published on Janaury 12, 1991 (55 FR 1185).

5. Drugged Driving Prevention

To qualify for a supplemental grant under section 410(e)(5), a State must be eligible for a basic grant and provide for a comprehensive drugged driving prevention program that meets the four elements in the statute.

The first element is modeled after the basic grant prompt suspension criterion in section 408, but expands that criterion to address the drugged driving problem. It requires that State laws: prohibit individuals from driving or being in actual physical control of a vehicle while under the influence of alcohol, drugs or a combination of these substances; establish implied consent to being tested for alcohol or drugs for persons who operate a motor vehicle in the State; and promptly suspend the driver's license of drivers who are determined, on the basis of one or more tests, to have been under the influence of drugs while operating a motor vehicle or refuse to submit to such tests. As in section 408, the suspension must last for not less than 90 days in the case of first offenders and not less than one year in the case of repeat offenders. To demonstrate compliance with this element in the first and in subsequent years, a State must submit a conforming law.

Similarly, the second element is modeled after the special grant minimum sentencing criterion in section 408, but expands that criterion to address the drugged driving problem. It requires that State laws provide that, for individuals convicted of driving under the influence of drugs or alcohol or both: first offenders must have their drivers' licenses suspended for 90 days and either be imprisoned for 48 consecutive hours or perform 100 hours of community service; second offenders within a five-year period must have their licenses revoked for one year and be imprisoned for ten days; and third offenders within a five-year period must have their licenses revoked for three years and be imprisoned for 120 days. Persons convicted of driving with a suspended or revoked license or in violation of a license restriction imposed as a result of a conviction for driving while under the influence of drugs or alcohol or both must be imprisoned for 30 days and, upon release, receive an additional period of license suspension or revocation of not less than the period that was remaining in effect at the time of commission of the offense. To demonstrate compliance with this element in the first and in subsequent years, a State must submit a conforming law.

The third element requires that States provide for an effective system for the detection of driving under the influence of drugs, the administration of tests to drivers who law enforcement officers believe have committed a traffic offense related to the use of drugs and, where there is probable cause, the prosecution of those persons who are determined on the basis of one or more tests to have been operating a motor vehicle while under the influence of drugs and those who refuse to submit to such tests. The statute, in the subsections pertaining to this element and also the first element of this criterion, refers to chemical tests. The agency notes that other types of tests are commonly employed by law enforcement officers to determine whether a driver has been operating a motor vehicle while under the influence of drugs, and has therefore avoided use of the term chemical in this portion of the regulation.

To demonstrate compliance with this element in the first and in subsequent years, a State must document that it participates in the Drug Evaluation and Classification (DEC) program or an equivalent program meeting standards for such a program established by the International Association of Chiefs of Police (IACP). In addition to this documentation and its implied consent law, which must be submitted to satisfy the first element of this criterion, the State must also submit information and data showing that persons who fail or refuse to take the required tests are being prosecuted.

The fourth element requires that States have in effect two of the following three programs: (1) An effective educational program for the prevention of driving under the influence of drugs; (2) an effective program for training law enforcement officers to detect driving under the influence of controlled substances; and (3) an effective program for the rehabilitation and treatment of those convicted of driving under the influence of drugs.

The agency believes that a State's participation in the DEC program or an equivalent program meeting standards for such a program established by the IACP would qualify a State under the second of the three programs identified under this element. We also note that States must submit, among other things, documentation of such participation to demonstrate compliance with the third element of this criterion. Accordingly, to demonstrate compliance with this fourth element in the first and in subsequent years, the State must submit either of the following: (1) A description of the State's drug education program; or (2) a description of the State's drug treatment and rehabilitation program.

6. Per se Level of 0.08

To qualify for a supplemental grant under section 410(e)(6), a State must be eligible for a basic grant and provide that: any person with a blood alcohol concentration of 0.08 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated

in each of the first three fiscal years in which a basic grant is received.

As explained earlier in this interim final rule, to qualify for a basic grant in each of the first three fiscal years in which a grant is received, States must (among other things) establish a 0.10 per se law that makes driving with a BAC of 0.10 percent or above itself an offense. After the third year of funding, to remain eligible for a basic grant, States must reduce the per se level to 0.08 or above to continue to qualify under this basic criterion.

This supplemental grant criterion was intended to reward those States that establish a per se level of 0.08 prior to the fourth year of funding. Beginning in the fourth year of funding, this supplemental grant will no longer be available.

States must demonstrate compliance with this requirement by submitting to the agency a copy of their laws adopting this per se level.

7. Video Equipment Program

To qualify for a supplemental grant under section 410(e)(7), a State must be eligible for a basic grant and provide for: a program to acquire video equipment to be used in detecting persons who operate motor vehicles while under the influence of alcohol or a controlled substance and in effectively prosecuting those persons, and to train personnel in the use of that equipment.

This is a new criterion, not previously included in either section 408 or 410. Today's final rule provides that, to demonstrate compliance with this criterion in the first fiscal year in which a grant is received, the State shall submit a plan for the acquisition and use of video equipment in the enforcement of impaired driving laws. The equipment must be installed in police vehicles.

The plan must include, at a minimum: a schedule for the areas where the equipment has been and will be installed and used; a plan for training enforcement personnel, prosecutors and judges in the use of this equipment; and a plan for public information and education programs to enhance the deterrent effect of the equipment.

To demonstrate compliance in subsequent years, the State must submit information and data on the use and effectiveness of the equipment, along with an updated plan for any acquisition and use of additional equipment.

States Previously Eligible

Section 2004(b) of the ISTEA provides that States which were eligible to receive a grant under the "old" section 410 before December 18, 1991, may elect to receive a grant under that statute, in lieu of a grant under the "new" section 410 in any fiscal year.

The States of Indiana and New Mexico will have this option. In any fiscal year, these States may choose to apply for funding under the version of section 410 that was in effect prior to December 18, 1991, and the regulations that were in effect at that time, rather than apply for funding under the section 410 that was enacted on December 18, 1991 and the regulations promulgated thereunder. If Indiana or New Mexico choose to apply for a grant under the "old" section 410, the provisions of that statute and its implementing regulation would govern these applications and would determine such things as the application procedures, the eligibility requirements, the funding amounts and the grant limitations. For example, no State is eligible to receive grants under the old law in more than three fiscal years.

Interim Final Rule

This notice is published as an interim final rule, without prior notice and opportunity to comment. Because this regulation relates to a grant program the requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553, are not applicable. Moreover, even if the notice and comment provisions of the APA did apply, the agency believes there is good cause for finding that providing notice and comment in connection with this rulemaking action is impracticable, unnecessary and contrary to the public interest, since it would prevent States from applying for grant funds in fiscal year 1992. This finding is based also on the agency's view that most of the criteria established in the "new" section 410 statute duplicate or are modeled after criteria previously contained in either the "old" section 410 law or in section 408, for which the agency has already developed implementing regulations. These regulations were promulgated subject to notice and a full opportunity for the public to comment. Accordingly, there would be little benefit gained by following the notice and comment procedures with regard to the revisions made by today's final rule.

As an interim final rule, this regulation is fully in effect and binding after its effective date. No further regulatory action by NHTSA is essential to the effectiveness of this rule. However, in order to benefit from comments which interested parties and the public may make, the agency is requesting that comments be submitted to the docket for this notice. All comments submitted in response to this notice, in accordance with the procedures outlined below, will be considered by the agency. Following the close of the comment period, NHTSA will publish a notice responding to the comments and, if appropriate, NHTSA will amend the provisions of this rule.

Written Comments

Interested persons are invited to comment on this interim final rule. It is requested, but not required, that ten copies be submitted.

All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit. (49 CFR 553.21.) This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by July 30, 1992. All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. Following the close of the comment period, NHTSA will publish a notice responding to the comments and, if appropriate, NHTSA will amend the provisions of this rule. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in Docket 89–02; Notice 4 of the NHTSA Docket Section in room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

This interim final rule does not have any preemptive or retroactive effect. It imposes no requirements on the States, but rather encourages States to adopt and implement comprehensive drunk driving prevention program, by offering incentive grant funds. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Federalism Assessment

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it will have no federalism implication that warrants the preparation of a federalism assessment. The section 410 grant program is entirely optional for the States. While many of the eligibility requirements are highly restrictive, they are mandated by the section 410 statute.

Economic and Other Effects

NHTSA has analyzed the effect of this action and has determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of Department of Transportation regulatory policies and procedures. State participation in the section 410 program is voluntary. Accordingly, a full regulatory evaluation is not necessary. Moreover, this rule merely modifies the existing section 410 implementing regulation to reflect statutory changes enacted recently by Congress. Thus, if there were any economic impacts associated with this action, they would flow from the law, not this rule.

When the agency originally promulgated a regulation to implement the section 410 program on January 12, 1990 (55 FR 1185), it determined that the rulemaking should be classified as significant under the Department's regulatory policies and procedures. A regulatory evaluation was prepared at that time and placed in the public docket (Docket No. 89–02; Notice 2). Persons interested in reviewing this document should request it by writing to NHTSA's Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 366–4949.

As discussed above, since this matter relates to grants, the notice and comment requirements established in the Administrative Procedure Act, 5 U.S.C. 553, are not applicable. Because the agency is not required to publish a notice of proposed rulemaking regarding this rule, the agency is not required to analyze the effect of this rule on small entities, in accordance with the Regulatory Flexibility Act. The agency has nonetheless evaluated the effects of this interim final rule on small entities. Based on the evaluation, I certify that this rule will not have a significant economic impact on a substantial number of small entities. States will be recipients of any funds awarded under the regulation and, accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

The requirements in this rule that States retain and report to the Federal government information which demonstrates compliance with drunk driving prevention incentive grant criteria, are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, these requirements have been submitted to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through 11/30/92; OMB No. 2127–0501.

The agency has also analyzed this action for the purpose of the National Environmental Policy Act. The agency has determined that this action will not have any effect on the human environment.

List of Subjects in 23 CFR Part 1313

Alcohol and alcoholic beverages, Drugs, Grant program-Transportation, Highway safety.

In accordance with the foregoing, part 1313 of title 23 of the Code of Federal Regulations is revised to read as follows:

PART 1313—INCENTIVE GRANT CRITERIA FOR DRUNK DRIVING PREVENTION PROGRAMS

Sec.

1313.1 Scope.
1313.2 Purpose.
1313.3 Definitions.
1313.4 General requirements.
1313.5 Requirements for a basic grant.
1313.6 Requirements for supplemental grants.
1313.7 Award procedures.
1313.8 States Eligible under Old 410.

Authority: 23 U.S.C. 410; delegation of authority at 49 CFR 1.50.

§ 1313.1 Scope.

This part established criteria, in accordance with 23 U.S.C. 410, for awarding incentive grants to States that adopt and implement comprehensive drunk driving prevention programs which include measures that will improve the effectiveness of the enforcement of State drunk and drugged driving laws.

§ 1313.2 Purpose.

The purpose of this part is to encourage States to adopt and implement comprehensive drunk driving prevention programs which include measures that will discourage individuals from operating motor vehicles while under the influence of alcohol. The criteria established are intended to ensure that the State drunk driving prevention programs for which incentive grants are awarded meet or exceed minimum levels designed to improve the effectiveness of the enforcement of State drunk driving laws. This part also encourages States to adopt and implement drugged driving prevention programs.

§ 1313.3 Definitions.

(a) *Alcoholic beverage* has the meaning given such term in § 1208.3 of this title, which implements section 158(c) of the National Minimum Drinking Age Act, 23 U.S.C. 158.

(b) A *comprehensive drunk driving prevention program* means a program that reflects the complexity and totality of the State's alcohol traffic safety problems, incorporates multiple approaches to these problems over a sustained period of time and ensures that public and private entities work in concert to address these problems. The program must include, at a minimum, the following components:

(1) Regularly conducted, peak-hour traffic enforcement efforts consisting of measures, such as roadside sobriety checkpoints or special DWI patrols;

(2) DWI prosecution, adjudication and sanctioning resources adequate to handle increased levels of DWI arrests;

(3) Other programs directed at forms of prevention other than enforcement and adjudication activities, such as school, worksite or community education; designated driver programs; transportation alternatives; responsible alcohol service programs; server training or treatment programs and

(4) A public information program designed to make the public aware of the problem of drunk driving and of the efforts in place to address it.

(c) *Controlled Substance* has the meaning given such term under section 102(6) of the Controlled Substances Act, 21 U.S.C. 802(6).

(d) *Fines or surcharges collected* means fines and penalties or additional assessments collected, whichever of these two amounts is greater, but it does not include user-type fees.

(e) *Imprisonment* means confinement in a jail, minimum security facility, community corrections facility, inpatient rehabilitation or treatment center, or other facility, provided the individual under confinement is in fact being detained. It does not include house arrest.

(f) *Motor vehicle* has the meaning given such term in § 659.5(c) of this title, which implements 23 U.S.C. 154, the National Maximum Speed Limit Act.

(g) *Open alcoholic beverage container* means any bottle, can, or other receptacle:

(1) Which contains any amount of an alcoholic beverage and

(2) (i) Which is open or has a broken seal or

(ii) The contents of which are partially removed.

(h) *Operating a motor vehicle while under the influence of alcohol* or *under the influence of alcohol while operating the motor vehicle* means operating a vehicle while the alcohol concentration in the blood or breath is 0.10 or more grams of alcohol per 100 milliliters of blood or 0.10 or more grams of alcohol per 210 liters of breath, as determined by chemical or other tests.

(i) *Prompt* means that the period of time from arrest to suspension of a driver's license does not exceed 45 days or does not exceed 90 days and the State submits a plan showing how it intends to achieve a 45-day average.

(j) *Repeat offender* means any person who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and to whom is administered one or more chemical tests to determine whether the individual was under the influence of alcohol while operating the motor vehicle and who is determined, as a result of such tests, to be under the influence of alcohol, or who refuses to submit to such a test as proposed by the officer, more than once in any 5-year period beginning on or after December 18, 1991.

(k) *Serious bodily injury* means an injury, other than a fatal injury, which prevents injured persons from walking, driving or normally continuing the activities they were capable of performing before the injury occurred.

(l) With regard to an individual's driver's license, *suspension* or *revocation* means:

(1) For first offenses (other than refusals), the temporary debarring of all driving privileges for a term of not less than 90 days, or not less than 30 days followed immediately by a term of not less than 60 days of a restricted, provisional or conditional license. A restricted, provisional or conditional license may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which a restricted, provisional or conditional license may be issued or with Statewide published guidelines and in exceptional circumstances specific to the offender.

(2) For refusal to take a chemical test for first offenses, the temporary debarring of all driving privileges for a term of not less than 90 days.

(3) For second and subsequent offenses, including the refusal to take a chemical test, the temporary debarring of all driving privileges for a term of not less than one year.

(m) With regard to an individual's registration and license plates, *suspension* and *return* means the temporary debarring of the privilege to operate or maintain a particular registered motor vehicle on the public highways and the confiscation or impoundment of motor vehicle or the motor vehicle's license plates for not less than the term(s) for which the individual's driver's license will be under suspension or revocation.

§ 1313.4 General requirements.

(a) Certification requirements for grants out of apportioned funds. To qualify for a grant under 23 U.S.C. 410 out of funds apportioned under § 1313.7(a), a State must, for each year it seeks to qualify:

(1) Submit an application to Regional Operations, NRO–01, 400 Seventh Street, SW., Washington, DC 20590 demonstrating that it meets the requirements of § 1313.5 and, if applicable, § 1313.6;

(2) Submit a certification to Regional Operations, NRO–01, 400 Seventh Street, SW., Washington, DC 20590 that:

(i) It has a drunk driving prevention program that meets those requirements;

(ii) It will use the funds awarded under 23 U.S.C. 410 only for the implementation and enforcement of drunk driving prevention programs;

(iii) It will administer the funds in accordance with 49 CFR part 18 and OMB Circulars A–102 and A–87 and

(iv) It will maintain its aggregate expenditures from all other sources for its drunk driving prevention programs at or above the average level of such expenditures in fiscal years 1990 and 1991 (either State or Federal fiscal year 1990 and 1991 can be used); and

(3) After being informed by NHTSA that it is eligible for a grant, submit to the agency, within 120 days, a drunk driving prevention plan for one or more years, as applicable, that describes the programs the State is and will be implementing in order to be eligible for the grant and that provides the necessary information, identified in § 1313.5 and § 1313.6, to demonstrate that the programs comply with the applicable criteria. The plan must also describe how the specific supplemental criteria adopted by a State are related to the State's overall drunk driving prevention program.

(b) Certification requirements for grants out of reapportioned funds. To qualify for a grant under 23 U.S.C. 410 out of funds apportioned under § 1313.7(c), a State must, for each year it seeks to qualify, submit to NHTSA, 400 Seventh Street, SW., Washington, DC 20590:

(1) A certification that:

(i) It has a drunk driving prevention program that qualified for a grant under § 1313.5 and, if applicable, § 1313.6 in the previous fiscal year;

(ii) It will use the funds awarded under 23 U.S.C. 410 only for the implementation and enforcement of drunk driving prevention programs;

(iii) It will administer the funds in accordance with 49 CFR Part 18 and OMB Circulars A–102 and A–87 and

(iv) It will maintain its aggregate expenditures from all other sources for its drunk driving prevention programs at or above the average level of such expenditures in fiscal years 1990 and 1991 (either State or Federal fiscal year 1990 and 1991 can be used); and

(2) A drunk driving prevention plan for one or more years, as applicable, that describes the programs the State is and will be implementing in order to be eligible for the grant and that provides the necessary information, identified in § 1313.5 and § 1313.6, to demonstrate that the programs comply with the applicable criteria. The plan must also describe how the specific supplemental criteria adopted by a State are related to the State's overall drunk driving prevention program.

(c) Limitation on grants. A State may receive a grant for one or more fiscal years subject to the following limitations:

(1) The amount received as a basic grant, under § 1313.5 of this part, shall equal 65 percent of the amount of funds apportioned to the State, in accordcance with 23 U.S.C. 410(g), in that fiscal year.

(2) The amount received for each supplemental grant, under § 1313.6 of this part, shall equal 5 percent of the amount of funds apportioned to the State, in accordance with 23 U.S.C. 410(g), in that fiscal year.

(3) A State that receives a basic or supplemental grant shall be reimbursed for up to 80 percent of the cost of its drunk driving prevention program adopted pursuant to 23 U.S.C. 410.

§ 1313.5 Requirements for a basic grant.

To qualify for a basic incentive grant of 65 percent of the amount of funds apportioned to the State, in accordance with 23 U.S.C. 410(g), in that fiscal year, a State must have in place and implement or adopt and implement four of the following five requirements:

(a) *An expedited administrative driver's license suspension or*

revocation system. (1) An expedited administrative driver's license suspension or revocation system for persons who operate motor vehicles while under the influence of alcohol which requires that:

(i) When a law enforcement officer has probable cause under State law to believe a person has committed an alcohol-related traffic offense and such person is determined, on the basis of a chemical test, to have been under the influence of alcohol while operating the motor vehicle or refuses to submit to such a test as proposed by the officer, the officer shall serve such person with a written notice of suspension or revocation of the driver's license of such person and take possession of such driver's license;

(ii) The notice of suspension or revocation referred to in paragraph (a)(1)(i) of this section shall provide information on the administrative procedures under which the State may suspend or revoke in accordance with the objectives of this section a driver's license of a person for operating a motor vehicle while under the influence of alcohol or refusing to submit to a chemical test and shall specify any rights of the individual under such procedures;

(iii) The State shall provide, in the administrative procedures referred to in paragraph (a)(1)(ii) of this section, for due process of law, including the right to an administrative review of a driver's license suspension or revocation;

(iv) After serving notice and taking possession of a driver's license in accordance with paragraph (a)(1)(i) of this section, the law enforcement officer shall immediately report to the State entity responsible for administering drivers' licenses all information relevant to the action taken in accordance with this paragraph;

(v) In the case of a person who, after December 18, 1991, is determined on the basis of a chemical test to have been operating a motor vehicle under the influence of alcohol or is determined to have refused to submit to such a test as proposed by the law enforcement officer, the State entity responsible for administering driver's licenses, upon receipt of the report of the law enforcement officer, shall:

(A) Suspend the driver's license of such person for a period of not less than 90 days if the person is a first offender; and

(B) Suspend or revoke the driver's license of such person for a period of not less than 1 year if the person is a repeat offender; and

(vi) The administrative review referred to under paragraph (a)(1)(iii) of this section shall take place and the suspension and revocation referred to under paragraph (a)(1)(v) of this section take effect not later than 30 days after the individual first received notice of the suspension or revocation.

(2)(i) To demonstrate compliance in the first fiscal year the State receives a basic grant based on this criterion, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the expedited administrative suspension system requirement.

(ii) To demonstrate compliance in subsequent fiscal years the State receives a basic grant based on this criterion, a Law State shall submit, in addition to the information identified in paragraph (a)(2)(i) of this section, data showing the number of licenses suspended; that the average length of the suspension terms for first offenders, first refusers, repeat offenders and repeat refusers meets the terms defined in § 1313.3(1); and that the average number of days it took to provide the administrative reviews and suspend the licenses meets the 30-day requirement in paragraph (a)(1)(vi) of this section. The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed. If the State's data do not meet the average license suspension terms defined in § 1313.3(1), the State can demonstrate compliance with this element by submitting a plan showing how it intends to achieve these averages.

(iii) For the purpose of this paragraph, "Law State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the expedited administrative suspension system criterion.

(3)(i) To demonstrate compliance in the first and in subsequent years the State receives a basic grant based on this criterion, a Data State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the expedited administrative suspension system requirement and data showing the number of licenses suspended, that the average length of the suspension terms for first offenders, first refusers, repeat offenders and repeat refusers meets the terms defined in § 1313.3(1) and that the average number of days it took to provide the administrative reviews and suspend the licenses meets the 30–day requirement in paragraph (a)(1)(vi) of this secion. The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed.

(ii) For the purpose of this paragraph, "Data State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the expedited administrative suspension system criterion, except that it need not specifically provide for each element of paragraphs (a)(1)(v) and (vi) of this section.

(b) *Per se law.* (1) For each of the first three fiscal years in which a basic grant is received based on this criterion, provide that any person with an alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated. For each subsequent fiscal year in which a basic grant is received based on this criterion, provide that any person with an alcohol concentration of 0.08 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

(2) To demonstrate compliance in the first and in subsequent years the State receives a basic grant based on this criterion, the State shall submit a copy of its law adopting this requirement.

(c) *A statewide program for stopping motor vehicles.* (1) A statewide program for stopping motor vehicles on a nondiscriminatory, lawful basis for the purpose of determining whether or not the operators of such motor vehicles are driving while under the influence of alcohol.

(2) To demonstrate compliance in the first year the State receives a basic grant based on this criterion, the State shall submit a comprehensive plan to conduct a program under which:

(i) Motor vehicles are stopped on a Statewide basis;

(ii) Stops are made not less than monthly;

(iii) Stops are made by both State and local (county and city) police agencies and

(iv) Effective public information efforts are made to inform the public about these enforcement efforts. The plan shall include guidelines, policies or operation procedures governing the

Statewide program for stopping motor vehicles and provide dates, approximate locations and participating police agencies for programs planned in the upcoming year.

(3) To demonstrate compliance in subsequent years the State receives a basic grant based on this criterion, the State shall submit an updated plan for conducting its statewide program in the following year and information documenting that the prior year's plan was effectively implemented. The information shall document that programs were conducted and identify which police agencies were involved, and the dates, times and duration of these programs. It must also report public information events used to publicize these programs.

(d) *A self-sustaining drunk driving prevention program.* (1) A self-sustaining drunk driving prevention program under which a significant portion of the fines or surcharges collected from individuals apprehended and fined for operating a motor vehicle while under the influence of alcohol are returned, or an equivalent amount of non-Federal funds are provided through the State's ordinary appropriations process or other ordinary State funding process which demonstrates the accountability of these funds, to those communities which have comprehensive programs for the prevention of such operations of motor vehicles.

(2) To demonstrate compliance in the first and in subsequent years the State receives a basic grant based on this criterion, a centralized State shall:

(i) Submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for a self-sustaining drunk driving prevention program, and for fines or surcharges to be imposed on individuals apprehended and fined for operating a motor vehicle while under the influence of alcohol;

(ii) Describe its criteria and procedures for reviewing community programs to determine whether they are comprehensive, as defined in § 1313.3(b) of this part;

(iii) Describe its procedures for returning or providing a significant portion of these revenues to communities that have comprehensive drunk driving prevention programs;

(iv) Submit data showing the aggregate amount of fines or surcharges actually collected and the aggregate amount of revenues actually returned or provided to community drunk driving prevention programs under the State's self-sustaining system;

(v) Certify that these revenues are being used to continue the operation of comprehensive drunk driving prevention programs and that a significant portion of the costs of these programs are supported with non-Federal funds; and

(vi) If the State is demonstrating compliance based on the equivalent amount of non-Federal funds it provides to communities, identify the source of funds.

(3) To demonstrate compliance in the first and in subsequent years the State receives a basic grant, other States shall:

(i) Submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for a self-sustaining drunk driving prevention program, and for fines or surcharges to be imposed on individuals apprehended and fined for operating a motor vehicle while under the influence of alcohol;

(ii) Describe its criteria and procedures for reviewing community programs to determine whether they are comprehensive, or show with detailed examples of specific community programs that such programs are comprehensive, as defined in § 1313.3(b) of this part;

(iii) Describe its procedures for returning or providing a significant portion of these revenues to communities that have comprehensive drunk driving prevention programs;

(iv) Submit data (or a representative sample) showing the aggregate amount of fines or surcharges actually collected and the aggregate amount of revenues actually returned or provided to community drunk driving prevention programs under the State's self-sustaining system;

(v) Certify that these revenues are being used to continue the operation of comprehensive drunk driving prevention programs and that a significant portion of the costs of these programs are supported with non-Federal funds;

(vi) Certify that a significant number of communities within the State have comprehensive drunk driving prevention programs; and

(vii) If the State is demonstrating compliance based on the equivalent amount of non-Federal funds it provides to communities, identify the source of these funds.

(4) For purposes of this section, a "centralized State" is a State in which revenues are collected at the State level and distributed to the communities and "other States" include decentralized and mixed States in which some or all revenues are retained by the communities, rather than collected at the State level and distributed to the communities.

(5) For the purpose of this section, activities conducted by the State for the benefit of a community may be considered to have been returned or provided to that community, provided that the community benefitted has had an active voice in the initiation, development, and implementation of the activities for which such funds are expended. In no case may the State arbitrarily ascribe State agency expenditures as "benefitting local communities." Where communities have had an active voice in the initiation, development, and implementation of a particular activity, and a community which has not had such active voice agrees in advance of implementation to accept the benefits of the activity, the non-Federal share of the cost of these benefits may be considered to have been returned or provided to the community. Where no communities have had an active voice in the initiation, development, and implementation of a particular activity, but political subdivision requests the benefits of the activity, the non-Federal share of the cost of these benefits may be considered to have been returned or provided to the community. Evidence of consent and acceptance of the work, goods or services on behalf of the community must be established and maintained on file by the State, until all basic grant funds for that fiscal year have been expended and audits completed.

(e) *Minimum drinking age prevention program.* (1) An effective system for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages, which includes the issuance of drivers' licenses to individuals under age 21 that are easily distinguishable in appearance from drivers' licenses issued to individuals 21 years of age and older. The State must also:

(i) Provide public information to underage drivers;

(ii) Have a program for alcoholic beverage retailers and servers addressing both on- and off-premise consumption;

(iii) Have an overall enforcement strategy directed at the sale and purchase of alcoholic beverages involving individuals under the age of 21; and

(iv) Provide for a prevention program that enlists the aid of individuals under the age of 21.

(2) To demonstrate compliance in the first fiscal year the State receives a basic grant based on this criterion, a State shall submit a plan to conduct a minimum drinking age prevention program that covers the elements identified in paragraphs (e)(1) (i) through

(iv) of this section. The State must also submit sample driver's licenses issued to persons both under and over 21 years of age.

(3) To demonstrate compliance in subsequent fiscal years the State receives a basic grant based this criterion, the State shall submit an updated plan for conducting a minimum drinking age prevention program in the following year and information documenting that the prior year's plan was effectively implemented.

§ 1313.6 Requirements for supplemental grants.

(a) *Per se law for persons under age 21.* (1) To qualify for a supplemental grant of 5 percent of the amount of funds apportioned to the State, in accordance with 23 U.S.C. 410(g), in that fiscal year, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and provide that any person under age 21 with an alcohol concentration of 0.02 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated for the purpose of administrative sanctions.

(2) To demonstrate compliance in the first and in subsequent years the State receives a supplemental grant under this paragraph, the State shall submit a copy of its law adopting this requirement.

(b) *Program making unlawful open containers and consumption of alcohol in motor vehicles.* (1) To qualify for a supplemental grant of 5 percent of the amount of funds apportioned to the State, in accordance with 23 U.S.C. 410(g), in that fiscal year, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and make unlawful the possession of any open alcoholic beverage container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway or the right-of-way of a public highway, except:

(i) As allowed in the passenger area, by persons (other than the driver), of any motor vehicle designed to transport more than 10 passengers (including the driver) while being used to provide charter transportation of passengers; or

(ii) As otherwise specifically allowed by such State, with the approval of NHTSA, but in no event may the driver of such motor vehicle be allowed to possess or consume an alcoholic beverage in the passenger area.

(2) To demonstrate compliance in the first and in subsequent fiscal years the State receives a supplemental grant under this paragraph, a State shall submit a law, regulation, binding policy directive implementing or interpreting an existing law or regulation, which provides for each element of the unlawful open container and consumption of alcohol requirement. The State shall also identify and provide sufficient justification for the agency to approve any exception, other than the exception that is specifically permitted under subparagraph (b)(1)(i) of this section.

(c) *Suspension of registration and return of license plate program.* (1) To qualify for a supplemental grant of 5 percent of the amount of funds apportioned to the State, in accordance with 23 U.S.C. 410(g), in that fiscal year, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and provide for the suspension of the registration of, and the return to such State of the license plates for, any motor vehicle owned by an individual who:

(i) Has been convicted on more than one occasion of an alcohol-related traffic offense within any 5-year period beginning after December 18, 1991; or

(ii) Has been convicted of driving while his or her driver's license is suspended or revoked by reason of a conviction for an alcohol-related traffic offense; except that

(iii) A State may provide limited exceptions to such suspension of registration or return of license plates, on an individual basis, to avoid undue hardship to any individual who is completely dependent on the motor vehicle for the necessities of life, including any family member of the convicted individual, and any co-owner of the motor vehicle, but not including the offender. Such exceptions may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which license plates may be released by the State or under Statewide published guidelines and in exceptional circumstances specific to the offender's motor vehicle, and may not result in unrestricted return of the motor vehicle, unrestricted reinstatement of the registration or unrestricted return of the license plates of the motor vehicle.

(2)(i) To demonstrate compliance in the first year the State receives a supplemental grant under this paragraph, the State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the registration suspension and license plate return requirement.

(ii) To demonstrate compliance in subsequent years the State receives a supplemental grant under this paragraph, the State shall submit, in addition to the information identified in paragraph (c)(2)(i) of this section, data showing the number of registrations suspended and license plates returned under the State law, that the average length of the term for which the registration was suspended and the license plates returned meets the definition in § 1313.3(m), and the number, reasons for and conditions under which hardship exemptions are being granted. The State must show that it is actively enforcing its law and that the hardship exceptions do not result in unrestricted return of the motor vehicle, unrestricted reinstatement of the registration or unrestricted return of the licenses plates of the motor vehicle. The State can provide the necessary data based on a representative sample.

(d) *Mandatory alcohol concentration testing program.* (1) To qualify for a supplemental grant of 5 percent of the amount of funds apportioned to the State, in accordance with 23 U.S.C. 410(g), in that fiscal year, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and provide for mandatory alcohol concentration testing whenever a law enforcement officer has probable cause under State law to believe that a driver of a motor vehicle involved in a crash resulting in the loss of human life or serious bodily injury has committed an alcohol-related traffic offense.

(2)(i) To demonstrate compliance in the first fiscal year the State receives a supplemental grant under this paragraph, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the mandatory testing requirement.

(ii) To demonstrate compliance in subsequent fiscal years the State receives a supplemental grant under this paragraph, a Law State shall submit, in addition to the information in paragraph (d)(2)(i) of this section, data showing the number of drivers invloved in these crashes and that, when there was probable cause to believe the driver had committed an alcohol-related traffic offense, substantially all of these drivers were tested for alcohol content and the results were reported to the State. The State can provide the necessary data based on a representative sample or surrogate measure.

(iii) For the purpose of this paragraph, "Law State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory testing criterion, including the requirement that enforcement officers must order testing upon a finding of probable cause.

(3)(i) To demonstrate compliance in the first and in subsequent fiscal years the State receives a supplemental grant under this paragraph, a Data State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for the alcohol concentration testing requirement. The State shall also submit data showing the number of drivers involved in these crashes and that, when there are probable cause to believe the driver had committed an alcohol-related traffic offense, substantially all of these drivers were tested for alcohol content and the results were reported to the State. The State can provide the necessary data based on a representative sample or surrogate measure.

(ii) For the purpose of this paragraph, "Data State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory testing criterion, except that enforcement officers may be authorized rather than required by law to order testing upon a finding of probable cause.

(e) *Drugged driving prevention.* (1) To qualify for a supplemental grant of 5 percent of the amount of funds apportioned to the State, in accordance with 23 U.S.C. 410(g), in that fiscal year, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and

(i) Provide for law concerning drugged driving under which:

(A) A person shall not drive or be in actual physical control of a motor vehicle while under the influence of alcohol, a controlled substance, a combination of controlled substances or any combination of alcohol an controlled substances;

(B) Any person who operates a motor vehicle upon the highways of the State shall be deemed to have given consent to a test or tests of his or her blood, breath or urine for the purpose of determining the alcohol concentration or the presence of controlled substances in his or her body; and

(C) The driver's license of a person shall be suspended promptly, for a period of not less than 90 days in the case of a first offender and not less than one year in the case of any repeat offender, when a law enforcement officer has probable cause under State law to believe such person has committed a traffic offense relating to controlled substances use, and such person is determined, on the basis of one or more tests, to have been under the influence of controlled substances while operating a motor vehicle, or refuses to submit to such a test as proposed by the officer;

(ii) Have in effect a law which provides that:

(A) Any person convicted of a first violation of driving under the influence of controlled substances or alcohol, or both, shall receive a mandatory license suspension for a period of not less than 90 days and either an assignment of 100 hours of community service or a minimum sentence of imprisonment for 48 consecutive hours;

(B) Any person convicted of a second violation of driving under the influence of controlled substances or alcohol, or both, within five years after a conviction for the same offense shall receive a mandatory minimum sentence of imprisonment for 10 days and license revocation for not less than one year;

(C) Any person convicted of a third or subsequent violation of driving under the influence of controlled substances or alcohol, or both, within five years after a prior conviction for the same offense shall receive a mandatory minimum sentence of imprisonment for 120 days and have his or her license revoked for not less than three years; and

(D) Any person convicted of driving with a suspended or revoked license or in violation of a restriction imposed as a result of a conviction for driving under the influence of controlled substances or alcohol, or both, shall receive a mandatory sentence of imprisonment for at least 30 days, and shall upon release from imprisonment receive an additional period of license suspension or revocation of not less than the period of suspension or revocation remaining in effect at the time of commission of the offense of driving with a suspended or revoked license;

(iii) Provide for an effective system for:

(A) The detection of driving under the influence of controlled substances;

(B) The administration of a test or tests to any driver who a law enforcement officer has probable cause under State law to believe has committed a traffic offense relating to controlled substances use; and

(C) In instances where such probable cause exists, the prosecution of those persons who are determined, on the basis of one or more tests, to have been operating a motor vehicle while under the influence of controlled substances and those persons who refuse to submit to such a test as proposed by a law enforcement officer; and

(iv) Have in effect two of the following programs:

(A) An effective educational program for the prevention of driving under the influence of controlled substances.

(B) An effective program for training law enforcement officers to detect driving under the influence of controlled substances.

(C) An effective program for the rehabilitation and treatment of those convicted of driving under the influence of controlled substances.

(2) To demonstrate compliance in the first and in subsequent fiscal years the State receives a supplemental grant under this paragraph, a State shall submit:

(i) A law, regulation, binding policy directive implementing or interpreting an existing law or regulation, which provides for each element of paragraphs (e)(1)(i) and (ii) of this section;

(ii) Evidence of the State's participation in the Drug Evaluation and Classification program or an equivalent program meeting standards for such program established by the International Association of Chiefs of Police;

(iii) Information and data showing that persons who fail or refuse to submit to required tests are being prosecuted; and

(iv) A description of either the State's drug education program or the State's drug treatment and rehabilitation program.

(f) *Per se level of 0.08.* (1) To qualify for a supplemental grant of 5 percent of the amount of funds apportioned to the State, in accordance with 23 U.S.C. 410(g), in each of the first three fiscal years in which a basic grant is received, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and provide that any person with an alcohol concentration of 0.08 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

(2) To demonstrate compliance in the first and in subsequent years the State receives a supplemental grant under this paragraph, the State shall submit a copy of its law adopting this requirement.

(g) *Video equipment program.* (1) To qualify for a supplemental grant of 5 percent of the amount of funds apportioned to the State, in accordance with 23 U.S.C. 410(g), in that fiscal year, a State must have in place and

implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and provide for a program:

(i) To acquire video equipment to be installed in police vehicles and used in detecting persons who operate motor vehicles while under the influence of alcohol or a controlled substance;

(ii) To effectively prosecute those persons; and

(iii) To train personnel in the use of that equipment.

(2) To demonstrate compliance in the first year the State receives a supplemental grant under this paragraph, the State shall submit a plan for the acquisition and use of video equipment in police vehicles for the enforcement of impaired driving laws, including:

(i) A schedule for the areas where the equipment has been and will be installed and used;

(ii) A plan for training enforcement personnel, prosecutors and judges in the use of this equipment; and

(iii) A plan for public information and education programs to enhance the deterrent effect of the equipment.

(3) To demonstrate compliance in subsequent years, the State shall submit information and data on the use and effectiveness of the equipment, and an updated plan for any acquisition and use of additional equipment.

§ 1313.7 Award procedures.

(a) In each Federal fiscal year, after a deduction under 23 U.S.C. 410(f) for administrative expenses, the remainder of the funds authorized to be appropriated to carry out this section will be apportioned to the States in accordance with the formula specified in 23 U.S.C. 410(g)(1).

(b) Out of the funds apportioned under paragraph (a) of this section, grants will be made to eligible States upon submission and approval of the drunk driving prevention plan and certification required by § 1313.4(a) and subject to the limitations in § 1313.4(c). Such grants shall be made until all eligible States have received a grant or until there are insufficient funds to award a grant to a State out of a proportionate share of available obligation authority. Time of submission shall be determined by the postmark for certifications delivered through the mail and by stamped receipt for certifications delivered in person.

(c) If a State is not eligible for a basic grant or for a supplemental grant under this section in a fiscal year, the amount of funds apportioned to the State in the fiscal year to make such grant shall be withdrawn from the State's apportionment and reapportioned to the other States eligible to receive a grant in the fiscal year in accordance with the formula specified in 23 U.S.C. 410(g)(1). This apportionment shall be made on the first day of the succeeding fiscal year.

(d) Out of the funds apportioned under paragraph (c) of this section, grants will be made to eligible States upon submission and approval of the drunk driving prevention plan and certification required by § 1313.4(b) and subject to the limitations in § 1313.4(c). Such grants shall be made until all eligible States have received a grant based on a proportionate share of available obligation authority.

§ 1313.8 States eligible under old 410.

A State which, before December 18, 1991, was eligible to receive a grant under 23 U.S.C. 410, and its implementing regulation, as in effect on December 17, 1991, may elect to receive in a fiscal year grants under such section 410, and implementing regulation, as so in effect, in lieu of receiving in such fiscal year grants under section 410, as amended, and this regulation.

Issued on: June 24, 1992.

Frederick H. Grubbe,

Deputy Administrator, National Highway Traffic Safety Administration.

[FR Doc. 92-15214 Filed 6-29-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 5

[T.D. ATF-324; Ref.: Notice No. 730]

RIN 1512-AA97

Standards of Identity for Distilled Spirits (CRD59)

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

ACTION: Final rule, Treasury decision.

SUMMARY: ATF is amending the regulations in 27 CFR part 5, by lowering the minimum bottling proof for flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky from 70° proof (35% alcohol by volume) to 60° proof (30% alcohol by volume).

EFFECTIVE DATE: July 30, 1992.

FOR FURTHER INFORMATION CONTACT: Daniel J. Hiland, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-8210).

SUPPLEMENTARY INFORMATION:

Background

Following the enactment of the Federal Alcohol Administration Act (FAA Act) in 1935, implementing regulations were issued. As originally written, these regulations provided for various classes and types of distilled spirits, but did not include a separate class and type for flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky.

In 1936, cordial manufacturers who were producing their products with the use of brandy and true fruit flavors requested the Federal Alcohol Administration to permit such products to be designated as, for example, "apricot brandy." On September 19, 1936, in a letter from the Federal Alcohol Administration to all bottlers of distilled spirits, the Administrator advised that the provisions of section 34 (a) of Regulations 5 provided that the words "cordial" or "liqueur" did not have to be stated upon a label to indicate the class of distilled spirits, which were in fact cordials, unless the Administrator found that, without a designation of the class, the type designation was one which did not clearly indicate to the consumer that the product was a cordial or liqueur. The Administrator informed the cordial manufacturers that, pursuant to the regulation, they could designate their products as, for example, "apricot flavored brandy", "orange flavored whisky", or "lemon flavored rum." It was the view of the Administration that the labeling of these products in the manner indicated would not lead to any consumer deception.

Pursuant to the above ruling, cordial manufacturers requested information as to whether permission to label their product as, for example, "apricot flavored brandy", was conditioned upon the presence in the product of any minimum quantity of whisky, brandy, rum, or gin. In connection with these inquiries, the Administration noted that the regulations governing the labeling of whisky, brandy, rum, and gin specified 80° proof as the minimum proof for these products. The Administration felt that a consumer purchasing a product labeled as "orange flavored gin" would expect to receive a product of practically the same proof as the product would have without the addition of the flavoring and sweetening material. The Administrator therefore ruled that no product could be designated as, for example, "orange flavored gin" unless the proof of such product, as indicated on the label, was

70° proof or more. If such products were produced at less than 70° proof, they would be required to be designated as for example, "orange liqueur." (Letter of Federal Alcohol Administrator to all bottlers of distilled spirits, dated October 7, 1936).

In April of 1968, the Alcohol and Tobacco Tax Division of the Internal Revenue Service revisited this issue during public hearings held to consider several amendments to the regulations covering the labeling and advertising of distilled spirits in 27 CFR part 5. One of the proposals discussed at these hearings was the codification into regulations of the existing position with respect to the labeling of flavored brandy, flavored gin, flavored vodka, and flavored whisky. It was also proposed that the use of wine in these distilled spirits be limited to 2½ percent by volume of the finished product. The reason for these proposals was that these products had achieved such consumer acceptance that a standard of identity was needed to maintain product identity and integrity.

Following these hearings, the Department of the Treasury issued Treasury Decision 6973. (See 33 FR 14459, 9/26/68). This decision established a regulatory standard of identity for these products. This amendment to 27 CFR part 5 became effective on July 1, 1969. The standard of identity for flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky was established in 27 CFR 5.22(i), as Class 9 distilled spirits, which reflected the above-mentioned amendment as it was initially proposed and adopted. Under § 5.22(i) these products were defined as follows:

> Flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky are brandy, gin, rum, vodka, and whisky, respectively, to which have been added natural flavoring materials, with or without the addition of sugar, and bottled at not less than 70° proof. The name of the predominant flavor shall appear as a part of the designation. If the finished product contains more than 2½ percent by volume of wine, the kinds and percentages by volume of wine must be stated as a part of the designation, except that a flavored brandy may contain an additional 12½ percent by volume of wine, without label disclosure, if the additional wine is derived from the particular fruit corresponding to the labeled flavor of the product.

Petition

ATF received a petition from Delta Consultants, Inc., dated April 17, 1991, which proposed that the regulations in 27 CFR part 5 to be amended by lowering the minimum bottling proof for flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky from 70° proof (35% alcohol by volume) to 60° proof (30% alcohol by volume).

The petitioner maintained that its proposal was consistent with domestic and international trends toward beverages with less alcohol content; would not result in any consumer deception; was in accord with consumer perceptions of flavored distilled spirits products; would provide consumers with a greater range of alcohol content; and would result in a minimal reduction of revenue.

The petitioner asserted that, over the years, consumers have perceived flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky as similar to the class of distilled spirits identified as cordial or liqueur products. In that regard, the petitioner stated that the lowering of the minimum bottling proof for these flavored distilled spirits to 60° proof would more accurately reflect the relationship between these class 9 distilled spirits, and cordials and liqueurs in the minds of consumers.

ATF Analysis

ATF reviewed the history of this issue and found that the original reason for establishing a bottling proof of 70° for flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky was consumer protection. It was felt that consumers purchasing products which were designated as "orange flavored gin", "apricot flavored brandy", "lemon flavored whiskey", and "peach flavored rum", would expect to receive products of substantially the same proof as gin, brandy, whiskey, and rum, which must be bottled at no less than 80° proof.

After careful consideration of the arguments made by the petitioner and the history of this issue, ATF believes that these flavored distilled spirits products are very closely associated with cordials and liqueurs. Indeed, the relationship between these products has been regulated since the inception of the FAA Act. However, while cordial and liqueur products generally have no minimum bottling proof, certain types of liqueurs, for example rye liqueur, bourbon liqueur, rum liqueur, gin liqueur, and brandy liqueur must be bottled at not less than 60° proof. ATF believes that maintaining a 60° proof minimum bottling requirement would allow for a closer and more consistent identification of the above-mentioned flavored distilled spirits with cordials and liqueur products while at the same time preventing consumer deception that could result from having no minimum proof requirements for flavored brandy, flavored gin, flavored rum, flavored whisky, and flavored vodka.

Therefore, on October 25, 1991, ATF published a notice of proposed rulemaking in the Federal Register (Notice No. 730, 56 FR 55247) which proposed to amend the standard of identity for these products.

Public Comments

Notice No. 730 requested comments from all interested persons concerning the proposed amendment. In response, 11 comments were filed. Of these, seven favored the proposal and four opposed the proposal.

Comments in Support

Two of the seven respondents who wrote in support of the proposal, Mohawk Distilled Products, and Glenmore Distilleries Company, stated only that they favor the proposal. The other five respondents, Brown-Forman Corporation, Hiram Walker & Sons Inc., McDermott, Will & Emery, Jim Beam Brands Co., and Intercontinental Packaging Co., gave specific reasons for supporting the proposal. Those reasons are summarized as follows:

1. The public's perception of flavored distilled spirits products has changed. These products are viewed as being closely related to cordials and liqueurs.
2. The proposal is consistent with domestic and international trends towards beverages with less alcohol content.
3. Lowering the proof on these types of products is more in line with the new drinking attitude of the American public.
4. The proposal will offer the consumer a wider range of alcohol content.
5. The proposal would be beneficial to the distilled spirits industry.
6. The alcohol content is mandatory labeling information, so lowering the alcohol content is unlikely to cause any consumer deception.

One of the respondents, Brown-Forman Corporation, cautioned that, although they supported the proposal, they were concerned that this might be the beginning of a move to lower the minimum proof for all cordial, liqueur, and flavored products. They stated that they endorse the Bureau's position that a minimum 60° proof is consistent with current requirements for other liqueurs, and the minimum proof should be maintained to avoid consumer deception.

ATF concurs with Brown-Forman Corporation's comment that a minimum bottling proof of 60° is appropriate for these products. Further, the Bureau does not view this amendment as the

beginning of a general move towards lowering the bottling proof on cordials, liqueurs, or flavored products.

Comments in Opposition

The four companies which opposed the proposal were: Bacardi Imports, Inc., International Distillers & Vintners North America, Hood River Distillers, Inc., and Guinness America, Inc.

Bacardi Imports Company stated in their comments that flavored products which use terms such as "flavored" or "spiced" gin, rum, or whisky are misleading to consumers who may receive the impression that these products contain full strength spirits to which only flavors are added. Bacardi asks that any flavored products which contain the name of a class or type of spirits normally bottled at 40% alcohol or higher, but which are bottled at a proof under the proof established for that category, be designated with a statement in close proximity to the brand name which readily indicates that the flavored product is diluted.

The Bureau does not concur with this comment. Flavored distilled spirits products have been marketed at less than 40% alcohol for a number of years, and suggesting that they now be labeled as a "diluted" product is contrary to the general perception of this class of products. The Bureau believes that flavored distilled spirits are not usually compared with full strength whisky, gin, rum, brandy, or vodka. They are a class of products which have become increasingly compared with cordials and liqueurs. Also, the term "spiced" rum is normally used to describe specialty products, not flavored distilled spirits.

International Distillers & Vintners North America stated that consumers clearly perceive a difference between flavored spirits and the unique characteristics of products in the cordials/liqueurs category. They state that the proposed amendment would confuse consumers with respect to product categories that have been relied upon by consumers for over fifty years.

ATF does not concur with this viewpoint. ATF believes that flavored distilled spirits products are very closely associated with cordials and liqueurs. The relationship between these products has been regulated since the inception of the FAA Act. Further, ATF believes that maintaining a 60° proof minimum bottling requirement will allow for a closer and more consistent identification of flavored distilled spirits with cordials and liqueur products while at the same time preventing consumer deception that could result from having no minimum proof requirements for flavored brandy, flavored gin, flavored rum, flavored whisky, and flavored vodka.

Hood River Distillers, Inc. stated that lowering the bottling proof is another way to cheat the consumer, and in the past, lowering the bottling proof has not caused a reduction in the price of the new product.

The Bureau does not view this proposal as a means for distillers to take advantage of consumers. It is intended to recognize the relationship that consumers perceive between flavored distilled spirits products and the class of distilled spirits identified as cordials and liqueurs. Also, ATF believes that maintaining a 60° proof minimum bottling requirement will help to prevent consumer deception that could result from having no minimum proof requirements for these products.

Guinness America, Inc. stated that there is a greater chance of confusion among consumers, and it would be more difficult for consumers to compare prices in the context of alcohol content. They also state that with a broader proof strength range it would be necessary to use different levels of mixers with risks of resulting inconsistencies of taste.

The Bureau believes that lowering the minimum alcohol content for flavored distilled spirits should not impose an additional burden on consumers. Flavored distilled spirits products can already be bottled at different levels of alcohol content. This change only lowers the minimum bottling proof. Also, distillers who are concerned with different levels of mixers and inconsistencies of taste can continue to bottle their products at their original alcohol content.

Guinness also refers to a market survey of whisky which suggests that those with lower proof are perceived by consumers to be inferior, and therefore lower proof could damage the generic quality image of one or more of the affected products.

ATF points out that this amendment to the minimum bottling proof for flavored distilled spirits does not require that bottlers lower the alcohol content of their product. Producers who believe that a lower proof product will be viewed as an inferior product can continue to bottle their product at a higher alcohol content.

Discussion

After considering the comments received, ATF has decided to amend the regulations in 27 CFR part 5, by lowering the minimum bottling proof for flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky from 70° proof (35% alcohol by volume) to 60° proof (30% alcohol by volume). Based on the original petition received, and the comments offered in response to the notice of proposed rulemaking, ATF feels that these flavored distilled spirits products are very closely associated with cordials and liqueurs. ATF believes that maintaining a 60° proof minimum bottling requirement will allow for a closer and more consistent identification of flavored distilled spirits with cordials and liqueur products while at the same time preventing consumer deception that could result from having no minimum proof requirements for these products.

Executive Order 12291

It has been determined that this final rule is not a major regulation as defined in E.O. 12291, and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or georgraphic regions; and it will not have significiant 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

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

Paperwork Reduction Act

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

Drafting Information

The principal author of this document is Daniel J. Hiland, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

Authority and Issuance

Accordingly, under the authority of 27 U.S.C. 205, 27 CFR part 5 is amended as follows:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

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

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

2. Section 5.22 is amended by revising paragraph (i) to read as follows:

§ 5.22 The standards of identity.

* * * * *

(i) Class 9; flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky. "Flavored brandy," "flavored gin," "flavored rum," "flavored vodka," and "flavored whisky," are brandy, gin, rum vodka, and whisky, respectively, to which have been added natural flavoring materials, with or without the addition of sugar, and bottled at not less than 60° proof. The name of the predominant flavor shall appear as a part of the designation. If the finished product contains more than 2½ percent by volume of wine, the kinds and precentages by volume of wine must be stated as a part of the designation, except that a flavored brandy may contain an additional 12½ percent by volume of wine, without label disclosure, if the additional wine is derived from the particular fruit corresponding to the labeled flavor of the product.

* * * * *

Signed: May 22, 1992.

Stephen E. Higgins,

Director.

Approved: June 8, 1992.

Peter K. Nunez,

Assistant Secretary, (Enforcement).

[FR Doc. 92-15187 Filed 6-29-92; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 92-058]

Connecticut River Raft Race, Hurd Park to Haddam Meadows, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of effective date of regulations.

SUMMARY: This notice puts into effect the permanent regulations, 33 CFR 100.102, for the Connecticut River Raft Race to be held on Saturday, August 8, 1992, from 10 am to 2 pm. The regulations are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the event. The purpose of this regulation is to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: The regulations are effective from 10 am to 2 pm on August 8, 1992.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Eric G. Westerberg, Chief, Boating Safety Affairs Branch, First Coast Guard District, (617) 223-8310.

Drafting Information: The principal persons involved in drafting this document are LTJG E. G. Westerberg, Project Manager, First Coast Guard District Boating Safety Division, and LCDR J. Astley, Project Attorney, First Coast Guard District Legal Office.

SUPPLEMENTARY INFORMATION: This notice provides the effective period for the permanent regulation governing the 1992 running of the Connecticut River Raft Race. A portion of the Connecticut River will be closed during the effective period to all vessels in excess of 20 meters (65.6 feet) in length. The regulated area is that area between the Salmon River (Marker No. 48) and Middle Haddam (Marker No. 72). Further public notification, including the full text of the regulations, will be accomplished through advance notice in the First Coast Guard District Local Notice to Mariners. The full text of this regulation is found in 33 CFR 100.102.

Dated: June 18, 1992.

K.W. Thompson,

Captain, U.S. Coast Guard, Acting District Commander.

[FR Doc. 92-15225 Filed 6-29-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD7-92-10]

Drawbridge Operation Regulations; Pinellas Bayway Structure E, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the State of Florida (bridge owner), the Coast Guard is changing the regulations governing the SR 679 drawbridge (Bayway E) over the Gulf Intracoastal Waterway, mile 113.0, St. Petersburg, Pinellas County, Florida, by expanding the current regulated period to include weekdays and changing the opening frequency from 15 minutes to 20 minutes. This change is being made to relieve highway congestion, while still meeting the reasonable needs of navigation.

EFFECTIVE DATE: August 14, 1992.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney, Project Manager at (305) 536-4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Ian MacCartney, Project officer, and Lt. J. M. Losego, Project Counsel.

Regulatory History

On April 17, 1992, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations in the **Federal Register** (33 FR 13685). The Coast Guard received no letters commenting on the change. A public hearing was not requested and one was not held.

Background and Purpose

This drawbridge presently opens on signal except that from 9 a.m. to 6 p.m. on Saturdays, Sundays and federal holidays, the draw need open only on the hour, quarter hour, half hour and three quarter hour. The State of Florida requested that the bridge open only on the hour, 20 minutes past the hour, and 40 minutes past the hour, daily, from 9 a.m. to 7 p.m. Study of the highway traffic and bridge opening data indicated that severe vehicular traffic congestion was occurring and during some periods back to back openings did not permit accumulated traffic to clear. This change will relieve highway congestion, while still meeting the reasonable needs of navigation.

Discussion of Comments and Changes

There were no letters or comments received in response to the proposed rule. The final rule is therefore

unchanged from the proposed rule published on April 17, 1992.

Regulatory Evaluation

These regulations are considered to be not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this change to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

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

Collection of Information

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

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In § 117.287, paragraph (d)(3) is revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

(d) * * *

(3) The draw of the Pinellas Bayway, Structure "E" (SR 679) bridge, mile 113.0 at St. Petersburg Beach, shall open on signal; except that from 9 a.m. to 7 p.m. the draw need open only on the hour, 20 minutes past the hour and 40 minutes past the hour.

* * * * *

Dated: June 10, 1992.

Robert E. Kramek,

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

[FR Doc. 92–15221 Filed 6–29–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD1 92–040]

Safety Zone: Colchester 4th of July Fireworks, Lake Champlain, VT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard plans to establish a temporary safety zone for a firework display for Colchester, Vermont's 4th of July Celebration. The event, sponsored by the Colchester Recreation Department will take place on Saturday, July 4th, 1992. Temporary closure of a portion of Malletts Bay in Lake Champlain is needed to protect the boating public from the hazards associated with a pyrotechnic fireworks display in confined waters.

EFFECTIVE DATES: This zone becomes effective on 4 July 1992 at 8 p.m. It terminates on 4 July 1992 at 11 p.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) J. E. Peschel, Waterways Management Officer, Coast Guard Group New York, (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG J. E. Peschel, Captain of the Port, New York and LCDR J. Astley, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards. Due to the date that this application was received, there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The circumstances requiring this regulation result from the desire to protect the maritime public from possible dangers and hazards associated with a pyrotechnic fireworks display in the waters of Malletts Bay in the vicinity of Malletts Bay Marina. No vessel will be permitted to enter or move within this safety zone unless permitted to do so by the Captain of the Port, New York (COTP NY).

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). Due to the limited 20 minute duration of the display, the launch site's location which is situated away from traffic channels, the extensive advisories that will be made to the affected maritime community, and the fact that the event is taking place late at night which typically experiences only a light volume of marine traffic, the impact of this regulation is expected to be minimal. The Coast Guard expects the economic impact of this to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rulemaking 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).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B it is an action under the Coast Guard's statutory authority to protect public safety, and thus, this regulation is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

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

PART 165—[AMENDED]

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

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

2. A temporary § 165.T01–040 is added to read as follows:

§ 165.T 01–040 Colchester 4th of July Fireworks.

(a) *Location.* The safety zone will include all waters of Malletts Bay in Lake Champlain within a 300 yard radius of a point on land at 44°32'45" N. and 073°13'00" W.

(b) *Effective period.* These regulations will be effective from 8 p.m. to 11 p.m. on July 4, 1992, unless terminated sooner by the Captain of the Port New York (COTP NY).

(c) *Regulations.* (1) No person or vessel may enter, transit, or remain in the safety zone during the effective period of regulation unless authorized by the COTP New York, or his designated representative. The COTP New York or his designated representative, will attempt to minimize any delays for commercial vessels transiting the area and will monitor channel 16 VHF–FM.

(2) All persons and vessels shall comply with the instructions of the COTP New York or the designated on scene personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed.

Dated: June 18, 1992.

R.M. Larrabee,

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

[FR Doc. 92–15222 Filed 6–29–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD1 92–061]

Safety Zone: Lower East River, New York, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard plans to establish a temporary safety zone for a fireworks display within all waters of the Lower East River south of the Manhattan Bridge and north of a line drawn from Pier 13, Manhattan to Pier 2, Brooklyn. The fireworks display will take place on Thursday, July 2nd, 1992 from 8 p.m. to 10:30 p.m. Temporary closure of the waters surrounding the launching barges is needed to protect the boating public from the safety hazards associated with a pyrotechnic fireworks display in these waters.

EFFECTIVE DATES: This zone becomes effective on 02 July 1992 at 8 p.m. It terminates on 02 July 1992 at 10:30 p.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) J.E. Peschel, Waterways Management Officer, Coast Guard Group New York (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG J. E. Peschel, Captain of the Port, New York and LCDR J. Astley, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since the event takes place on a public holiday with a timeline that cannot change and where immediate action is needed to respond to any potential hazards and sufficiently protect the boating public. Due to the date that this application was received, there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The circumstances requiring this regulation result from the desire to protect the maritime public from possible dangers and hazards associated with a pyrotechnic fireworks display in the waters of the Lower East River. The safety zone will surround a barge based shoot directed over the waters of the Lower East River. This two and one half hour zone allows time for Coast Guard personnel to clear vessels from the area both before and during the display, and ensure all pyrotechnics have been extinguished prior to reopening the area to maritime traffic. No vessel will be permitted to enter or move within the safety zone unless permitted to do so by Captain of the Port, New York.

Regulatory Evaluation

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). Due to the limited duration of the display within this two and one half hour window, and the extensive advisories made to the affected maritime community concerning this OPSAIL event, the impact of this regulation is expected to be minimal. The Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

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

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus this regulation is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

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

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

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

2. A temporary § 165.T 01–061 is added to read as follows:

§ 165.T 01–061 OPSAIL opening fireworks.

(a) *Location.* The safety zone will include all waters bank to bank of the Lower East River south of the Manhattan Bridge and north of a line drawn from Pier 13, Manhattan to Pier 2, Brooklyn.

(b) *Effective period.* This regulation will be effective from 8 p.m. through 10:30 p.m. on July 2nd 1992.

(c) *Regulations.* (1) No person or vessel may enter, transit, or remain in the safety zone during the effective period of regulation unless participating in the event as authorized by the U.S. Coast Guard Captain of the Port (COTP), New York. The COTP will attempt to minimize any delays for commercial vessels transiting the area and will monitor channel 16 VHF–FM.

(2) All persons and vessels shall comply with the instructions of the COTP NY or the designated on scene personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed.

Dated: June 24, 1992.

R.M. Larrabee,

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

[FR Doc. 92–15218 Filed 6–29–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD1 92–064]

Safety Zone: Navesink River, Red Bank, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard plans to establish a temporary safety zone for a fireworks display within all waters of the Navesink River from a line drawn between Guyon Point and Lewis Point then south to the Route 35 Bridge. The fireworks display will take place on Friday, July 3, 1992 between 9 p.m. to 11 p.m. Temporary closure of the waters surrounding the launching barge is needed to protect the boating public from the safety hazards associated with a pyrotechnic fireworks display in these waters.

EFFECTIVE DATES: This zone becomes effective on July 3, 1992 at 9 p.m. It terminates on July 3, 1992 at 11 p.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) J.E. Peschel, Waterways Management Officer, Coast Guard Group, New York, (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG J.E. Peschel, Captain of the Port, New York and LCDR J. Astley, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since the event takes place on a public holiday with a timeline that cannot change and where immediate action is needed to respond to any potential hazards and sufficiently protect the boating public. Due to the date that this application was received, there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The circumstances requiring this regulation result from the desire to protect the maritime public from possible dangers and hazards from falling debris or unexploded pyrotechnics associated with a fireworks display in the waters of the Navesink River. The safety zone will surround a barge based shoot directed over the water of the Navesink River, Red Bank, New Jersey. The majority of the zone lies west of Marine Park and east of the Cooper's Bridge. This 2 hour zone allows time for Coast Guard personnel to clear vessels from the area both before and during the display, and ensure all pyrotechnics has been extinguished prior to reopening the area to maritime traffic. No vessel may enter or move within the safety zone unless permitted to do so by Captain of the Port, New York.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). Due to the limited duration of the display within this two hour window, the extensive advisories made to the affected maritime community, and the location of the zone, which typically doesn't experience a significant volume of commercial marine traffic, the impact of this regulation is expected to be minimal. The Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

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

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

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

PART 165—[AMENDED]

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

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

2. The temporary § 165.T01–064 is added to read as follows:

§ 165.T01–065 Navesink River Fireworks, Red Bank, New Jersey.

(a) *Location.* The safety zone will include all waters within the Navesink River from a line drawn between Guyon Point and Lewis Point then south to the Route 35 Bridge.

(b) *Effective period.* This regulation will be effective from 9 p.m. through 11 p.m. on July 3, 1992.

(c) *Regulations.* (1) No person or vessel may enter, transit, or remain in the safety zone during the effective period of regulation unless participating in the event as authorized by the U.S. Coast Guard Captain of the Port (COTP), New York. The COTP will attempt to minimize any delays for commercial vessels transiting the area and will monitor channel 16 VHF–FM.

(2) All persons and vessels shall comply with the instructions of the COTP NY or the designated on scene personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed.

Dated: June 20, 1992.

R.M. Larrabee,

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

[FR Doc. 92–15219 Filed 6–29–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP San Francisco Regulation SF–92–02]

Safety Zone Regulation: San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: At the request of the National Park Service, the Coast Guard is establishing a Safety Zone on the waters of San Francisco Bay, California, along the shoreline of Crissy Field during an Independence Day fireworks display. This event is expected to attract a significant number of spectators and a Safety Zone is needed to protect the safety of the boating public during the fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on July 4, 1992, at 8:45 p.m., p.d.t. It terminates on July 4, 1992, at 10 p.m., p.d.t.

FOR FURTHER INFORMATION CONTACT: LT Lorne Thomas, Coast Guard Marine Safety Office, San Francisco Bay, CA. 510–437–3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking (NPRM) was not published for this regulation, and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to safeguard local boaters on the scheduled date.

Drafting Information

The drafters of this regulation are LT Lorne Thomas, Project Officer for the Captain of the Port, and Captain Bruce E. Weule, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation is an Independence Day fireworks display on July 4, 1992, at Crissy Field, San Francisco, California. The fireworks will be launched over the water from an onshore location just north of the helicopter pad located on the Presidio Army base. The Safety Zone will be a semicircular area on the waters of San Francisco Bay within a radius of 300 yards, centered at 37–48′–17″N, 122–27′–42″W. Past Independence Day fireworks displays have attracted a very large turnout of recreational boaters. It is estimated that hundreds of boaters will be on San Franciso Bay for this event and a Safety Zone will provide the Captain of the Port with the authority necessary to ensure that boating spectators are not injured as a result of the fireworks display.

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

List of Subjects in 33 CFR Part 165

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

Regulation

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

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

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

2. A new § 165.T1162 is added to read as follows:

§ 165.T1162 Safety Zone: San Francisco Bay, CA.

(a) *Location.* The following area is a safety zone: The waters of San Francisco Bay, California, an area adjacent to the Crissy Field shoreline within a radius of 300 yards centered at 37–48′–17″N, 122–27′–42″W.

(b) *Effective Date.* This regulation becomes effective at 8:45 p.m., p.d.t., July 4, 1992, and terminates at 10 p.m., p.d.t., July 4, 1992, unless canceled earlier by the Captain of the Port.

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

Dated: June 15, 1992.

T.H. Gilmour,

Commander, U.S. Coast Guard, Alternate Captain of the Port.

[FR Doc. 92-15223 Filed 6-29-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF60

Burial of Unclaimed Bodies of Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its rules concerning burial of the unclaimed bodies of certain veterans. The intended effect of the proposal is to allow VA regional office Directors greater flexibility in making burial arrangements when the body of a veteran has not been claimed by friends or relatives.

EFFECTIVE DATE: June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 233-3005.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 14, 1992, at pages 1442 through 1443, VA published a proposed rule to allow VA regional office Directors to pay the cost of transporting unclaimed bodies of veterans to certain state-owned cemeteries as well as to national cemeteries, provided that the total amount paid by VA for transportation to and burial in a state-owned facility does not exceed the total amount payable if burial had been in a national cemetery. Interested parties were invited to submit written comments on or before February 13, 1992. Since no comments were received, the final rule is adopted as proposed.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), the amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more;

(2) It will not cause a major increase in costs or prices;

(3) It will not have 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.

The Catalog of Federal Domestic Assistance program number is 64.101.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: May 27, 1992.

Edward Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

1. The authority citation for part 3, subpart B is revised to read as follows:

Authority: 105 Stat. 386, 38 U.S.C. 501(a), 2302-2308, unless otherwise noted.

2. Section 3.1610 is revised to read as follows:

§ 3.1610 Burial in national cemeteries; burial of unclaimed bodies.

The statutory burial allowance and premissible transportation charges as provided in §§ 3.1600 through 3.1611 are also payable under the following conditions:

(a) Where burial of a deceased veteran is in a national cemetery, provided that burial in a national cemetery is desired by the person or persons entitled to the custody of the remains for interment and permission for burial has been received from the officers having jurisdiction over burials in national cemeteries; or

(b) Where the body of a deceased veteran is unclaimed by relatives or friends (see § 3.1603), the Director of the regional office in the area in which the veteran died will immediately complete arrangements for burial in a national cementery or, his or her option, in a cemetery or cemetery section meeting the requirements of § 3.1604(d)(1)(ii)-(iv), provided that the total amount payable for burial and transportation expenses (including the plot allowance, if entitlement is established) does not exceed the total amount payable had burial been in a national cemetery.

(Authority: 38 U.S.C. 501(a))

[FR Doc. 92-15285 Filed 6-29-92; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 21

RIN 2900-AF51

Veterans Education; Implementation of Legislation Affecting the Montgomery GI Bill—Active Duty

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Act to amend title 38, United States Code, with respect to veterans education and employment programs which was enacted on March 22, 1991, has several provisions which affect the Montgomery GI Bill—Active Duty. These provisions affect the criteria used to determine eligibility for the educational assistance available under the GI Bill. These amended regulations will inform the public of the way in which the Department of Veterans Affairs (VA) will administer these new provisions of law.

EFFECTIVE DATE: March 22, 1991.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 233-2092.

SUPPLEMENTARY INFORMATION: Public Law 102-16 contains technical amendments affecting the criteria used to determine eligibility for educational assistance payable under the Montgomery GI Bill—Active Duty. The regulations governing the Montgomery GI Bill—Active Duty must be amended to implement the law.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

VA finds that good cause exists for making the amendments to these regulations, like the provision of law they implement, retroactively effective on March 22, 1991. These amended regulations are intended to achieve a benefit for individuals. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of the provision of law, and might result in the denial of a benefit to someone who is entitled to it.

VA finds that good cause exists for publishing these amended regulations without prior notice and opportunity for public comment. The amended regulations conform directly with the provisions of law which were amended by section 10, Public Law 102–16. The departments have no discretion in this matter. Consequently, public comment is unnecessary.

The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 9, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

For the reasons set out in the preamble, 38 CFR part 21, subpart K is amended as set forth below.

1. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. chapter 30, Pub. L. 98–525; 38 U.S.C. 501(a).

2. In § 21.7042 paragraphs (a)(4) and (c)(4) and the authority citations for paragraphs (a) and (c) are revised to read as follows:

§ 21.7042 Basic eligibility requirements.

* * * * *

(a) *Eligibility based solely on active duty.* * * *

(4) After completing the service requirements of this paragraph the individual must—

(i) Continue on active duty, or

(ii) Be discharged from service with an honorable discharge, or

(iii) Be released after service on active duty characterized by the Secretary concerned as honorable service, and

(A) Be placed on the retired list, or

(B) Be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or

(C) Be placed on the temporary disability retired list, or

(iv) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

* * * * *

(Authority: 38 U.S.C. 3011; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 102–16) (Mar. 22, 1991)

* * * * *

(c) *Eligibility based on withdrawal of election not to enroll.* * * *

(4) Before completing the service he or she was obligated to serve on December 1, 1988, the individual—

(i) Must complete the requirements of a secondary school diploma (or an equivalency certificate) or

(ii) Complete the equivalent of 12 semester hours in a program of education leading to a standard college degree.

* * * * *

(Authority: 38 U.S.C. 3018; Pub. L. 102–16) (Mar. 22, 1991)

* * * * *

3. In § 21.7044 paragraph (a)(5) and the authority citation for paragraph (a) are revised to read as follows.

§ 21.7044 Persons with 38 U.S.C. ch. 34 eligibility.

* * * * *

(a) *Eligibility based solely on active duty.* * * *

(5) Upon completion of the requisite active duty service the individual must either—

(i) Continue on active duty, or

(ii) Be discharged from active duty with an honorable discharge, or

(iii) Be released after service on active duty characterized by the Secretary concerned as honorable service and

(A) Be placed on the retired list, or

(B) Be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or

(C) Be placed on the temporary disability retired list, or

(iv) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service;

* * * * *

(Authority: 38 U.S.C. 3011; Pub. L. 98–525, Pub. L. 99–145, Pub. L. 99–576, Pub. L. 102–16) (Mar. 22, 1991)

* * * * *

[FR Doc. 92–15282 Filed 6–29–92; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 21

RIN 2900–AF12

Veterans Education; Changing Programs of Education

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs Nurse Pay Act of 1990 contains a section which affects most of the educational programs VA (Department of Veterans Affairs) administers. The section revises the rules for determining whether an individual can change programs of education. These amended regulations will acquaint the public with the way in which VA intends to implement this provision of law with regard to the Survivors' and Dependents' Educational Assistance program and the Montgomery GI Bill—Active Duty.

EFFECTIVE DATE: June 1, 1991.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 865 and 866 of the **Federal Register** of January 9, 1992, there was published a Notice of Intent to amend 38 CFR part 21 in order to implement a provision of the Department of Veterans Affairs Nurse Pay Act of 1990 regarding changing programs of education.

Individuals were given 30 days to submit comments, suggestions or objections. VA received no comments, suggestions or objections. Accordingly, the department is making the proposal final.

The Department of Veterans Affairs Nurse Pay Act (Pub. L. 101–366) liberalizes the rules for determining whether a veteran or eligible person can change a program of education. It is applicable to all changes of program which occur after May 31, 1991. These amended regulations implement that change in law for two of the educational programs VA administers.

VA will implement this statutory change by applying the procedures now used to determine whether a veteran's second change of program may be approved to the second change and all subsequent changes of program made after May 31, 1991. Thus, approval of changes after a second program change will not be limited to cases in which the change is necessitated by reasons beyond the individual's control.

The Act left intact the provision in 38 U.S.C. 3691(c) which allows the Secretary of Veterans Affairs to approve changes of program beyond the second change if required by circumstances beyond the individual's control. In considering changes of program after May 31, 1991, VA has determined that it will not exercise this optional provision of law. Therefore, it has not been included in the amended regulation.

VA believes that the new authority for approving changes of program when suitable to the individual's aptitudes, interests and abilities is sufficiently broad to permit VA to approve changes solely on that basis even though the need for the change may have been due to circumstances beyond the individual's control. Accordingly, the amended regulation does not include a separate provision for consideration of changes due to circumstances beyond the individual's control when the change of program occurs after May 31, 1991.

When this bill was being considered in the United States Senate, Sen. Alan Cranston suggested that VA might wish to establish additional counseling procedures for use in determining the suitability of an individual's new program of education. VA has not done so, and has not included the type of procedures envisioned by Sen. Cranston in the amended regulation.

For many years VA has had to determine whether an individual's new program of education was suitable to his or her aptitudes, interests and abilities. The department has developed many procedures for doing this, including counseling. VA believes that rather than mandate counseling for everyone who wishes to change a program of education, VA would make the most efficient use of its resources if it continued the procedures it has had in effect for many years. Under these procedures counseling is available for those who wish it.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no 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.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

VA finds that good cause exists for making these amended regulations, like the provision of law they implement, retroactively effective on June 1, 1991. These regulations are intended to achieve a benefit for individuals. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of the provision of law, and might result in the denial of a benefit to someone who is entitled to it.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are 64.117 and 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 13, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

For the reasons set out in the preamble, 38 CFR part 21, subparts D and K are amended as set forth below.

1. The authority citation for part 21, subpart D is revised to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a).

2. In § 21.4234, paragraph (d)(4) and its authority citation are added to read as follows:

§ 21.4234 Change of program.

* * * * *

(d) *Other changes of program.*

* * * * *

(4) Notwithstanding any provision of any other paragraph of this section, if a third or subsequent change of program occurs after May 31, 1991, VA will apply only the applicable provisions of paragraph (d)(2) of this section. If the applicable provisions of paragraph (d)(2) of this section are met, VA will approve the change of program. VA will not apply any of the provisions of paragraph (d)(3) of this section in determining whether the change of program should be approved.

(Authority: 38 U.S.C. 3691; Pub. L. 101–366) (June 1, 1991)

* * * * *

3. The authority citation for part 21, subpart K is revised to read as follows:

Authority: 38 U.S.C. chapter 30, Pub. L. 98–525; 38 U.S.C. 501(a).

4. Section 21.7114 and its authority citation are revised to read as follows:

§ 21.7114 Change of program.

In determining whether a veteran or servicemember may change his or her program of education under 38 U.S.C. ch. 30, VA will apply the provisions of § 21.4234 of this part. VA will not consider programs of education a veteran or servicemember may have pursued under 38 U.S.C. ch. 34 or 36 before January 1, 1990, if he or she wishes to change programs of education under 38 U.S.C. ch. 30.

(Authority: 38 U.S.C. 3034, 3691; Pub. L. 98–525, Pub. L. 101–366) (June 1, 1991)

[FR Doc. 92–15283 Filed 6–29–92; 8:45 am]

BILLING CODE 8320–01–M

POSTAL SERVICE

39 CFR Part 111

Mailability of Sharps and Other Medical Devices

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: As a result of the comments received regarding its proposed rule titled "Mailability of Sharps and Other Medical Devices", dated March 18, 1992 (57 FR 9404), the Postal Service has decided to amend its regulations to require that used sharps and other used medical devices be sent as First-Class or Priority Mail, effective June 30, 1992. The Postal Service will also require in 180 days that used sharps be packaged in a primary container that is securely sealed, leak resistant, and puncture resistant. The primary container must be packaged in a watertight secondary containment system. The secondary containment system may consist of more than one component. If, however, one of those components is a plastic bag, it must be, at a minimum, 3.0 mils in thickness. Each primary container and secondary containment system (or sets of primary containers in a secondary containment system) must be enclosed in a shipping container constructed of 200-pound grade corrugated fiberboard or material of equivalent strength. Enough absorbent material must be enclosed within a watertight barrier to absorb three times the total liquid allowed in the package. The total volume of liquid in the primary container and secondary containment system (or set of primary containers in a secondary containment system) may not exceed 50 ml., and there will be a 35-pound weight limit for each mailed parcel. To ensure compliance with these standards, all distributors and manufacturers of sharps containers will be required to obtain an authorization from the U.S. Postal Service for their products to be transported in the mails. All packaging must be "type-tested" and certified by an independent company or organization before application is made for a U.S. Postal Service mailing authorization. Packaging will be required to pass the environmental and test conditions in 49 CFR 178.604, 178.606, 178.608 and 178.609.

Other used medical devices which do not have or contain a projecting sharp must be packaged in a securely sealed, leak resistant primary container. The primary container must be enclosed in a shipping container that is constructed of 200-pound grade corrugated fiberboard or similar material of equivalent strength. The total volume of liquid in the primary and shipping container must not exceed 50 ml., unless the devices are mailed in a formalin solution or its equivalent. There must be sufficient absorbent material between the primary and shipping container to absorb three times the total liquid allowed within the primary container, except when the device is being shipped in a formalin solution.

EFFECTIVE DATE: This final rule will be effective December 28, 1992, except that sharps as defined in new section 124.382e and other medical devices as defined in new section 124.382f must be mailed as First-Class or Priority Mail effective June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Earl Hohbein, (202) 268–5309.

SUPPLEMENTARY INFORMATION: On March 18, 1992, the Postal Service proposed (57 FR 9404) to amend its regulations concerning the mailing of sharps and other medical devices. Although exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553 (b) and (c)) regarding the proposed rule, the Postal Service invited comments.

We received 17 comments during the 45-day period which ended May 4, 1992. Most of the commenters expressed support for the proposed changes in the present regulations.

One organization disagreed with the proposal in its entirety. This organization indicated that the labeling, required manifest, and testing were too expensive, and that the container specifications regarding the integrity and capability to withstand the specified maximum and minimum temperatures were "overkill." This same commenter objected to the financial responsibility requirement, but misunderstood that this is to be borne by the manufacturer or distributor of the containers, or both, not the generator.

The Postal Service believes that a bond is essential to avoid or minimize the expenses incurred for containing and cleaning up spills and leaks that occur on postal property, in addition to disposing of regulated medical waste addressed for delivery at closed disposal sites.

Another organization disagreed will all the provisions of this proposal. However, the commenter made an erroneous assumption that the proposed regulations dealt with clinical specimens.

Three comments suggested that we require 200 pound grade corrugated fiberboard for the shipping container. One of these commenters has a total shipping system consisting of syringes, medication, and a container made of 200 pound test fiber board. Another commenter maintains that it is impossible to construct a parcel measuring 8½×4×2½ inches (having a gross shipping weight of 8 to 10 ounces) of 275-pound grade fiberboard. The last commenter stated that the 275-pound grade fiber board is excessive when a 200 pound test fiber board shipping container can hold weights up to 60 pounds which exceeds the maximum weight limit by 25 pounds.

In view of the additional information received regarding this matter, the Postal Service has decided to revise the proposal and allow the shipping containers to be constructed of 200-pound fiber board or similar material of at least that strength.

Three commenters asked for clarifications or a partial relief from the required package testing. One company suggested that we supply the results of the tests and methods of corrective action. An association said the testing is an excessive financial burden. Another company requested relief from the leakproof and vibration tests. A fourth commenter asked for clarification on the pass/fail criteria.

The packaging criteria and the mandatory testing proposed in the notice are essential to assure that postal employees, customers and mail are protected from the results of broken or leaking parcels. Any additional information obtained from the testing organizations regarding specifics about the results of the tests may be obtained directly from the testing organization before conducting the tests. The Postal Service is interested only in obtaining the results of the tests and not in suggestions concerning corrective action.

There were two comments concerning the manifesting requirement; one stated that the manifest appears to be too complicated for the "home generator" to complete and another stated that a barcoding system should be considered as an alternative to the "hard-copy" manifest.

The Postal Service believes that the manifest can be designed in a simplified or "user friendly" manner. However, the suggestion to use a barcoding system as an alternative to a "hard-copy" manifest is not adopted.

One commenter stated that sharps should be mailed as registered mail.

The Postal Service will not require the use of registered mail for the following reasons: (1) Many home generators would cease using the "mail-back" system for the disposing of sharps

because they are physically unable to travel to the post office, (2) the extra cost associated with registered mail will detour this regulated medical waste into landfills and other undesirable or illegal methods of disposal. Furthermore, stringent packaging requirements will insure safe transport of the packages while in the mail stream.

Two other commenters suggested that we include enforcement provisions in the new regulations.

We will promulgate enforcement provisions in postal regulations if incidents occur that call for this type of action.

One concern was expressed about establishing a premature effective date, causing a financial hardship for those organizations with extensive distributed inventory. In order to minimize the possibility of financial hardship and encourage a smooth transition to mailing operations which satisfy the new requirements, the effective date will be 180 days after publication.

Finally, there were a few comments requesting that we either clarify some of the definitions or terminologies used in the proposed regulations. Definitions or terminologies in the final rule have been revised to deal with those concerns.

Based on the proposed rule, and after careful consideration of the comments received, as described above, the Postal Service adopts the following amendments to part 124 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

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

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Section 124.382 of the Domestic Mail Manual is amended by adding sections 124.382e and 124.382f. Section 124.384 is revised by replacing old subsections 124.384 a and b with new subsections 124.384 a and b and adding new subsections 124.384 c through j. Section 124.385 is replaced with new section 124.385 a through e. Old section 124.385 is renumbered to 124.386 and section 124.386 is renumbered to section 124.387. The text is as follows:

124 NONMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

* * * * *

.38 Etiologic Agent Preparation, Clinical Specimens, Sharps, Medical Devices and Biological Products

* * * * *

.382

* * * * *

e. "Sharps" mean items having a projecting cutting edge or fine point that have been used in animal or human patient care or treatment or in medical research, or industrial laboratories, including but not limited to hypodermic needles, syringes (with or without the attached needles), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of the presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides or cover slips. The term "sharps" does not include new unused medical devices such as hypodermic needles, syringes, scalpel blades, etc.

f. "Other medical devices" mean any devices used in animal or human patient care or treatment or in medical research which are not, or do not contain, a projecting sharp.

* * * * *

.384 Sharps

a. A mailed parcel containing the types of used materials defined in section 124.382e is nonmailable unless it bears the "Infectious Substance" label required by 49 CFR 172.432. Such parcels will be nonmailable, effective (date of publication), if they are not mailed as First-Class or Priority Mail.

b. Used sharps must be packaged in a securely sealed, leak resistant, and puncture resistant primary container, the total volume of liquid contents of which can not exceed 50 ml. The primary container must maintain its integrity when exposed to temperatures between 0 degrees and 120 degrees Fahrenheit.

c. The primary container must be packaged within a water-tight secondary containment system. The secondary containment system may consist of more than one component; however, if one of the components is a plastic bag, it must be, at a minimum, 3.0 mils in thickness, and must be reinforced with a fiberboard sleeve. A plastic bag will not by itself satisfy the requirement for a secondary containment system. Several primary containers may be enclosed within a secondary containment system to prevent breakage during ordinary processing.

d. The secondary containment system must be enclosed within an outer shipping container constructed of 200-pound grade corrugated fiberboard or similar material of equivalent strength.

The secondary containment system must fit securely within the shipping container to prevent breakage during ordinary processing.

e. There must be sufficient absorbent material within a watertight barrier to absorb and retain three times the total liquid allowed within the primary container (150 ml per primary container) in case of leakage.

f. Each parcel must not weigh more than thirty-five pounds.

g. Each package prepared for mailing must be designed and constructed so that, if subjected to the environmental and test conditions prescribed in 49 CFR 178.604, (Leakproof test), 178.606 (Stacking test), 178.608 (Vibration standard), 178.609 (Test requirements for packaging for infectious substances {etiologic agents}), in addition to a bursting test for the shipping container and an adsorbency test for the absorbent material commensurate with the requirements in subsection e, there will be no release of the contents to the environment, and no significant reduction in the effectiveness of the packaging.

h. All mailed packages containing used sharps must be accompanied by a four-part manifest or mail disposal service shipping record. The manifest must be placed in an envelope which is affixed to the outside of the shipping container, and must comply with any applicable requirements imposed by the laws of the State from which the package is mailed.

At a minimum, the following information must appear on the manifest:

1. Generator (Mailer)

a. Name

b. Complete address (Not a P.O. Box)

c. Telephone number

d. Description of contents of shipping container: use either "Infectious Substances, affecting animals only" or "Infectious Substances affecting humans." No other description or proper shipping name should be used.

e. Date the shipping container was mailed, and

f. State permit number of the approved facility in which the contents will be disposed.

2. Destination Facility (Disposal Site)

Complete Address (Not a P.O. Box)

3. Generator's (Mailer's) Certification

"I certify that this carton has been approved for the mailing of used

medical sharps, has been prepared for mailing in accordance with the directions for that purpose, and does not contain excess liquid or nonmailable material in violation of the applicable postal regulations. I am aware that full responsibility rests with the generator (mailer) for any violation of 18 U.S.C. 1716 which may result from placing improperly packaged items in the mail. I also certify that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and in proper condition for carriage by air according to the applicable national governmental regulations."

This printed statement is to be followed by the printed name of the generator (mailer), the signature of the generator, and the date the manifest was signed.

4. Destination Facility (Storage or Disposal Site)

a. Printed Certification of receipt, treatment, and disposal—"I certify that the contents of this package have been received, treated, and disposed of in accordance with all local, state, and Federal regulations."

b. Printed or typed name of an authorized recipient at the destination facility.

c. Signature of the authorized recipient at the destination facility.

d. Date destination facility's representative signed manifest.

5. Transporter or Intermediate Handler Other Than the U.S. Postal Service (If Different From the Destination Facility)

a. Name.

b. Complete address (NOT A P.O. BOX).

c. Printed name of transporter or intermediate handler.

d. Signature of transporter or intermediate handler.

6. The manifest or mail disposal service shipping forms must be serialized.

7. The form must contain an area reserved specifically for discrepancies and comments, especially if an alternate destination facility is used.

8. Instructions for completing form and distribution of copies.

a. One copy must be retained by the generator (mailer).

b. One copy must be retained by the transporter or intermediate handler for 90 days.

c. One copy must be retained by the destination facility for 90 days.

d. One copy must be mailed to the generator by the destination facility.

9. The form must bear the following statement with appropriate information: "In Case of Emergency, or the Discovery of Damage or Leakage, Call 1–800–XXX–XXXXX"

i. U.S. Postal Service Authorization to Mail Sharps—Each distributor or manufacturer of mailing kits or packaging assemblies, including containers, cartons, and any other related material to be used to mail sharps to a storage or disposal facility, must obtain an authorization from the United States Postal Service. Before applying for this authorization, each such type of the mailing kit must be tested and certified against the standards in section 125.384g by an independent company or organization. This authorization may be obtained by applying in writing to the Office of Classification and Rates Administration, Business Requirements Division, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–5906. The letter of application must contain the following information: the address of the headquarters or general business office of the distributor or manufacturer; the addresses of all disposal and storage sites; a list of all types of mailing kits to be covered with proof of package testing certifications by the independent testing facility that subjected the materials to the testing requirements prescribed above; a copy of the proposed manifest to be used with all mailings; 24-hour telephone numbers for emergencies; and a list of the types of sharps that will be mailed for disposal.

j. Each package must be mailed using merchandise return service (section 919) and each authorized manufacturer (or distributor) must provide to the Office of Classification and Rates Administration a surety bond of $50,000 or a letter of credit as proof of sufficient financial responsibility to cover disposal costs if the manufacturer (or distributor) ceases doing business before all its shipping containers are disposed of, or to cover clean-up costs if spills occur while the containers are in the possession of the Postal Service. Each primary and shipping container must bear a label, which cannot be detached intact, bearing (1) the company name of the manufacturer or the distributor, (2) the "U.S. Postal Service Auth. No. XXXX", (3) the container ID number (or unique model number) signifying that the packaging material has been certified and the manufacturer or distributor has obtained an authorization required by subsection i.

.385 Other Used Medical Devices

a. Effective (date of publication) other unused medical devices, as defined in section 124.382f, must be mailed as First-Class or Priority Mail.

b. Other used medical devices must be packaged in a securely sealed, leak resistant primary container, the total liquid volume of which must not exceed 50 ml., unless the devices are being shipped in formalin or its equivalent. The primary container must maintain its integrity when exposed to temperatures between 0 degrees and 120 degrees Fahrenheit.

c. The primary container must be enclosed in an outer shipping container constructed of 200-pound grade corrugated fiberboard or similar material of equivalent strength. The primary container must fit securely within the shipping container to prevent breakage during ordinary processing.

d. There must be sufficient absorbent material between the shipping container and the primary container to absorb three times the total liquid allowed within the package unless the device is mailed in a formalin solution or its equivalent.

e. Each parcel containing other used medical devices must bear a complete return address (not a post office box).

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

Neva R. Watson,

Attorney, Legislative Division.

[FR Doc. 92–15246 Filed 6–29–92; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 7E3489/R1148; FRL–4067–4]

RIN 2070–AB78

Pesticide Tolerances for 4-(Dichloroacetyl)-3,4-Dihydro-3-Methyl-2H-1,4-Benzoxazine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of 4-(dichloroacetyl)-3,4-dihydro-3-methyl-2H-1,4-benzoxazine when used as an inert ingredient (safener) in pesticide formulations containing metolachlor in or on the raw agricultural commodities for which tolerances have been established for metolachlor. This

regulation to establish a maximum permissible level for residues of the inert ingredient in or on the commodities was requested by the Ciba-Geigy Corp. This time-limited tolerance expires on December 1, 1996.

EFFECTIVE DATE: This regulation becomes effective June 30, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP 7E3489/R1148], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Kerry Leifer, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711L, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5180.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 15, 1992 (57 FR 13070), EPA issued a proposed rule that gave notice that the Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419, had submitted pesticide petition (PP) 7E3489 to EPA. The petition requested that the Administrator, pursuant to section 408(e) of the FFDCA, propose the establishment of a tolerance for residues of 4-(dichloroacetyl)-3,4-dihydro-3-methyl-2H-1,4-benzoxazine (when used as an inert ingredient (safener) in formulations of the active ingredient metolachlor) at 0.01 part per million (ppm) in or on raw agricultural commodities for which tolerances for metolachlor have been established. A safener is a herbicidal antidote that protects desirous crops while allowing the herbicide to act on the intended weed targets.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

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

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

List of Subjects in 40 CFR Part 180

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

Dated: June 15, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. By adding new § 180.460, to read as follows:

§ 180.460 4-(Dichloroacetyl)-3,4-dihydro-3-methyl-2H-1,4-benzoxazine; tolerances for residues.

Tolerances, to expire on December 1, 1996, are established at 0.01 part per million (ppm) for residues of 4-(dichloroacetyl)-3,4-dihydro-3-methyl-2H-1,4-benzoxazine when used as an inert ingredient (safener) in pesticide formulations containing metolachlor in or on the raw agricultural commodities for which a tolerance has been established for metolachlor. Metolachlor tolerances are established under § 180.368.

[FR Doc. 92-15117 Filed 6-29-92; 8:45 am]
BILLING CODE 6560-50-F

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40 CFR Part 180

[PP 2E2756/R1152; FRL-4068-4]

RIN 2070-AB78

Pesticide Tolerances for Beta-([1,1'-Biphenyl]-4-Yloxy)-Alpha-(1,1-Dimethylethyl)-1H-1,2,4-Triazole-1-Ethanol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the residues of the fungicide beta-([1,1'-biphenyl]-4-yloxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol (also referred to in this document as bitertanol) in or on the raw agricultural commodity (RAC) imported bananas (whole) at 0.2 part per million (ppm). This rule to establish a maximum permissible level of residues of the pesticide in or on the commodity was requested by Mobay Corp.

EFFECTIVE DATE: This regulation becomes effective June 30, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP 2E2756/R1152], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm.

M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5540.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 1, 1992 (57 FR 11056), EPA issued a proposed rule that gave notice that the Mobay Corp., P.O. Box 4913, Kansas City, MO 64120-0013, had submitted a tolerance petition (PP) 2E2756 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to establish a tolerance for the fungicide bitertanol in or on the RAC bananas at 0.2 ppm. EPA had issued a notice, published in the **Federal Register** of November 3, 1982 (47 FR 49892), that Mobay Chemical Corp. had filed this petition to establish a tolerance for bitertanol in or on the RAC bananas at 0.5 ppm. EPA subsequently issued a notice published in the **Federal Register** of July 13, 1983 (48 FR 32078), that Mobay Chemical Corp. had amended the petition by decreasing the tolerance from 0.5 ppm to 0.2 ppm. There were no comments received in response to the notice of filing. Mobay Corp. subsequently amended the petition by limiting the RAC to imported bananas.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

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

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

List of Subjects in 40 CFR Part 180

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

Dated: June 15, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. By adding new § 180.457, to read as follows:

§ 180.457 Beta-([1,1'-biphenyl]-4-yloxy)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol; tolerances for residues.

A tolerance is established for the residues of the fungicide beta-([1,1'-biphenyl]-4-yloxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol in or on the following raw agricultural commodity:

Commodity	Parts per million
Bananas (whole)	0.2

There are no U.S. registrations as of April 1, 1992.

[FR Doc. 92-15118 Filed 6-29-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 1F3968/R1154; FRL-4069-4]

RIN 2070 AB-78

Bacillus Subtilis GB03; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the biofungicide *Bacillus subtilis* GB03 in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practices. This exemption was requested by Gustafson, Inc.

EFFECTIVE DATE: Effective on June 17, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP 1F3968/R1154], may be submitted to the: Hearing Clerk (A-110), Rm. M3708, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of May 1, 1991 (56 FR 19997), which announced that Gustafson, Inc., P.O. Box 660065, Dallas TX 75266-0065, had submitted pesticide petition (PP) 1F3968 to EPA proposing to amend 40 CFR part 180 by establishing a regulation pursuant to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a and 371) to exempt from the requirement of a tolerance the residues of the biofungicide *Bacillus subtilis* GB03 in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practices. No comments were received in response to the notice.

Gustafson's strain of the bacterium *Bacillus subtilis* is a naturally occurring isolate of the spore-forming genus

Bacillus which was first isolated from plots of cotton grown in McKinney, TX. *Bacillus subtilis* is a soil saprophyte found world-wide. Strains of this organism are not generally regarded as human or animal pathogens. The product is intended to be used for formulating other end-use products or as a seed treatment. When applied to seeds, the bacteria colonize the developing root system, competing with disease organisms which attack roots.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include an acute oral toxicity/pathogenicity study in the rat, an acute dermal toxicity study in the rabbit, an acute pulmonary toxicity/pathogenicity study in the rat, an acute intravenous toxicity/pathogenicity study in the rat, and a primary eye irritation study in the rabbit. These studies were performed on the active ingredient and the end-use product Gus 2000 Concentrate Biological Fungicide. A review of these studies indicates that the biofungicide was not toxic to test animals when administered via the oral, dermal, intravenous, or pulmonary routes. The active ingredient was not infective or pathogenic for test animals when administered via the oral, pulmonary, or intravenous route. The end-use product produced slight to severe ocular irritation which dissipated within 7 days of dosing. No reports of hypersensitivity have been recorded from personnel working with this organism. All of the toxicity studies submitted are considered acceptable. The toxicity data provided are sufficient to show that there are no foreseeable human or domestic health hazards likely to arise from the use of the product as a seed treatment.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition because the data submitted demonstrate that this biological control agent is not toxic to humans. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request. This is the first exemption from the requirement of a tolerance for this biofungicide.

Bacillus subtilis GB03 is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the tolerance exemption will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 17, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

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

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

2. In subpart D, by adding new § 180.1111, to read as follows:

§ 180.1111 Bacillus subtilis GB03; exemption from the requirement of a tolerance.

The biofungicide *Bacillus subtilis* GB03 is exempted from the requirement of a tolerance in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practices.

[FR Doc. 92–15339 Filed 6–29–92; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 712 and 716

[OPPTS–82036A; FRL–4070–6]

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule, technical amendment.

SUMMARY: This notice corrects a typographical error in a final rule published in the **Federal Register** of August 29, 1991, concerning the chemical 2-(2-aminoethoxy)-ethanol (CAS No. 929–06–6) which was incorrectly listed in two model information-gathering rules: the Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Rule (PAIR) and the TSCA section 8(d) Health and Safety Data Reporting Rule. The chemical was listed as 2-(2-aminoethyoxy)-ethano (CAS No. l929–06–6). It should read 2-(2-aminoethoxy)-ethanol (CAS No. 929–06–6). This document corrects that error. A new reporting period is also being established for this chemical.

EFFECTIVE DATE: This rule will become effective on [insert date of publication in the **Federal Register**].

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Rm. E–543, Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 29, 1991 (56 FR 42688), EPA issued a final rule which added chemicals to two model information-gathering rules: the Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Rule (PAIR) and the TSCA section 8(d) Health and Safety Data Reporting Rule. On pages 42692 and 42695 the chemical 2-(2-aminoethoxy)-ethanol (CAS No. 929–06–6) is incorrectly listed as 2-2-(aminoethoxy)-ethano (CAS No. l929–06–6). Because this typographical error could have caused the chemical to be misrepresented thereby preventing some manufacturers, importers, or processors

from reporting as required under TSCA sections 8(a) and 8(d), a new effective date is established for this chemical.

Dated: June 18, 1992.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

Therefore, 40 CFR Chapter I is amended as follows:

PART 712—[AMENDED]

1. In Part 712:

a. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. In § 712.30(x), under the category Substantially produced chemicals in need of subchronic tests, CAS No. entry 1929–06–6 is revised to read as follows:

§ 712.30 Chemical lists and reporting period.

* * * * *

(x) * * *

CAS Number	Substance	Effective date	Reporting date
* *	* * * * * *		
929–06–6	2-(2-Aminoethoxy)-ethanol	6/30/92	9/28/92
* *	* * * * * *		

PART 716—[AMENDED]

2. In Part 716:

a. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d)

b. In § 716.120(d), under the category of Substantially produced chemicals in need of subchronic tests, the entry for 2-(2-Aminoethoxy)-ethano is revised to read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

* * * * *

(d) * * *

Category	CAS No. (examples for category)	Special exemptions	Effective date	Sunset date
* *	* *	* * * *		
2-(2-Aminoethoxy)-ethanol	929–06–6		6/30/92	6/30/02
* *	* *	* * * *		

[FR Doc. 92–15338 Filed 6–29–92; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 281

[FRL–4148–9]

Maryland; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Maryland's application for program approval.

SUMMARY: The State of Maryland has applied for approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the State of Maryland's application and has made a final determination that the State of Maryland's underground storage tank program satisfies all of the requirements necessary to qualify for approval. Thus, EPA is granting final approval to the State of Maryland to operate its program.

EFFECTIVE DATE: Program approval for Maryland shall be effective on July 30, 1992. From date of publication.

FOR FURTHER INFORMATION CONTACT: Rosemarie P. Nino, UST Section (3HW63), U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 597–0270.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. To qualify for approval a State's program must be "no less stringent" than the Federal program in all seven elements set forth at section 9004(a)(1) through (7) of RCRA, 42 U.S.C. 6991c(a)(1) through (7), as well as the notification requirements of section 9004(a)(8) of RCRA, 42 U.S.C. 6991c(a)(8) and must provide for adequate enforcement of compliance with UST standards (section 9004(a) of RCRA, 42 U.S.C. 6991c(a)).

On November 5, 1990, the State of Maryland submitted an official application for approval. The State reaffirmed its application by letter dated January 31, 1992, and submitted a revised Attorney General's Statement and a revised Memorandum of Agreement to obtain final approval to administer its underground storage tank program. On March 10, 1992, EPA published a tentative decision announcing its intent to approve Maryland's program. Further background on the tentative decision to grant approval appears at 57 FR 8420, (March 10, 1992).

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of a public hearing on the application. EPA requested advance notice for testimony and reserved the right to cancel the public hearing in the event of insufficient public interest. Since there was no request, the public hearing was cancelled. One written comment was received from the Maryland Service Station and Automotive Repair Association on March 16, 1992, urging

EPA's approval of Maryland's underground storage tank program.

B. Final Decision

I conclude that the State of Maryland's application for program approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA and 40 CFR Part 281. Accordingly, Maryland is granted approval to operate its underground storage tank program in lieu of the Federal program.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approved Maryland UST program will operate in lieu of the Federal UST program in the State of Maryland, thereby eliminating duplicative requirements. It does not impose any significant new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Administrative Practice and Procedure, Hazardous Materials, State Program Approval, and Underground Storage Tanks.

Authority: This notice is issued under the authority of sections 2002(a), 7004(b), and 9004 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6974(b) and 6991c.

Dated: June 18, 1992.

William T. Wisniewski,

Acting Regional Administrator.

[FR Doc. 92-15337 Filed 6-29-92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 281

[FRL-4142-6]

The State of Oklahoma; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of Oklahoma for final approval, public hearing and public comment period.

SUMMARY: The State of Oklahoma has applied for final approval of its underground storage tank program under Subtitle I of the Solid Waste Disposal Act ("SWDA"). The Environmental Protection Agency ("EPA") has reviewed Oklahoma's application and has made the tentative decision that Oklahoma's underground storage tank program satisfies all of the requirements necessary to quality for final approval. Thus EPA intends to grant final approval to the State to operate its program. Oklahoma's application for final approval is available for public review and comment and a public hearing will be held to solicit comments on the application, if requested.

DATES: A public hearing is schedule for July 30, 1992. Oklahoma will participate in the public hearing held by EPA on this subject. All comments on Oklahoma's final approval application must be received by the close of business on July 30, 1992.

ADDRESSES: The public hearing will begin at 2 p.m. Central Standard Time, and will be held at at the Sequoyah Building, Capitol Grounds, Oklahoma City, Oklahoma 73105.

Copies of Oklahoma's final approval application are available for inspection and copying, 9 a.m. 4 p.m. at the following addresses: Oklahoma Corporation Commission, Jim Thorpe Building, 2101 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105, Phone: 405/521-3107; U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC 20460, Phone: 202/382-5926; and U.S. EPA Region 6, Library, 12th Floor, 1445 Ross Avenue, Mailcode: 6H-A, Dallas, Texas 75202, Phone: 214/655-6755. Written comments should be sent to Program Manager, Underground Storage Tank Program, Attention Sam Coleman, Region 6, Mailcode: 6H-A, 1445 Ross Avenue, Dallas, Texas 75202, Phone: 214/655-6755.

FOR FURTHER INFORMATION CONTACT: Oklahoma State Program Officer, Underground Storage Tank Program, Attention Lynn Dail, U.S. EPA Region 6, Mailcode: 6H-A, 1445 Ross Avenue, Dallas, Texas 75202, Phone: 214/655-6755.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of SWDA enables EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. Two types of approval may be granted. The first type, known as "interim approval", is a temporary approval which is granted if EPA determines that the State program is "no less stringent" than the Federal program (section 9004(b)(2), 42 U.S.C. 6991c(b)(2)) in the following elements: corrective action; financial responsibility; and new tank standards. While operating under interim approval, the State may complete development of "no less stringent" standards for the following elements: Release detection; release detection recordkeeping; reporting of releases and two types of approval may be granted.

The second type of approval is a "final approval" that is granted by EPA if the Agency finds that the State program: (1) Is "no less stringent" than the Federal program in all seven elements, and includes notification requirements of section 9004(a)(8), 42 U.S.C. 6991c(a)(8); and (2) provides for adequate enforcement of compliance with UST standards (section 9004(a), 42 U.S.C. 6991(b)).

B. Oklahoma

On June 25, 1989, Oklahoma submitted an official application for final approval. Prior to its submission, Oklahoma provided an opportunity for public notice and comment in the development of its underground storage tank program. This is required under 40 CFR 281.50(b). EPA has reviewed Oklahoma's application, and has determined that there are apparent differences between Oklahoma's regulations and federal regulations. The differences are noted as follows:

- Oklahoma does not include, in its rules 14 and 15, several federal technical requirements for upgrading existing UST systems, or any apparent equivalent. The specific requirements are: 40 CFR 280.43(e)(6), on assessing the UST excavation zone to establish the number and position of monitoring wells required when conducting vapor monitoring; (2) 42 CFR 280.43(f)(3), on the design of the slotted portion of the monitoring well casing when conducting ground-water monitoring; and (3) 40 CFR 280.43(f)(7), on assessing the UST excavation zone for monitoring well placement when conducting ground-water monitoring.
- The State's release detection system requirement set forth in rule 14.05, does not include the word "designed". Thus, detection systems would not be required to be designed so that releases are detected in accordance with the capabilities of the method. EPA Region 6 has determined that Oklahoma must include the design standard in its release detection system requirements.
- Oklahoma rule 13.07.B.3, requires the design of the corrective action plan to consider only present uses of nearby surface and groundwater, not future

uses. Consideration of future uses is required in the federal technical standard § 280.66(b)(3), and EPA Region 6 has determined that Oklahoma's rule 13.07.B.3, must meet the technical adequacy requirements.

EPA and the State of Oklahoma have discussed these issues and the State has agreed, pursuant to a Memorandum of Agreement (MOA) entered between EPA and the State of Oklahoma, to adopt policies that will amend the regulations on the aforementioned issues to adequately meet the Federal standards.

EPA has tentatively determined that the majority of Oklahoma's program meets all of the requirements necessary to qualify for final approval. Consequently, EPA intends to grant final approval to the State of Oklahoma to operate its program, pursuant to the mutual acceptance of EPA and the State, of the Memorandum of Agreement ("MOA").

In accordance with section 9004 of SWDA, 42 U.S.C. 6991c, 40 CFR 281.50(e), the Agency has planned a public hearing on its proposal at 2 p.m. Central Standard Time at the Sequoyah Building, Capitol Grounds, Oklahoma City, Oklahoma 73105. The public may also submit written comments on EPA's tentative determination until July 30, 1992. Copies of Oklahoma's application are available for inspection and copying at the location indicated in the "Addresses" section of this notice.

EPA will consider all public comments on its tentative determination received at the hearing or during the public comment period. Issues raised by those comments may be the basis for a decision to deny final approval to Oklahoma. EPA expects to make a final decision on whether or not to approve Oklahoma's program by September 28, 1992 and will give notice of it in the **Federal Register.** The notice will include a summary of the reasons for the final determination and a response to all major comments.

C. Decision

After reviewing the Oklahoma application and the provisions established in an MOA to amend the portions of the regulations at issue, I conclude that the State's program meets all of the requirements necessary to qualify for final approval. Accordingly, the State of Oklahoma is granted final approval to operate its underground storage tank program. The State of Oklahoma now has the responsibility for managing underground storage tank facilities within its borders and carrying out all aspects of the UST program. The State of Oklahoma also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 9005 of SWDA, 42 U.S.C. 6991d and to take enforcement actions under section 9006 of SWDA, 42 U.S.C. 6991e.

The State of Oklahoma is not authorized to operate the UST program on Indian lands and this authority will remain with EPA.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 601(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval effectively suspends the applicability of certain Federal regulations in favor of Oklahoma's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Administrative practice and procedure, Hazardous materials, State program approval, and Underground storage tanks.

Authority: This Notice is issued under the authority of Sections 2002(a), 7004(b), 3006, and 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b), and 6991(c).

Allyn M. Davis,

Acting Regional Administrator.

[FR Doc. 92–15336 Filed 6–29–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 65 and 72

RIN 3067–AB66

Identification and Mapping of Special Flood Hazard Areas and Procedures and Fees for Processing Map Changes

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This final rule revises the National Flood Insurance Program (NFIP) regulations on identification and mapping of special hazard areas. The rule initiates a fee requirement for map revisions, similar to the current fee procedures for conditional Letters of Map Amendment (CLOMAs) and conditional Letters of Map Revision (CLOMRs), by establishing administrative and cost recovery procedures for the review and issuance of Letters of Map Revision (LOMRs) and map revisions requested to reflect changed flood hazards. This action is being undertaken to reduce expenses to the NFIP and will contribute to maintaining the NFIP as self-supporting.

Also, the final rule deletes the listing of initial fees and references to pre-authorized spending limits set forth in the current regulations at §§ 72.3 and 72.4 and substitutes language which provides for publication of fees and pre-authorized spending limits in a separate listing. This action was undertaken to permit FEMA to adjust fees to accommodate the increased rates FEMA must pay for these activities and to eliminate the necessity of undertaking formal rulemaking solely for the purpose of adjusting fees. The listing of fees to be effective as of the effective date of this final rule, is published as a notice elsewhere in this **Federal Register.**

Under this rule, the fees are to be adjusted periodically, but no more than once annually, to provide for changes in the prevailing private sector labor rate upon which the fees are predicated. Revised fees will be published as a notice in the **Federal Register.**

EFFECTIVE DATE: July 30, 1992.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: These amendments to the NFIP criteria for identification and mapping of special hazard areas are a result of a continuing reappraisal of the NFIP for the purposes of achieving greater administrative and fiscal effectiveness and encouraging sound flood plain management so that reductions in the loss of life and property and in disaster expenditures can be realized.

Establishment of Fee System for Revisions

FEMA receives a large number of requests for Letters of Map Revision (LOMRs) and map revisions resulting from the placement of fill and the completion of stream channelizations, the construction of bridges and culverts, or other flood control projects, such as levees. These projects are typically limited in scope and are frequently done solely to reduced flood risk to a limited

area of the floodplain proposed for development and to offer relief from flood insurance purchase requirements of 42 U.S.C. 4012a or to secure financing or other benefits. Thus, to reduce expenses to the NFIP, FEMA is implementing a reimbursement procedure to allow for a partial recovery of certain costs associated with these actions.

Revisions intended to show a reduced flood hazard resulting from a publicly-sponsored project which was constructed primarily to reduce the flood hazard to insurable structures in identified flood hazard areas in existence prior to the date of commencement of construction of the flood control project are not subject to this reimbursement procedure. Likewise, revisions to correct an error in FEMA's mapping are not subject to the fee reimbursement procedures described herein.

Under this rule, an initial fee, the amount determined by the type of flood control project, is required of those seeking a LOMR or map revision before any review commences. The initial fee represents the minimum engineering review and administration processing costs for a LOMR or map revision based on the type of project. The initial fee does not include costs for labor and materials associated with the cartographic processing and preparation of a map revision since these costs will vary depending on the number of map panels affected and the complexity of the changes being incorporated.

In the case of a map revision, FEMA will estimate the additional costs of cartographic preparation and processing of the revised map and will notify the requestor of those anticipated costs. Prior to initiating the map revision, FEMA will bill and collect these costs from the requestor. The requestor will not be charged for printing or distributing the revised map or for other incidental changes in the map not related to the specific request.

If it is determined that the actual cost associated with the review and processing of a LOMR or map revision will exceed the amount remitted for the initial fee, the requestor will be billed and will be required to remit payment prior to receiving FEMA's final determination. Funds collected from this fee initiative will be deposited to the National Flood Insurance Fund since it is the source of funding for this service.

FEMA has determined that the costs associated with the technical review of requests for LOMRs and map revisions vary based on the type of project involved. In addition, the review costs are generally higher for requests that contain insufficient technical data and require additional data submittals by the requestor. It was determined that, for each category of project, there are certain minimum review and processing elements common to all requests. These minimum review and processing costs were used to develop the initial fees for the various projects.

The LOMRs and map revisions were first categorized by the type of project to be reviewed. Each category was then examined and minimum review and processing times were determined for engineering review, administration, word processing, and quality control. The basis processing time common to each type of project was then converted to a dollar amount using the direct labor rates, overhead, and fee, which FEMA pays for these services. Administrative expenses to be recovered also include the cost of publishing notices of changes in base flood elevations in the local newspaper and in the **Federal Register**, when required. The costs to be recovered are those of the technical engineering and administrative review of projects, and, for map revisions, the cost of cartographic preparation and processing.

The cartographic costs for a map revision vary depending on the number of map panels affected and on the complexity of the changes to be incorporated. Therefore, these costs are calculated on a case-by-case basis and have not been included in the initial fee calculations. Cartographic costs include preparation of the revised map and report, administration, word processing, quality control, and materials. The primary component of the cost of processing a LOMR or map revision is the prevailing private sector labor rate charged to FEMA for the conduct of the engineering review and cartographic preparation and processing. Since this rate will vary due to inflation and other economic fluctuations, FEMA is publishing the initial fees, pre-authorized spending limits, and the established hourly rate which are to be effective as of the effective date of this final rule, as a notice elsewhere in this **Federal Register**. When it is necessary to revise the fees, a notice revising the initial fees, the pre-authorized spending limits, and the hourly rate will be published in the **Federal Register**. This will not occur more than once annually.

In most cases, FEMA anticipates that periodic fee adjustments will be based primarily on fluctuations in the prevailing private sector labor rate charged to FEMA. Because such periodic fee adjustments are necessary to permit FEMA to recoup its expenses and would not reflect a change in the underlying fee structures, FEMA will not issue a proposed notice of fees prior to adopting the updated fee schedule.

This approach permits FEMA to make periodic fee adjustments for fluctuations in the prevailing private sector labor rate without soliciting prior public comment on these adjustments. Prior public comment will only be solicited if FEMA is to make a substantive change in the method by which the fees are calculated.

On October 9, 1991, FEMA published in 56 FR 50838, for comment, a proposed rule containing procedures for implementation of a map revision fee system. The proposed rule was also inadvertently republished in 56 FR 51358 on October 11, 1991.

Two comments were received from the public during the 60-day comment period provided following publication of the proposed rule. One of these was from a county floodplain management technician who was concerned that the proposed fee system would cause communities to abandon flood control projects which would benefit floodplain residents and who felt it was unfair to charge property owners for LOMRs once they had incurred the expense of placing fill to remove their property from the floodplain. The final rule provides for fee exemptions set forth in § 72.5 which address these concerns.

The second comment, from a flood control and water conservation district engineer in California, dealt with the concern that, although the proposed rule states in § 72.4(d) that the local community incurs no financial obligation as a result of transmitting an application by another party to FEMA, in fact, some communities may incur the costs of converting an existing CLOMR to a LOMR because the developer may lack the financial motivation to pursue the LOMR. The suggestion was made that FEMA exempt local agencies from the fees for converting privately sponsored projects covered by an existing CLOMR issued prior to the effective date of the final rule. Having received only one comment on this issue, FEMA is unable to gauge how prevalent this situation might be. Therefore, FEMA does not find adequate merit to warrant changing the final rule.

Editorial changes were made to clarify FEMA's intent and to respond to comments from one of the FEMA Regional Offices. One of these changes is to consolidate and to set forth references to fee exemption criteria in one location in the regulation, at § 72.5. To accomplish this, the exemptions contained in § 72.1(a) and (b) of the proposed rule have been removed and

set forth in § 72.5 of the final rule as new paragraphs (a) and (b). Section 72.1(c) of the proposed rule which references the exemption for publicly-sponsored projects has been deleted from that section in the final rule. Instead, the exemption for publicly-sponsored projects contained in § 72.5 of the proposed rule has been set out in the final rule in § 72.5 as a new paragraph (c).

A second change clarifies the fee exemption provided in § 72.1(a) for map errors and deficiencies. Following publication of the proposed rule, FEMA became aware that a broad interpretation of the term "mapping deficiencies" could exceed FEMA's intent which was to provide relief from fees in situations involving error or technical inadequacy in the mapping and study effort. Budgetary restrictions and pragmatic issues typically necessitate that FEMA limit the scope and detail of its flood studies and mapping. It is not FEMA's intent to apply the fee exemption to situations where the LOMR or map revision request is based on submittal of more detailed flood data for the primary purpose of showing a reduced flood risk to a limited area of the floodplain proposed for development and to offer relief from flood insurance purchase requirements. To avoid misinterpretation, the word "deficiencies" has been deleted from the final rule at §§ 65.4(c) and 72.5(a) and elsewhere in the final rule.

A third editorial change involves language used in describing the fee exemption for single lot LOMRs based on placement of fill in § 72.1(b) and again at § 72.3(b) of the proposed rule. The exemption was reworded in the final rule and added as paragraph (b) to § 72.5. The new language gives the Administrator discretion in applying the fee exemption for single-lot LOMRs based on fill outside the regulatory floodway, thereby clarifying FEMA's original intent to provide relief for individual property owners while avoiding potential use of the exemption to circumvent fees for multi-lot or subdivision LOMRs.

In the fourth change, § 72.3(b) of the final rule states the fee exemption for LOMAs in a separate sentence to make it clear that all LOMAs are fee exempt.

Finally, language was added to § 72.4(e) of the final rule to specify that payment of fees is to be made in U.S. funds. This addition was made in response to recent attempts by requestors of conditional LOMAs and LOMRs to remit payment in foreign funds which cannot be processed due to administrative restrictions.

FEMA had also solicited comment on the approach contained in the proposed rule to revise fees on an annual basis without soliciting prior public comment and by publishing a notice in the **Federal Register** by August 1 of each calendar year. This notice would contain the adjusted fees to be effective the first day of the subsequent fiscal year. Prior public comment would only be solicited if FEMA were to make a substantive change in the method by which the fees are calculated. No comments were received on this approach. However, since it is not always necessary to revise the fees on an annual basis, the final rule provides, instead, for a periodic adjustment of the fees, as necessary. Notice of periodic fee adjustments will be published in the **Federal Register** and fees will be adjusted no more than once annually.

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, Federal Regulation, February 17, 1981, and will not have a significant economic impact on a substantial number of small entities. 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 Parts 65 and 72

Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR parts 65 and 72 are amended, as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding a paragraph (c) to read as follows:

* * * * *

(c) Requests for revisions to effective Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs) to reflect the changed flood hazard resulting from the filling of more than a single lot within the flood plain or from the construction of channel alterations, bridges, culverts, levees or similar measures for the primary purpose of reclaiming flood plain lands for future development are subject to the reimbursement procedures described in part 72 of this subchapter. Revisions to reflect a reduced flood hazard resulting from a publicly-sponsored project constructed primarily to reduce the flood hazard to insurable structures which were in existence prior to commencement of construction of the flood-control project, or to correct errors in existing flood insurance mapping, will not be subject to the reimbursement procedures.

3. Part 72 is revised, as follows:

Part 72—PROCEDURES AND FEES FOR PROCESSING MAP CHANGES

Sec.

72.1 Purpose of part.
72.2 Definitions.
72.3 Initial fee schedule.
72.4 Submittal/payment procedures and FEMA response.
72.5 Exemptions.
72.6 Unfavorable response.
72.7 Resubmittals.

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 72.1 Purpose of part.

The purpose of this part is to provide administrative and cost recovery procedures for the engineering review and administrative processing associated with the issuance of Conditional Letters of Map Amendment (CLOMAs), Conditional Letters of Map Revision (CLOMRs), Letters of Map Revision (LOMRs), and map revisions, including cartographic costs, based on manmade alternations within the flood plain, such as the placement of fill, modification of a channel, or construction of a new bridge, culvert, levee, or similar measure.

§ 72.2 Definitions.

Except as otherwise provided in this part, the definitions set forth in part 59

of this subchapter are applicable to this part.

CLOMA. For the purpose of this part, a CLOMA is FEMA's comment on a proposed structure that would, upon construction, be located on existing natural ground above the base flood elevation on a portion of a legally defined parcel of land which is partially inundated by the base (100-year) flood.

CLOMR. For the purpose of this part, a CLOMR is FEMA's comment on a proposed project that would, upon construction, result in a modification of the area of special flood hazard through the placement of fill, or would affect the hydrologic and/or hydraulic characteristics of a flooding source, and thus result in the modification of the existing regulatory floorway, the effective base flood elevations, or the area of special flood hazard.

LOMR. For the purpose of this part, a LOMR is FEMA's modification to an effective flood insurance map based on the placement of fill, or other physical measures which have been implemented that support changes in the area of special flood hazard, base flood elevations, or floodway. The LOMR officially revises the Flood Insurance Rate Map (FIRM) or the Flood Boundary Floodway Map (FBFM), or both, and includes a description of the modifications. In addition, the LOMR is generally accompanied by an annotated copy of the affected FIRM or FBFM panel(s), or both.

Map Revision. For the purpose of this part, a map revision is FEMA's redrawing and republication of an effective flood insurance map based on the placement of fill, or other physical measures which have been implemented that support changes in the area of special flood hazard, base flood elevations, or floodway.

§ 72.3 Initial fee schedule.

(a) For CLOMAs and for CLOMRs, an initial fee, subject to the provisions of § 72.4, shall be paid by the requestor prior to the initiation of FEMA's review. The initial fee represents the minimum number of hours required to review each type of project, multiplied by an hourly rate, which is based on the prevailing private sector labor rate and the administrative costs of processing a CLOMA or CLOMR. The initial fees for CLOMAs and CLOMRs for the categories listed below are published in a separate notice in the **Federal Register.** Revisions to these fees are published periodically, as a notice in the **Federal Register:**

(1) Single lot CLOMA;

(2) Single lot CLOMR (based strictly on the proposed placement of fill outside the regulatory floodway);

(3) Multi-lot/Subdivision CLOMA;

(4) Multi-lot/Subdivision CLOMR (based strictly on the proposed placement of fill outside the regulatory floodway);

(5) Review of new hydrology;

(6) New bridge or culvert (no channelization);

(7) Channel modifications only;

(8) Channel modification and new bridge or culvert;

(9) Levees, berms, or other structural measures;

(10) Structural measures on alluvial fans.

(b) For LOMRs or map revisions, whether or not they follow a CLOMR issued by FEMA, an initial fee for all categories listed below, subject to the provisions of § 72.4, will be paid by the requestor prior to the initiation of FEMA's review. There are no fees for LOMAs. There are no fees for single lot LOMRs which meet the requirements set forth in § 72.5(b) and are based strictly on the placement of fill outside of the regulatory floodway. The initial fee represents the minimum number of hours required to review each type of project, multiplied by an hourly rate, which is based on the prevailing private sector labor rate and the administrative costs of processing a LOMR or map revision. The initial fee does not include the costs of cartographic preparation and processing of a map revision. The initial fees for LOMRs and map revisions in the categories listed below are contained in a separate notice published in the **Federal Register.** Revisions to these fees are published periodically, as a notice in the **Federal Register:**

(1) Multi-lot/Subdivision LOMR based strictly on the placement of fill outside the regulatory floodway;

(2) New bridge or culvert (no channelization);

(3) Channel modifications only;

(4) Channel modification and new bridge or culvert;

(5) Levees, berms, or other structural measures;

(6) Structural measures on alluvial fans.

(c) For projects involving combinations of the actions listed under paragraphs (a) or (b) of this section, the initial fee shall be that charged for the most expensive action of those that compose the combination.

§ 72.4 Submittal/payment procedures and FEMA response.

(a) Initial fees shall be submitted with the request for FEMA review and processing of CLOMAs and CLOMRs, LOMRs, and map revisions.

(b) Initial fees must be received by FEMA before the review will be initiated for any CLOMA, CLOMR, LOMR, or map revision. The initial fee is non-refundable upon initiation of FEMA's review.

(c) Following completion of FEMA's review for any CLOMA, CLOMR, LOMR, or map revision, the requestor will be billed at the established hourly rate for any actual costs exceeding the initial fee incurred during the review. The rate is published in a separate notice in the **Federal Register.** The rate will be revised periodically to reflect more current cost data and the revised hourly rate will be published as a notice in the **Federal Register.**

(1) In the event that the revision request results in a map revision, the requestor will be notified and billed for costs of cartographic preparation and processing of the revised map. This work will not be initiated until FEMA has received payment. This amount will be calculated on a case by case basis and will reflect the cost to FEMA for cartographic preparation and processing of the revised map. The cost of reprinting and distributing the revised Flood Insurance Rate Map (FIRM) or the Flood Boundary Floodway Map (FBFM), or both, will be borne by FEMA.

(2) Requestors of CLOMAs, CLOMRs, LOMRs and map revisions will be notified of the anticipated total cost if the total cost of processing the request, including estimated costs for cartographic preparation and processing of a map revision, will exceed the pre-authorized spending limits. The limits vary according to the type of review performed and are based on the established hourly rate. The pre-authorized spending limits are listed in a separate notice published in the **Federal Register.** These spending limits are revised periodically and published as a separate notice in the **Federal Register.**

(3) In the event that processing costs are anticipated to exceed the pre-authorized spending limits, processing of the request will be suspended pending FEMA receipt of written approval from the requestor to proceed.

(d) The entity that applies to FEMA through the local community for review will be billed for the cost of the review. The local community incurs no financial obligation under the reimbursement procedure set forth in this part as a result of transmitting the application by another party to FEMA.

(e) Payment of both the initial fee and final cost shall be by check or money order payable in U.S. funds to the

National Flood Insurance Program and must be received by FEMA before the CLOMA, CLOMR, or LOMR will be issued, or before the cartographic processing will begin for a map revision.

(f) For CLOMA requests, FEMA shall:

(1) Notify the requestor within 30 days as to the adequacy of the submittal, and

(2) Within 60 days of receipt of adequate information and fee, provide comment to the requestor on the proposed project.

(g) For CLOMR, LOMR and for map revision requests, FEMA shall:

(1) Notify the requestor within 60 days as to the adequacy of the submittal; and

(2) Within 90 days of receipt of adequate information and fee, provide comment to the requestor on the proposed project, issue a LOMR or, in the case of a map revision, notify the requestor of the results of the review and the estimate of the costs of the cartographic preparation and processing; and

(3) Within 90 days of completion of the engineering review and receipt of the payment for the total cost of the review and processing of the map revision, including cartographic costs, issue a preliminary copy of the revised FIRM or FBFM, or both, for review and comment by the community and the requestor.

§ 72.5 Exemptions.

(a) LOMAs, LOMRs, or map revisions issued to correct map errors or to include the effects of natural changes within the areas of special flood hazard shall be exempt from fees.

(b) LOMRs, as determined to be appropriate by the Administrator, issued to remove single residential lots or structures from the area of special flood hazard based solely on the placement of fill outside of the regulatory floodway, shall be exempt from fees. The Administrator's determination will be based, in part, on whether the LOMR is being sought by an individual property owner or whether it is being requested prior to the transfer of ownership of the property in question from a developer to an individual property owner.

(c) Federal, State, and local governments and their agencies shall be exempt from fees for projects they sponsor if the Administrator determines or the requesting agency certifies that the particular project is for public benefit and primarily intended for flood loss reduction to insurable structures in identified flood hazard areas which were in existence prior to the commencement of construction of the flood control project. Projects undertaken primarily to protect planned flood plain development are not eligible for fee exemption.

§ 72.6 Unfavorable response.

(a) A request for a CLOMA or CLOMR may be denied or the determination may contain specific comments, concerns, or conditions regarding a proposed project or design and its impacts on flood hazards in a community. A requestor is not entitled to any refund if the determination contains such comments, concerns, or conditions, or if the request is denied. A requestor is not entitled to any refund if the requestor is unable to provide the appropriate scientific or technical documentation or to obtain required authorizations, permits, financing, etc., for which the CLOMA or CLOMR was sought.

(b) A request for a LOMR or map revision may be denied or may not revise the FIRM or the FBFM, or both, in the manner or to the extent desired by the requestor. A requestor is not entitled to any refund if the revision is denied or if the LOMR or map revision action does not revise the map specifically as requested.

§ 72.7 Resubmittals.

Any resubmittal of a CLOMA, CLOMR, LOMR, or map revision request more than 90 days after FEMA notification that the request has been denied or after the review has been terminated because of insufficient information or other reasons will be treated as an original submission and subject to all submittal payment procedures described in § 72.4, including the initial fee. The procedure of § 72.4, including the initial fee, will also apply to any resubmitted request (regardless of when it is submitted) if the project on which the request is based has been significantly altered in design or scope other than as necessary to respond to comments, concerns, or other findings made by FEMA regarding the original submission.

In addition, when a LOMR or map revision request is made following a previously issued CLOMR, the procedure of § 72.4 and the appropriate initial fee, as referenced in § 72.3(c), will apply when the as-built conditions differ from the proposed conditions on which the issuance of the CLOMR was based.

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

Dated: June 22, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-15317 Filed 6-29-92; 8:45 am]

BILLING CODE 6718-03-M

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Chapter XX

Termination of Commission and Removal of Regulations

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Final rule.

SUMMARY: The Commission on the Bicentennial of the United States Constitution was established by Public Law 98-101 as a temporary agency which terminates on June 30, 1992. All agency program activities officially end on that date. Accordingly, it is the purpose of this action to deactivate all agency regulations applicable to its program activities, and to remove such regulations from the Code of Federal Regulations.

This action does not relieve any individual or organization which is participating in Commission program activities of its responsibilities or liabilities under the law, and shall not affect the right of the Government of the United States to collect all funds due the Commission from any private party and deposit same in the United States Treasury.

The Commission has arranged for the General Services Administration to close out any existing contractual agreements.

The Commission has arranged for Office of Justice Programs at the United States Department of Justice to provide for an orderly termination of Commission program activities, including closing out educational grant agreements, assuring completion of work in progress, disposing of agency records and publications, and distributing the final Commission Report to the President and Congress.

Inquiries concerning the close out of Commission contractual or grant agreements after termination of the agency should be referred to the individuals listed below under **FOR FURTHER INFORMATION CONTACT.**

Individuals and organizations with grant or contract agreements with the Commission which have not been closed out should retain a copy of the Code of Federal Regulations volume, 45 CFR Parts 1200—End, revised July 1, 1991. This volume contains the text of the Commissions regulations, and may be used for reference during close out.

EFFECTIVE DATE: June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Inquiries concerning the close out of agency contract agreements should be referred to Calvin Snowden, External Services Coordinator, General Services Administration, National Capital Region, Washington, DC 20407, (202) 708–5702.

Inquiries concerning the close out of grant agreements should be referred to Michael Lynch or Jack Nadol, Office of Justice Programs, 633 Indiana Avenue NW., Washington, DC 20531, (202) 307–0604.

SUPPLEMENTARY INFORMATION:

Classification

This is not a major rule under E.O. 12291 since it has no effect on costs, prices or economic competition.

Public Comment

This removal of regulations is issued as a final rule without opportunity for public comment since its sole purpose is to inform the public of the termination of the agency. It does not impose any new requirements on any individuals or organizations which are involved in Commission program activities.

Statutory Authority

This removal of regulations is issued under the authority of section 7, Public Law 98–101, 97 Stat. 719, as amended.

Paperwork Reduction Act

There is no information collection requirement in this action.

List of Subjects

45 CFR Part 2000

Organization and functions (Government agencies).

45 CFR Part 2001

Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Signs and symbols.

45 CFR Part 2002

Accounting.

45 CFR Part 2005

Freedom of Information.

45 CFR Part 2010

Elementary and secondary education, Grant programs—education.

45 CFR Part 2015

Accounting, Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

45 CFR Part 2016

Administrative practice and procedure, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Issued in Washington, DC, on June 25, 1992.

Thomas J. Simon,

Assistant Staff Director and Special Assistant to the Chairman.

Termination of Agency and Removal of Regulations

PARTS 2000, 2001, 2002, 2005, 2010, 2015, 2016—[REMOVED]

Accordingly, under the authority of section 7 of Public Law 98–101, as amended, the Commission on the Bicentennial of the United States Constitution is hereby terminated; parts 2000, 2001, 2002, 2005, 2010, 2015, and 2016 of title 45 of the Code of Federal Regulations are removed; and chapter XX of title 45 of the Code of Federal Regulations is vacated, effective June 30, 1992.

[FR Doc. 92–15334 Filed 6–29–92; 8:45 am]

BILLING CODE 6340–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

Defense Federal Acquisition Regulation Supplement; Foreign Acquisition

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for public comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to prohibit award of a prime contract to a foreign person, company, or entity unless it has certified that it does not comply with the Secondary Arab Boycott of Israel.

DATES: *Effective Date:* June 23, 1992. *Comment Date:* Comments on the interim rule should be submitted in writing at the address shown below on or before July 30, 1992, to be considered in the formulation of the final rule. Please cite DAR Case 91–327 in all correspondence.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations System, ATTN: Mrs. Alyce Sullivan, IMD 3D139, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301–3062. FAX (703) 697–9845. Please cite DAR Case 91–327 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

These revisions implement section 8027A of the Fiscal Year 1992 DoD Appropriations Act (Public Law 102–172) which prohibits awarding a prime contract to a foreign person, company, or entity unless it has certified that it does not comply with the Secondary Arab Boycott of Israel. The statute provides for certain exceptions and permits a waiver by the Secretary of Defense on the basis of national security interests.

This DFARS interim rule adds a new section, 225.770, titled Secondary Arab Boycott of Israel, and a new clause at 252.225–7031, which must be included in all solicitations and contracts, unless an exception applies or the restriction has been waived by the Secretary of Defense.

The Director of Defense Procurement issued these revisions on June 23, 1992 by Departmental Letter 92–005.

B. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this regulation as an interim rule. Urgent and compelling reasons exist to promulgate this rule before affording the public an opportunity to comment because section 8027A of the FY 1992 DoD Appropriations Act was effective upon enactment November 26, 1991.

C. Regulatory Flexibility Act

An initial Regulatory Flexibility Analysis has not been performed because the interim rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* These revisions apply to prime contracts with a foreign person, company, or entity, and therefore are not expected to affect U.S. small entities. Comments are invited. Comments from small entities will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 92–610 in correspondence.

D. Paperwork Reduction Act

The interim rule does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, Defense FAR Supplement 201.301.

PART 225—FOREIGN ACQUISITION

2. Sections 225.770, 225.770–1, 225.770–2, 225.770–3, and 225.770–4 are added to read as follows:

225.770 Secondary Arab Boycott of Israel.

225.770–1 Restriction.

In accordance with section 8027A of the FY 1992 DoD Appropriations Act (Pub. L. 102–172), do not enter into a prime contract with a foreign person, company, or entity unless it has certified that it does not comply with the Secondary Arab Boycott of Israel.

225.770–2 Exceptions.

The restriction does not apply to—

(a) Purchases below the small purchase threshold in FAR 13.101;

(b) Contracts for consumable supplies, provisions, or services for the support of U.S. or allied forces in a foreign country; or

(c) Contracts pertaining to any equipment, technology, data, or services for intelligence or classified purposes, or the acquisition or lease thereof in the interest of national security.

225.770–3 Waivers.

The Secretary of Defense may waive the restriction on the basis of national security interests. Waiver requests should be forwarded to the Director of Defense Procurement, OUSD(A) (DP).

225.770–4 Solicitation provision and contract clause.

Unless an exception applies or a waiver has been granted, use the clause at 252.225–7031, Secondary Arab Boycott of Israel, in all solicitations and contracts.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.225–7031 is added to read as follows:

252.225–7031 Secondary Arab boycott of Israel.

As prescribed in 225.770–4, use the following clause:

Secondary Arab Boycott of Israel (Jun 1992)

(a) *Definitions.*

As used in this clause—

Foreign person means any person other than a United States person as defined in section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec 2415).

United States person is defined in section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

(b) *Certification.* By submitting this offer, the Offeror, if a foreign person, company or entity, certifies that it—

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec. 2407(a) prohibits a United States person from taking.

(End of clause)

[FR Doc. 92–15244 Filed 6–29–92; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 591

RIN 2127–AD00

[Docket No. 89–5; Notice 11]

Importation of Motor Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for reconsideration; final rule.

SUMMARY: This notice denies a petition to add "liaison offices" of foreign manufacturers to the category of importers who are permitted to lease vehicles imported under 49 CFR 591.5(j). The notice also amends part 591 to specify an office to which letters requesting prior approval for importation of noncomplying vehicles may be addressed.

DATE: The amendment is effective June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202–366–5263).

SUPPLEMENTARY INFORMATION: On January 17, 1992, NHTSA published a final rule requiring that persons who wish to import nonconforming vehicles or equipment items for purposes of research, investigation, studies, demonstrations or training, or competitive racing events, submit in advance of such importation, information in support of a request for admission, and obtain a letter of permission from NHTSA (57 FR 2043). The regulation also was amended to prohibit such importers from leasing the noncomplying vehicles imported under these provisions.

Exempted from the requirement were original motor vehicle manufacturers who certify compliance to all applicable Federal motor vehicle safety standards, or their wholly owned subsidiaries. These importers are permitted to lease vehicles that they have imported under these provisions.

A petition for reconsideration of these requirements was received from Nissan Diesel Motor Co., Ltd. (NDM), which filed it through Nissan Diesel America, Inc. Petitioner is a heavy duty truck manufacturer in Japan which has been exporting "class 3 to 7 trucks (cab-chassis)" to the United States. NDM plans to export a prototype truck that does not conform to all applicable Federal motor vehicle safety standards to conduct tests in the U.S. NDM says that the truck would be imported by "our liaison office," also known as Nissan Diesel Motor Co., Ltd., which "is not a (sic) original manufacturer nor (sic) interpreted as our subsidiary." NDM believed that it would be prohibited from leasing the truck for field study. It therefore petitioned NHTSA "to modify the text so that manufacturers' liaison office which have no sales activity in the U.S. may also lease non-conforming vehicles in order to conduct fleet tests by obtaining the permission from NHTSA in advance of the importation."

Petitioner did not define "liaison office", and its legal relationship to the intended importer was unclear. Accordingly, NHTSA telephoned Nissan Diesel America and representatives of Nissan's passenger car operations in the U.S., and learned that the "liaison office" in this case is, in fact, a wholly-owned subsidiary. Thus, no amendment of part 591 is necessary to resolve NDM's problem, and its petition is moot.

It has been brought to NHTSA's attention that the regulation does not contain any address to which importers who are not original vehicle manufacturers or their subsidiaries, may submit letters requesting approval of

importation before arrival of the vehicle in the United States. Such a letter is required by § 591.6(g)(1). In response, the section is amended to designate the Director, Office of Vehicle Safety Compliance (NEF–32) as the recipient of these letters.

Effective Date

Since the amendment merely clarifies an existing procedural requirement by providing a specific mailing address and creates no additional burden upon any person, it is hereby found for good cause shown that an effective date earlier than 30 days after publication is in the public interest, and the amendment is effective upon publication.

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the economic impacts of this rule and determined that it is not major within the meaning of Executive Order 12291 nor significant under Department of Transportation policies and procedures. The addition of a mailing address to the regulation does not change the agency's previous conclusions about the impacts of the regulation. Thus, the impacts are so minimal that preparation of a full regulatory evaluation is not warranted.

National Environmental Policy Act

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. The designation of an address will not have a significant effect upon the environment.

Regulatory Flexibility Act

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. Since the impact of this rule will be minimal, I certify that this rule would not have a significant economic impact upon a substantial number of small entities. There will be no substantial effect on small vehicle manufacturers or on state and local governments which purchase new vehicles. Accordingly, no regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

The declaration requirements and submittal of written statements to NHTSA are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. However, they were previously approved by OMB for inclusion in § 591.6(f) in the final rule published on September 29, 1989 (OMB Approval Number 2127–0002).

Executive Order 12612 (Federalism)

This rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 591

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, title 49 Code of Federal Regulations part 591 is amended as follows:

PART 591—[AMENDED]

1. The authority citation for part 591 continues to read:

Authority: Pub. L. 100–562, 15 U.S.C. 1401, 1407, 1912, 1916, 2022, 2027; delegations of authority at 49 CFR 1.50 and 501.8.

2. Section 591.6(g)(1) is amended by adding a sentence at the end of the parenthetical section beginning "(Any person * * * *" to read:

* * * * *

(g) * * *

(1) * * * The request shall be addressed to Director, Office of Vehicle Safety Compliance (NEF–32), National Highway Traffic Safety Administration, room 6111, 400 Seventh Street, SW., Washington, DC 20590.

* * * * *

Issued on: June 24, 1992.

Frederick H. Grubbe,

Deputy Administrator.

[FR Doc. 92–15215 Filed 6–29–92; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 57, No. 126
Tuesday, June 30, 1992

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147

[Docket No. 91-026-1]

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the National Poultry Improvement Plan (referred to below as the Plan) and its auxiliary provisions to improve its programs by isolating and testing birds from sources that do not participate in the Plan before their introduction into a Plan-participating flock, and by providing new procedures for examining and testing participating flocks. This action appears necessary to increase the effectiveness of the Plan in preventing and controlling certain poultry diseases. The intended effect of these proposed amendments is to help improve poultry breeding stock and hatchery products.

DATES: Consideration will be given only to comments received on or before July 30, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-026-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, VS, APHIS, USDA, room 771, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436 7768.

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (referred to below as the Plan) is a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs to prevent and control egg-transmitted, hatchery-disseminated poultry diseases. Participation in all the Plan programs is voluntary. However, flocks, hatcheries, and dealers must qualify as "U.S. Pullorum-Typhoid Clean" before participating in any other Plan program. Also, regulations at 9 CFR 82.33 require that no hatching eggs or newly-hatched chicks from egg-type chicken breeding flocks may be moved interstate unless they are classified "U.S. Sanitation Monitored" under the Plan, or meet the requirements of a State classification plan determined by the Adminstrator to be equivalent to the Plan.

The Plan identifies States, flocks, hatcheries, and dealers that meet certain disease control standards specified within the Plan's various programs. As a result, customers can buy stock that has tested clean of certain diseases or that has been produced under disease-prevention conditions.

The regulations in 9 CFR parts 145 and 147 (referred to below as "the regulations") contain the requirements for this program. The Animal and Plant Health Inspection Service (APHIS) amends these provisions from time to time to incorporate new scientific information and technologies within the Plan. We propose to amend the regulations to include provisions to—

1. Add a definition of poultry dealer;
2. Provide for the segregation and testing of birds from sources that do not participate in the Plan before introduction into a Plan-participating flock;
3. Improve the "U.S. Sanitation Monitored" program for egg-type chicken breeding flocks by requiring 30-day culturing of the environment rather than dead-germ eggs;
4. Improve the "U.S. Sanitation Monitored" program for meat-type chicken breeding flocks by providing for environmental cultural and control efforts for flocks with certain *Salmonella* serotypes to reduce vertical transmission;
5. Provide for egg yolk monitoring test for *Mycoplasm gallisepticum* (MG) and reduced sample size for game birds to keep MG classification;
6. Improve sampling procedures for environmental sample collection for *Salmonella* testing of the breeding flock environment;
7. Provide procedures for bacteriologic examination of environmental samples for *Salmonella*; and
8. Provide procedures for drag-swag sampling for *Salmonella* testing of the breeding flock environment.

Our proposed amendments are consistent with the recommendations approved by the voting delegates to the June 1990 meeting of the Biennial Plan Conference. Participants at these meetings represented flockowners, breeders, hatcherymen, and Official State Agencies from all cooperating States. Definitions

Section 145.1 provides definitions for various terms used within the Plan. Currently, the regulations do not define "dealer." This omission has led to misunderstanding because of differing meanings for a dealer among components of the poultry and within APHIS. Adding a standard meaning would help eliminate this confusion. Therefore, we propose to amend §§ 145.1 by defining a dealer as an individual or business that deals in commerce in hatching eggs and newly-hatched poultry that were obtained from breeding flocks and hatcheries. This would not include an individual or business that deals in commerce in buying and selling poultry for slaughter only.

General Provisions for all Participants

Section 145.4 provides general procedures for buying, selling, and advertising poultry and hatching eggs and for maintaining and inspecting records in connection with such buying, selling, or advertising. Currently, participants in the Plan may buy, sell, or receive poultry breeding stock and hatching eggs, baby poultry, and started poultry from a nonparticipant, with the Official State Agency and APHIS approval, for use in breeding flocks or for experimental purposes.

We propose to amend §§ 145.4(d) to continue to allow participants to buy or receive products from nonparticipants

with the Official State Agency's permission and APHIS concurrence provided that birds from sources that do not participate in the Plan are segregated and tested at maturity before introduction into a participating flock. By segregated we mean that the nonparticipating flock would be separated from the participating flock in a manner that ensures no commingling of the birds. Also, we propose that at its discretion, the Official State Agency could require retesting of the nonparticipating flock. Possible reasons for retesting would include, among other things, the general history of disease in the flock, the reputation and history of the breeder, and the final destination of the flock. We are changing the word "approval" to "concurrence" because it more accurately reflects our role. We oversee the approval process of the Official State Agency and agree or disagree with their assessment based upon similar reasons as stated above for retesting.

Currently, when introduction of birds from nonparticipating sources is approved, the birds may be mingled with the birds in the participating flock. This leaves the participating flocks, where time and effort have been spent to eradicate pullorum and other diseases, vulnerable to Plan diseases. We are proposing these changes to help eliminate the risk of introduction of these diseases and to help maintain the health of participating flocks.

Terminology and Classification; Flocks and Products.

U.S. Sanitation Monitored—Egg Type Chicken Breeding Flocks

The "U.S. Sanitation Monitored" program is intended to be the basis from which the breeding-hatching industry may conduct a program for the prevention and control of Salmonellosis. It is intended to reduce the incidence of *Salmonella* organisms in hatching eggs and chicks through an effective and practical sanitation program at the breeder farm and in the hatchery.

Currently, participants in the "U.S. Sanitation Monitored" program for egg-type breeders must have environmental samples collected from their flocks when the flocks reach a certain age. Additionally, the participants must have monthly bacteriological samples collected from at least 30 dead-germ eggs. If *Salmonella enteritidis* serotype *enteritidis* (SE) is isolated from either a dead-germ specimen or from a bird necropsy specimen, then the participants' flocks are not eligible for the "U.S. Sanitation Monitored" classification.

We propose to amend § 145.23 to change the "U.S. Sanitation Monitored" program for egg-type chicken breeders by requiring collection of environmental samples every 30 days after the first environmental sample has been taken and by deleting the requirements for dead-germ culturing. Under the proposed regulations, if SE is isolated from certain specified samples, then bacteriological examination would be required of a random sample of 60 live birds. To relieve any unnecessary burden upon a producer, we would specify that if the bacteriological examination revealed only one positive specimen, the participant would have the option of requesting a new examination of an additional 60-bird sample. If the new examination does not recover any SE, the flock will be eligible for the classification. We believe these changes would strengthen the program because the bacteriological examination of environmental samples is a more reliable screening method than the less sensitive method of sampling dead—germ eggs. The 30-day collection period would allow for the 21-day incubation plus a 7-day holding period. Also, a 30-day cycle will make it easier to schedule and remember collections.

U.S. Sanitation Monitored—Meat Type Chicken Breeding Flocks

Currently, participants in the "U.S. Sanitation Monitored" program for meat-type chicken breeding flocks may buy feed that is pelletized and/or crumbled in mills operated at 190 °F. or above. Another requirement for continued classification under this program is that hatching eggs must be collected at least four times a day. At present, there are no provisions for culturing the environment and using control efforts such as bacterins.

We propose to amend § 145.33 to change the "U.S. Sanitation Monitored" program for meat-type chicken breeding flocks to provide for: (1) Buying feed from participants in the "Animal Protein Products Industry (APPI) *Salmonella* Education/Reduction" program; (2) Culturing the environment; and (3) Using control efforts, such as bacterins, depending upon the *Salmonella* serotype isolated.

Specifically, we would add a provision in paragraphs (d)(1)(iii) and (d)(1)(iv) that pelletized or mash feed containing animal protein should be purchased from participants in the "APPI *Salmonella* Education/Reduction" program. Additionally, we would add that the protein products in the pelletized feed must have a minimum moisture content of 14.5 percent and must have been heated throughout to a minimum temperature of 190 °F. or above, or to a minimum temperature of 165 °F. for at least 20 minutes, or to a minimum temperature of 184 °F. under 70 lbs. pressure during the manufacturing process.[1] We believe this change would help control the introduction of *Salmonella* into participating flocks by ensuring that animal protein products meet the highest standards of sanitation. Under the proposed regulations, we would delete the provision for the collection of eggs four times a day. We believe that this requirement is not needed to maintain the health of the flock and is no longer necessary because of the added requirements for collection and bacteriological examination of environmental samples.

Also, we would add two new paragraphs to § 145.33. New paragraph (d)(1)(vii) would provide for collection and bacteriological examination of environmental samples by an authorized agent and an authorized laboratory, respectively. The samples would be collected from each flock when the flock is at least 4 months of age and every 90 days thereafter. These time intervals were selected to allow time for a chick to develop the needed antibodies for reliable diagnosis of Plan diseases. Research indicates that poultry are more immunologically competent at 4 months of age or more, depending upon breed and other factors, making the detection of any infection more likely. Also, collecting environmental samples every 90 days after the first sample has proven effective for the detection of *Salmonella*. New paragraph (d)(1)(viii) would allow owners to vaccinate flocks infected with paratyphoid *Salmonella* with an autogenous bacterin containing a potentiating agent.

These changes would allow a breeder to identify the type of *Salmonella* contained in the environment. After determining the importance of the *Salmonella*, the breeder and the Official State Agency could determine what action to take. By adding inoculation with an autogenous bacterin (bacteria grown from the owner's premises) for paratyphoid *Salmonella* as one of those options, a practical means for the poultry industry to reduce vertical transmission (from hen to chick) of *Salmonella* would be provided. Eventually, these procedures would help

[1] For the sake of consistency in regulatory language, we also propose to slightly modify the language describing temperature requirements for feed manufacture contained in § 145.23(d)(1) for egg type chicken breeding flocks, and in § 145.43(f)(3) for turkey breeding flocks.

reduce the level of *Salmonella* contamination of poultry products.

U.S.M. Gallisepticum Clean

Section 145.53 provides the requirements that waterfowl, exhibition poultry, and game bird breeding flocks and products must meet to be designated by the terms recognized by the various Plan programs. Presently, § 145.53(c)(1)(i) specifies that to retain the designation of "U.S.M. Gallisepticum Clean," 5 percent of a flock, with a minimum of 100 birds, must be tested for *M. gallisepticum* at intervals of not more than 90 days. We propose to amend § 145.53(c)(1)(i) to require random testing of serum or egg yolk. Additionally, we would lower the minimum numbers of birds for testing to 30 because the high transmission rate and incidence of *M. gallisepticum* indicates that low numbers of birds for testing are sufficient.

Because of the virulence of this disease, we believe that random testing of serum or egg yolks from at least 30 birds would be sufficient to detect infection by *M. gallisepticum*. Random testing of at last 30 samples could lower costs for breeders (due to the lower number of tests), and adding the option of testing egg yolks would provide an effective means of detecting disease without the damaging effects of drawing blood. Additionally, an easier-to-administer and less-dangerous-to-flocks test would encourage game bird breeders to participate in the Plan.

Laboratory Procedure Recommended for the Bacteriologic Examination of Salmonella

Section 147.11 provides procedures for collecting and culturing *Salmonella* reactors. Currently, this section has no provisions for culturing environmental and other contaminated specimens. We propose to amend § 147.11(b) to add specific steps [2] to conduct a bacteriologic examination of environmental and other contaminated specimens. These steps, which are based upon what USDA and industry experience appear to indicate are the most acceptable laboratory procedures, would include: (1) Culturing a representative sample; (2) inoculating various agar plates; (3) inoculating *Salmonella* suspect colonies; (4) serologic screening of cultures revealing typical reactions of *Salmonella*; and (5) serotyping certain cultures at National Veterinary Services Laboratories.

[2] More details on these steps may be obtained from the person listed under "For Further Information Contact" within this document.

The first two steps, which are standard laboratory procedures, are already widely accepted in the industry. the third step involves inoculating *Salmonella* suspect colonies to slants of triple sugar-iron (TSI) and lysine-iron (LI) agar and incubating at 37 °C for 24 hours. Based upon USDA and industry research, we recommend five suspect colonies per plate for inoculation; however, we realize that circumstances, such as the quantity of the colonies, may dictate more or fewer picks per plate. Also, the number of picks may be reduced to three if an excessive number of positive plates indicate reduced need. Statistical data and research appear to indicate that if there are high numbers of plates, 50 percent or more, with *Salmonella*-like colonies, fewer picks per plate would provide assurance of detecting infection.

The fourth step would involve conducting serologic screening of cultures revealing typical reactions of *Salmonella* on TSI and agar slants. At this point, the laboratory would have the option of sending suspect cultures to the National Veterinary Services Laboratory for further identification or conducting other bacteriologic tests to obtain additional information to further identify the suspect culture. One of many bacteriologic tests to further identify the *Salmonella* is the Analytical Profile Index for Enterobacteriaceae system (APE). The APE is a USDA- and industry-recognized trade product that has proven effective in identifying *Salmonella* organisms.

We believe that the addition of all these steps would help standardize laboratory procedures. Also, their use would ensure prompt identification of disease through detection techniques that we believe are consistent and effective. Prompt identification would be important in helping to eliminate the spread of Plan diseases.

Procedures for Collecting Environmental Samples and Cloacal Swabs for Bacteriological Examination

Section 147.12 provides procedures for collecting environmental samples and taking cloacal swabs for bacteriological examinations. Currently, there are no provisions for collecting environmental samples using the drag-swab technique. We propose to amend § 147.12 to include procedures for drag-swab assembly and collection of environmental samples from floor litter and nest boxes. We would add a new paragraph (c) to describe how to assemble two 3×3 inch sterile gauze pads to make a Y-shaped drag-swab sampling set. We recommend use of 3×3 inch pads because they can be obtained readily and saturated easily. Further, the 3×3 inch pads would be more easily assembled in a Y shape, which has proven to be more effective in collecting fecal samples from the peak shaped poultry manure.

Once assembled, the sampling sets would be moistened with double strength skim milk to help in collecting samples and to keep samples moist during transportation. Industry and USDA experience appear to indicate that four pads dragged over the floor litter surface for at least 15 minutes and two pads wiped over at least 10 percent of the total nesting area would ensure that the necessary samples for detecting the presence of *Salmonella* would be obtained. In fact, because the nesting area in most poultry houses includes the egg belt, which is the most sensitive area for detecting *Salmonella*, we believe the drag-swab technique is an excellent option for collecting environmental samples for bacteriological sampling.

The drag-swab technique was developed through USDA and industry research. Our experience indicates that dragging a swab through the environment is an effective method of detecting the presence of *Salmonella*. This proposed revision to § 147.12 would provide guidance for an effective and standardized means to evaluate poultry breeding flocks.

Additionally, we propose to allow the pooling of environmental samples at the laboratory. We believe that culturing pooled-composite samples would be less costly and would maintain the accuracy of assessing whether SE is present in the environment. Pooling samples will reduce the overall costs for screening the flock and produce results just as reliable as individual environmental samples.

Fumigation

Section 147.25, among other things, describes the specific steps by which clean eggs should be fumigated after collection. These steps include use of formaldehyde gas. Currently, §§ 145.22, 145.23, 145.32, 145.42, 145.52, 147.22, and 147.24 provide for sanitization or fumigation, as described in § 147.25, for hatching eggs. We propose to amend the regulations by removing the requirement to fumigate by our specific instructions. For proper sanitation, we believe that hatching eggs should be fumigated or otherwise sanitized; however, fumigation can be accomplished with various products, and procedures for fumigation are readily available within the industry.

Miscellaneous

Finally, we propose to make certain editorial changes to clarify the regulations and to correct typographical errors.

Executive Order 12291 and Regulatory Flexibility Act

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

The proposed changes are based on the recommendations of representatives of member States, hatcheries, dealers, flock owners and breeders who were participants at the Biennial Plan Conference. Since participation in the program is voluntary, individuals are likely to continue in the program as long as the costs of implementing the program are lower than the added benefits they receive from the program.

Several of the suggested procedures for improvement would help prevent disease. The procedure for segregating and testing of nonparticipating birds would prevent disease from spreading into the participating flock. The egg yolk monitoring test for *Mycoplasma gallisepticum* (MG), besides permitting effective identification of the disease, allows for a reduced sample (30 birds rather than 100 birds) that would result in a decreased number of tests. Together with other methods of environmental culturing, the procedure for drag-swab sampling of breeding flocks is likely to strengthen the effectiveness of the disease identification procedure. Specifically, if breeders suspect the presence of disease, they would find the drag-swab sampling of the breeding flock environment more cost effective than the present methods. Any increased cost of these detection and prevention programs would be minor compared to the losses that each producer would bear in case of undetected disease spread. Furthermore, the number of birds required to be tested under this proposal is very small compared to the size of flocks within the industry.

According to APHIS and other Federal and State Government data, there are 327 participating hatcheries with a total hatching egg capacity of approximately 490 million egg- and meat-type chickens. Hatcheries with less than a 50,000 hatching egg capacity produce only 1/10th of a percent of this total, while hatcheries with over a 500,000 hatching egg capacity account for 97 percent. Hatcheries with a 50,000 to 499,999 bird capacity account for the remaining 2.7 percent. One of the proposed amendments to the "U.S. Sanitation Monitored" programs requires necropsy or culturing of 60 birds in the case of one positive sample. The additional cost of implementing this change is very minor when considered in terms of risk to the industry. In addition, the costs of conducting these tests as well as the cost of specific antigens used are modest. For example, a typical cost for performing the Pullorum-Typhoid plate test is $15 for the first 100 birds or fraction thereof at one location, $0.08 for each bird between 100 and 500 at the same location, and $0.04 for each bird in excess of 500 at the same location on consecutive working days. The cost of MG plate test antigen is $0.09 per plate test, while the cost of Pullorum-Typhoid plate test antigen is $0.03 per plate test. Compared to the total size of the hatcheries and to the total losses that individual producers could incur due to disease incidence, the cost of testing a small fraction of birds is minor.

Although information is not available regarding the benefits of the program, implementation of suggested procedures would likely advance the goals of disease prevention, through early detection and control of the disease, which would result in reduced egg and chick mortality. According to the industry representatives [3] contacted, the long-run losses avoided would far outweigh the cost of implementing the testing procedures. Since the additional costs and benefits are minor, the agency concludes that this proposed rule would be unlikely to have any significant economic impact on producers, consumers, or any other small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

[3] A list of industry representatives from whom information was collected may be obtained from the person listed under "For Further Information Contact" within this document.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this document will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send copies of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

Executive Order 12372

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) State and local laws or regulations that conflict with the proposed rule would be preempted; (2) no retroactive effect would be given to this rule, and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

List of Subjects in 9 CFR Parts 145 and 147

Animal diseases, National poultry improvement plan, Poultry & poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR parts 145 and 147 as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

1. The authority citation for part 145 would continue to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 145.1 would be amended by adding a new definition, in alphabetical order, to read as follows:

§ 145.1 Definitions.

* * * * *

Dealer. An individual or business that deals in commerce in hatching eggs and

newly-hatched poultry obtained from breeding flocks and hatcheries. This does not include an individual or business that deals in commerce in buying and selling poultry for slaughter only.

* * * * *

§ 145.3 [Amended]

3. In § 145.3(c), the introductory text would be amended by removing "NPIP Form 3B" and adding "VS Form 9–2 (formerly NPIP Form 3B)" in its place.

4. Section 145.4(d) would be revised to read as follows:

§ 145.4 General provisions for all participants.

* * * * *

(d) Except as provided by this paragraph, participants in the Plan may not buy or receive products for any purpose for nonparticipants unless they are part of an equivalent program, as determined by the Official State Agency. Participants in the Plan may buy or receive products from flocks that are neither participants nor part of an equivalent program, for use in breeding flocks or for experimental purposes, under the following conditions only:

(1) With the permission of the Official State Agency and the concurrence of the Service; and

(2) By segregation of all birds before introduction into the breeding flock. Upon reaching sexual maturity, the segregated birds must be tested and found negative for pullorum-typhoid. The Official State Agency may require a second test at its discretion.

* * * * *

§ 145.10 [Amended]

5. Section 145.10(i) would be amended by removing "*Mycoplasma*" in the paragraph heading and adding "*U.S.M.*" in its place, and by adding "Figure 10" below the illustrative design.

§ 145.14 [Amended]

6. Section 145.14(a)(1) would be amended by adding "or in literature provided by the producer" after the last word in the second sentence.

7. In § 145.14, footnote number "1" and the reference in paragraph (b)(1) would be renumbered "3".

§ 145.22 [Amended]

8. Section 145.22(d) would be amended by removing "as described in § 147.25" and adding "(see § 147.25 of this chapter)" in its place.

§ 145.23 [Amended]

9. Section 145.23 would be amended as follows:

a. Paragraph (d)(1)(ii)(A) would be amended by removing all text following "(APPI)" and adding in its place "*Salmonella* Education/Reduction Program. The protein products must have a minimum moisture content of 14.5 percent and must have been heated throughout to a minimum temperature of 190 °F. or above, or to a minimum temperature of 165 °F. for at least 20 minutes, or to a minimum temperature of 184 °F. under 70 lbs. pressure during the manufacturing process;".

b. Paragraph (d)(1)(v) would be amended by adding "The authorized agent shall also collect samples every 30 days after the first sample has been collected." immediately after the first sentence.

c. Paragraph (d)(1)(vi) would be amended by removing "-typhoid" in the first sentence.

d. Paragraph (d)(1)(vii) would be amended by removing "as described in § 147.25(a) of this chapter" and adding "(see § 147.25 of this chapter)" in its place.

e. Paragraph (d)(1)(viii) would be amended by removing "as prescribed in § 147.25 of this chapter" and adding "fumigated (see § 147.25 of this chapter)" in its place.

f. Paragraph (d)(1)(ix) would be removed.

g. Paragraph (d)(2) would be revised.

h. Paragraph (d)(3) would be amended by revising "paragraphs (d)(1)(vi) and (d)(1)(ix)" to read "paragraph (d)(1)(vi)".

As amended § 145.23 (d)(2) would read as follows:

§ 145.23 Terminology and classification; flocks and products.

* * * * *

(d) * * *

(2) A flock shall not be eligible for this classification if *Salmonella enteritidis* ser *enteritidis* (SE) is located from a specimen taken from a bird in the flock. Isolation of SE from an environmental or other specimen as described in section (d)(1)(v) of this paragraph will require bacteriological examination, as described in § 147.11 of this chapter, of a random sample of 60 live birds for SE in an authorized laboratory. If only one specimen is found positive for SE, the participant may request bacteriological examination of another 60-bird sample from the flock. If no SE is recovered from any of the specimens in the second sample, the flock will be eligible for the classification.

* * * * *

§ 145.32 [Amended]

10. Section 145.32(c) would be amended by removing "as described in § 147.25" and adding "(see § 147.25 of this chapter)" in its place.

11. Section 145.33 would be amended by revising paragraphs (d)(1)(iii), (d)(1)(iv), (d)(1)(v), and (d)(1)(vi), and by adding new paragraphs (d)(1)(vii) and (d)(1)(viii) and footnote 1 to read as follows:

§ 145.33 Terminology and classification; flocks and products.

* * * * *

(d) *U.S. Sanitation monitored.* * * *

(1) * * *

(iii) If pelletized feed contains animal protein, the protein products should be purchased from participants in the Animal Protein Products Industry (APPI) *Salmonella* Education/Reduction Program. The protein products must have a minimum moisture content of 14.5 percent and must have been heated throughout to a minimum temperature of 190 °F. or above, or to a minimum temperature of 165 °F. for at least 20 minutes, or to a minimum temperature of 184 °F. under 70 lbs. pressure during the manufacturing process;

(iv) If mash feed contains animal protein, the protein products should be purchased from participants in the Animal Protein Products Industry (APPI) *Salmonella* Education/Reduction Program;

(v) Feed shall be stored and transported in such a manner as to prevent possible contamination;

(vi) Chicks shall be hatched in a hatchery meeting the requirements of §§ 147.23 and 147.24(b) and sanitized or fumigated (see § 147.25 of this chapter);

(vii) An Authorized Agent shall take environmental samples, as described in § 147.12 of this chapter, from each flock at 4 months of age and every 30 days thereafter. An authorized laboratory for *Salmonella* shall examine the environmental samples bacteriologically;

(viii) Owners of flocks found infected with a paratyphoid *Salmonella* may vaccinate these flocks with an autogenous bacterin with a potentiating agent.[1]

* * * * *

§ 145.42 [Amended]

12. Section 145.42(c) would be amended by removing "as described in § 147.25" and adding "(see § 147.25 of this chapter)" in its place.

§ 145.43 [Amended]

13. Section 145.43, paragraph (f)(3)(i) would be amended by removing all text following "must have been" and adding "heated throughout to a minimum

[1] Preparation and use of this type of vaccine may be regulated by State statutes.

temperature of 190 °F. or above, or to a minimum temperature of 165 °F. for at least 20 minutes, or to a minimum temperature of 184 °F. under 70 lbs. pressure during the manufacturing process." in its place.

§ 145.52 [Amended]

14. Section 145.52(b) would be amended by removing "as described in § 147.25" and adding "(see § 147.25 of this chapter)" in its place.

15. Section 145.23 would be amended by revising paragraph (c)(1)(i), the text beginning *"Provided,"* to read as follows:

§ 145.53 Terminology and classification; flocks and products.

* * * * *

(c) *U.S.M. Gallisepticum Clean.*

(1) * * *

(i) * * * *Provided,* That to retain this classification, a random sample of serum or egg yolk from at least 5 percent of the birds in the flock, but at least 30 birds, shall be tested at intervals of not more than 90 days: *And provided further,* That a sample comprised of less than 5 percent may be tested at any one time, with the approval of the Official State Agency and the concurrence of the Service, provided that a total of at least 5 percent of the birds in the flock, but at least 30 birds, is tested within each 90-day period; or

* * * * *

16. Section 145.53(c)(1)(ii)(B) would be amended by removing the "; or" at the end of the sentence and adding a period in its place.

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

17. The authority citation for part 147 would continue to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.17, 2.51, and 371.2(d).

§ 147.5 [Amended]

18. In § 147.5(b), footnote number "1" would be amended by removing "Building 265, Beltsville Agricultural Research Center-East, Beltsville, Maryland 20705" and adding "room 771, Federal Building; Hyattsville, Maryland 20782" in its place.

19. Section 147.5(e)(4) would be amended by removing "two-fold" in the first sentence and adding "twofold" in its place.

20. Section 147.5(f)(3) would be amended by removing "[±]" immediately after "or vice versa" and adding "[∓]" in its place.

§ 147.7 [Amended]

21. Section 147.7 would be amended as follows:

a. The seventh sentence of the introductory paragraph would be amended by removing "any" immediately before "/or tube antigens." and adding "and" in its place.

b. In paragraph (d)(1)(ii), the table would be amended by removing "12.0" for the listing of Sodium citrate under the Grams column and adding "8.0" in its place, and by revising the entry for "Dextrose".

c. In paragraph (d)(2), the introductory paragraph would be amended by removing "PBC" and adding "PBS" in its place.

d. In paragraph (e), the introductory paragraph would be amended by removing "(c)" immediately after "§ 147.7" and adding "(d)" in its place.

e. Paragraph (e)(1)(iv) would be amended by removing "paragraph (d)(1)(iv)" and adding "paragraphs (d)(1)(ii) through (v)" in its place.

f. Paragraph (e)(3)(x)(G) would be amended by removing "0.05" the second time it appears and adding "0.5" in its place.

As revised, the entry for "Dextrose" in the table, paragraph (d)(1)(ii), would read as follows:

	Grams
* * * * *	
Dextrose	20.5
Distilled water to make 1,000 ml	

22. Section 147.11 would be amended as follows:

a. The section heading would be amended by removing the word "reactors".

b. Paragraph (a) would be amended by adding a new paragraph heading, and by removing "gall-bladder" in the first sentence and adding "gallbladder" in its place, and by removing "paragraph (f)" in the last sentence and adding "paragraph (g)" in its place.

c. Paragraphs (b) through (i) would be redesignated as paragraphs (c) through (j) and a new paragraph (b) would be added.

d. Newly-redesignated paragraph (c)(2) would be amended by removing "gall bladder" and adding "gallbladder" in its place.

e. Newly-redesignated paragraph (d) would be amended by removing "paragraph (b)" in the first sentence and adding "paragraph (c)" in its place.

f. Newly-redesignated paragraph (g) would be amended by removing "paragraph (e)" and adding "paragraph (f)" in its place.

g. In newly-redesignated paragraph (i), footnote 2 would be amended by removing "Texas A&M University, College Station, TX 77843" and adding "University of Pennsylvania, New Bolton Center, Kennett Square, Pennsylvania 19348–1692" in its place.

As amended, § 147.11 would read as follows:

§ 147.11 Laboratory procedure recommended for the bacteriological examination of salmonella.

(a) *Bacteriological examination of salmonella reactors and necropsy specimens.* * * *

Bacteriologic examination of environmental and other contaminated specimens.

(1) Culture a representative sample of the specimen in Tetrathionate Hajna (TTH) selective broth (TT Mueller-Kauffmann or selenite-cystine also acceptable) at a temperature of 41–42 °C for 24 hours.

(2) Inoculate an agar plate of Brilliant Green Novobiocin (BGN) and an agar plate of Xylose-Lysine-Tergitol 4 (XLT4), incubate at 37 °C for 24 hours, and retain culture tubes at room temperature for 5–7 days for possible reculturing of the negative tubes using 0.25 ml in TTH.

(3) Inoculate *Salmonella* suspect colonies to slants of triple sugar-iron (TSI) and lysine-iron (LI) agar and incubate at 37 °C for 24 hours. Five colony picks per plate should be taken unless 50 percent or more of the plates have *Salmonella*-like colonies. In that case, the number of picks may be reduced to three per plate.

(4) Conduct serologic screening of cultures revealing typical reactions of *Salmonella* on TSI and LI agar slants using somatic O-group antisera agglutination or transferred to appropriate biochemical tests for further identification such as: Dextrose, lactose, sucrose, mannitol, maltose, dulcitol, malonate, gelatin, urea broth, citrate, lysine decarboxylase, ornithine decarboxylase, methyl red and Voges-Proskauer, KCN, salicin broths, indole, and hydrogen sulfide. Motility or non-motility is demonstrated by inoculating a suitable semisolid medium. The Analytical Profile Index (API) for Enterobacteriaceae (APE) system may also be used for further identification if desired.

(5) Serotype all *Salmonella* group D cultures at the National Veterinary Services Laboratory.

* * * * *

23. Section 147.12 would be amended as follows:

a. In paragraph (a)(2), the words "or house" would be added after the words

"the pen" in the second sentence and the words "or houses" would be added after the words "from pens" in the three instances were they appear in the seventh sentence and concluding text would be added at the end of the paragraph.

b. A new paragraph (c) would be added.

As amended, § 147.12 would read as follows:

§ 147.12 Procedures for collecting environmental samples and cloacal swabs for bacteriological examination.

* * * * *

(a) * * *

(2) * * *

The composite samples above may be pooled to not less than five samples at the laboratory.

* * * * *

(c) *Drag-swabs.* Drag-swabs for bacteriological examination should involve the exposure of at least six unpooled pads per house to promote representative sampling and some element of quantification.

(1) *Drag-swab assembly.* Assembly drag-swab sampling sets from folded-once 3 by 3 inch sterile guaze pads secured with paper clips. Bend end wires of each paper clip slightly to catch into the swab fabric, thus securing the clips to the folded pads. Use two pads, assembled as described to make each drag-swab sampling set. Securely connect one pad through the free rounded end of the paper clip to a 2-ft (0.6 m) length of size 20 fibrous wrapping twine. Similarly connect the other pad to a 1-ft (0.3 m) length of twine. Then securely connect the free ends of both lengths of twine to a small loop tied at the end of a similar 5-ft length of twine. The resulting assembly resembles the letter Y with a 5-ft long vertical stem and two diagonal branches (one 1 ft long and the other 2 ft long), with a folded swab securely attached at the end of each branch. After assembly, place each two-pad drag-swab sampling set into a sterile bag.

(2) *Procedure for taking drag-swabs—Floor litter:* The Plan participants should collect two samples as follows: Drag four 3 by 3 inch gauze pads premoistened with double strength skim milk 1 [1] over the floor litter surface for 15 min minimally. Place the gauze pads used to collect the samples in 18-oz whirl-pack bags, two pads per bag with each bag containing 5 ml of double strength skim milk. This will maintain the moistness of the sample during transport. Mark the bags with the type of sample and the house identification.

Nest-boxes: The Plan participant should collect one nest-box sample by using two sterile 3 by 3 inch gauze pads premoistened with double strength skim milk. Wipe the two gauze pads used to collect the sample over assorted locations of about 10 percent of the total nesting area. Place the gauze pads used to collect the sample in an 18-oz whirl-pack bag containing 5 ml of double strength skim milk. Mark the bag with the type of sample, and the House indentification.

§ 147.14 [Amended]

24. In § 147.14, footnote number "1" would be amended by removing "Texas A&M University, College Station, TX 77843, 1975" and adding "University of Pennsylvania, New Bolton Center, Kennett Square, Pennsylvania 19348–1692, 1980" in its place.

§ 147.15 [Amended]

25. Section 147.15(a) would be amended by removing "(e)" in the fifth sentence and adding "(f)" in its place.

26. Section 147.15(b) would be amended by removing "(f)" in the fifth sentence and adding "(g)" in its place.

27. Section 147.15(g) would be amended by removing "18.0" after "Purified agar (g)—" and adding "12.0" in its place.

§ 147.16 [Amended]

28. Section 147.16(c) would be amended by removing "(e)" in the second sentence and adding "(f)" in its place.

29. Section 147.22(c) would be amended by revising the first sentence to read as follows:

§ 147.22 Hatching egg sanitation.

* * * * *

(c) The visibly clean eggs should be fumigated (see § 147.25 of this chapter) or sanitized as soon as possible after collection. * * *

* * * * *

§ 147.23 [Amended]

30. Section 147.23(d) would be amended by removing "(d)" at the end of the paragraph.

§ 147.24 [Amended]

31. Section 147.24(b)(3) would be amended by removing "as described in § 147.25(e)" and adding "(see § 147.25 of this chapter)" in its place.

32. Section 147.24(c) would be amended by removing "according to the procedures described in § 147.25(b)(3), (4), and (5)" and adding "(see § 147.25 of this chapter)" in its place.

§ 147.25 [Amended]

33. Section 147.25 would be amended by removing paragraphs (a) through (f).

Done in Washington, DC, this 24th day of June 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–15232 Filed 6–29–92; 8:45 am]

BILLING CODE 3410–34–M

[1] Obtain procedure for preparing double strength skim milk from USDA-APHIS "Recommended Sample Collection Methods for Environmental Samples" available for the National Poultry Improvement Plan Staff, room 771, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 702

Reserves

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board is proposing to amend its regulations to modify the valuation of the allowance for loan losses to better conform with generally accepted accounting principles (GAAP). This proposed change would require credit unions to provide an allowance for loan losses sufficient to cover specifically identified loans, as well as estimated losses inherent in the loan portfolio, such as loans and pools of loans for which losses are probable but not identifiable on a specific loan-by-loan basis.

DATES: Comments must be postmarked on or before August 31, 1992.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Kelbly, Accounting Officer, Office of Examination and Insurance (202) 682–9640, or Mike McKenna, Staff Attorney, Office of General Counsel (202) 682–9630, at the above address.

SUPPLEMENTARY INFORMATION: Section 116 of the FCU Act (12 U.S.C. 1762) sets forth reserve requirements for federal credit unions. Section 702.3 of the NCUA Rules and Regulations addresses full and fair disclosure concerning reserves. Section 741.9(a)(1) of the rules and regulations requires that federally-insured state chartered credit unions comply with statutory reserves (Section 116 of the Federal Credit Union Act) and with full and fair disclosure

requirements of the Rules and Regulations (§ 702.3). Therefore this proposed amendment applies to all federally insured credit unions.

Section 116(a) of the Federal Credit Union Act requires that federal credit unions set aside a certain percentage of gross income at the end of each accounting period as a Regular Reserve. The totals of the Regular Reserve, the Allowance for Loan Losses Account and the Allowance for Investment Losses are combined for determining the applicable percentage of gross income to be transferred to the Regular Reserve. Historically, credit unions have established a valuation for the allowance for loan losses based strictly on nonperforming or delinquent loans. This practice, however, is inconsistent with generally accepted accounting principles (GAAP). The NCUA Board believes that greater emphasis needed to be placed on the probable losses inherent in the total loan portfolio when calculating a valuation of the allowance for loan losses. This modified valuation would present a more accurate reflection of the expected loan losses. In light of this concern, in September 1991 the NCUA issued Letter to Credit Unions No. 126 to provide interim guidance for the allowance for loan losses. NCUA is now proposing to amend § 702.3(c)(2) to require credit unions to provide an allowance for loan losses sufficient to cover specifically identified loans, as well as estimated losses inherent in the loan portfolio, such as loans and pools of loans for which losses are probable but not identifiable on a specific loan-by-loan basis.

Presently, § 702.3(c)(2) reads in part that the:

> Valuation allowance established fairly presents the value of loans and anticipated losses resulting from (i) uncollectable loans and notes and contracts receivable, including, where applicable, any uncollectable accrued interest receivable thereon; (ii) assets acquired in liquidation of loans, and (iii) loans purchased from other credit unions.

NCUA is proposing three changes to the above-cited provision. First, the phrase "the value of loans and anticipated losses" is proposed to be changed to read "the value of loans and probable losses" since the term "probable" is the term used and understood in GAAP.

Second, the three sub-point setting forth what the allowance must encompass are proposed to be changed to read simply, "the value of loans and probable losses for all categories of loans." The proposed change would shift the emphasis from nonperforming or classified loans only to categories of loans within the total portfolio, classified or unclassified.

The third proposed change would provide additional guidance as to the necessary components of the allowance to meet the "all categories of loans" standard, i.e., estimates of probable losses for:

(1) Specifically identified doubtful or troubled loans;

(2) Pools of classified loans;

(3) Pools of unclassified loans (consumer, credit card, mortgage, business, etc.);

(4) Pools of credit instruments (standby letters of credit and other commitments to lend, notes and contracts receivable); and

(5) A general portion, as needed, for all other loans and credit instruments. This guidance was adopted from the American Institute of Certified Public Accountants Exposure Draft to the Audit and Accounting Guide, "Audits of Credit Unions".

Paperwork Reduction Act

The proposed amendment does not change the paperwork requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets).

The NCUA Board has determined that the proposed amendment is necessary to meet existing requirements for full and fair disclosure although it could significantly impact some small credit unions.

Of the items required to be contained in an initial regulatory flexibility analysis by 5 U.S.C. 603(b), the first ("a description of the reasons why action by the agency is being considered") and the second ("a succinct statement of the objectives of, and legal basis for, the proposed rule") are found elsewhere in the supplementary information.

The NCUA Board proposes that the modified definition be applicable to all federally insured credit unions regardless of size. Approximately 3,059 small credit unions could be affected by this amendment. An exemption for small credit unions from this definition would provide for an inaccurate reflection of the true financial condition of small credit unions. While the generally accepted accounting principles (GAAP) governing the establishment of an allowance for loan losses have remained constant, as a result of the savings and loan and banking industry crises, there has grown in accounting practice a greater emphasis on the allowance for loan losses representing inherent losses in the entire portfolio.

This proposed amendment, if adopted, must be applied to all federally insured credit unions regardless of size, because it ensures that the allowance for loan losses will be within the framework established by GAAP and, therefore, within the requirements of full and fair disclosure.

The NCUA Board does not believe that the proposed amendment would impose reporting or recordkeeping burdens on small credit unions that require specialized professional skills not available to them. There are no other relevant federal rules which duplicate, overlap or conflict with the proposed amendment.

The only alternative to the proposed amendment is to retain the present method of valuing the allowance for loan losses. This alternative is unacceptable considering the shifting emphasis in accounting practice. No other method, including the current method of valuation, is within the GAAP framework or meets the complete requirements for full and fair disclosure.

This initial regulatory flexibility analysis is being submitted to the Chief Counsel for Advocacy of the Small Business Administration.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. Section 702.3 already applies to federally-insured state chartered credit unions. The proposed amendment will affect the way these credit unions account for loan losses. The fact that the change will bring credit unions closer to GAAP ameliorates any minimal effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements, Reserves.

By the National Credit Union Administration Board on June 23, 1992.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 702 as follows:

PART 702—RESERVES

1. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1762 and 1766.

2. Section 702.3(c)(2) is revised to read as follows:

§ 702.3 Full and fair disclosure required.

* * * * *

(c) * * *

(2) As a minimum, adjustments to the valuation allowance for loan losses shall be made prior to the distribution or posting of any dividend to the accounts of members so that the valuation allowance established fairly presents the value of loans and probable losses for all categories of loans. The valuation allowance must encompass:

(i) Specifically identified doubtful or troubled loans;

(ii) Pools of classified loans;

(iii) Pools of unclassified loans (consumer, credit card, mortgage, business, etc.);

(iv) Pools of credit instruments (standby letters of credit and other commitments to lend, notes and contracts receivable); and

(v) A general portion, as needed, for all other loans and credit instruments.

* * * * *

[FR Doc. 92–15256 Filed 6–29–92; 8:45 am]
BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–92–7]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. 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 August 31, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Angela M. Washington, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–5571.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 23, 1992.

Deborah E. Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26603.

Petitioner: National Air Transportation Association.

Regulations Affected: 14 CFR 158.11.

Description of Petition: Section 158.11 allows a public agency, when applying for the authority to impose a passenger facility charge (PFC), to request not to require the collection of the PFC by any class of air carriers or foreign air carriers in the class constitutes no more than one percent of the total number of passengers emplaned annually at the airport at which the PFC is to be imposed. The petitioner would remove the one percent threshold, consequently allowing a public agency to request that any class of air carrier or foreign air carrier not be required to collect passenger facility charges.

Petitioner's Reason for the Request: The petitioner believes that on-demand air charter operations conducted under part 135 of the FAR should be excluded from the requirement for collecting a PFC. This position was based on the petitioner's view that the legislation authorizing PFC's is clearly directed at the scheduled airlines and not air taxis; that there is excessive administrative burden to collect the fee from air taxi flights; and that there is an extremely small return from collecting PFC's from on-demand air charter operators.

Disposition: Denied on June 11, 1992.

Docket No.: 26729.

Petitioner: Mr. Sol Rothkopf.

Regulations Affected: 14 CFR 91.119(d).

Description of Petition: Petitioner would amend the regulations to require that helicopters, when flying over congested areas, be operated above the same minimum altitude required of other types of aircraft. The petitioner asserts that this amendment would not in any way limit the location of landings or take-offs.

Petitioner's Reason for the Request: The petitioner asserts that the purpose of this proposed amendment is to mitigate the negative impact of noise on the public's quality of life caused by extremely low altitude helicopter operations.

[FR Doc. 92–15289 Filed 6–29–92; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AF81

Procedural Due Process and Appellate Rights

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning procedural due process and appellate rights. This proposed amendment is necessary because the current regulations limit locations at which VA may hold claimant hearings. The intended effect of this amendment is to allow the Veterans Benefits Administration (VBA) greater flexibility in providing hearing locations for claimants desiring a hearing.

DATES: Comments must be received on or before July 30, 1992. Comments will be available for public inspection until August 10, 1992. The amendment is proposed to be effective the date of publication of he final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for

public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until August 10, 1992.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: If a claimant requests a hearing on an issue pending before VBA, 38 CFR 3.103(c)(1) provides that the hearing will be held "in the VA office having original jurisdiction over the claim or at the VA office nearest the claimant's home having adjudicative functions". The current regulation does not allow VA sufficient flexibility to provide hearings at alternative sites, such as VA medical centers or other federal buildings, even though such an option would allow VBA to better serve its claimants.

We propose to ease this restriction and to allow VBA managers the latitude to authorize hearings at remote sites, subject to available resources, by amending § 3.103(c)(1). We are also amending the reference to § 19.174 that appears in the first sentence of § 3.103(c)(1) to conform with final Board of Veterans Appeals (BVA) regulations published on February 3, 1992 (57 FR 4088–4130).

We propose to make this amendment of § 3.103(c)(1) effective the date of publication of the final rule. The Secretary finds good cause for doing so since this amendment relieves a restriction and will not work to the detriment of any claimant. This decision is fully consistent with VA's longstanding policy to administer the law under a broad interpretation for the benefit of veterans and their dependents (38 CFR 3.102).

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have 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.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: May 27, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is proposed to be amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

§ 3.103 [Amended]

2. In § 3.103(c)(1), the first sentence, remove the numbers "19.174", and add, in their place, the numbers "20.1304".

3. In § 3.103(c)(1), the second sentence, after the words "claimant's home having adjudicative functions," add the words "or, at the option of VA and subject to available resources, at any other VA facility or federal building at which suitable hearing facilities are available." Remove the words "and will provide VA personnel" and add, in their place, the words "VA will provide personnel".

[FR Doc. 92–15284 Filed 6–29–92; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300229; FRL–3846–3]

Perfluidone; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of tolerances listed in 40 CFR 180.165 for residues of the herbicide perfluidone (1,1,1-trifluoro-*N*-[2-methyl-4-(phenylsulfonyl)phenyl]-methanesulfonamide) in or on the raw agricultural commodity cottonseed. EPA is initiating this action because all uses of perfluidone on growing cotton have been cancelled and the related tolerance for cottonseed is no longer necessary.

DATES: Written comments, identified by the document control number [OPP-300229], must be received on or before August 31, 1992.

ADDRESSES: By mail, submit written comments to: Public Response Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Killian Swift, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 724B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5317.

SUPPLEMENTARY INFORMATION: The herbicide perfluidone was initially registered in 1976 under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use on cotton; however, the herbicide has never been commercially manufactured or marketed in the United States. In July 1984, the only registrant voluntarily cancelled the registration of perfluidone on cotton; thus, there are no registered food or feed crop uses for this pesticide chemical.

The tolerances under the Federal Food, Drug, and Cosmetic Act for perfluidone on cottonseed were obtained in conjunction with the FIFRA registration. EPA has no information to suggest that perfluidone is used on food exported to the U.S.

Since a tolerance under the FFDCA is generally not necessary for a pesticide chemical that is not registered for the particular food use, EPA now proposes to revoke the tolerance in 40 CFR 180.165 for residues of perfluidone in or on cottonseed.

Since perfluidone was never marketed for use on cotton and is no longer registered for this use, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action level will be recommended to replace the cottonseed tolerance upon its revocation.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains perfluidone may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal to revoke the tolerance in or on cottonseed listed in 40 CFR 180.165 be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300229]. All written comments filed in response to this petition will be available in the Public Response Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 1128, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action, i.e., it will not have an annual effect on the economy of a least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Since all registrations for use of perfluidone on cotton were voluntarily cancelled by the registrant in July 1984, it is anticipated that little or no economic impact would occur at any level of business enterprises if the cottonseed tolerance were revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

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

Dated: June 10, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

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

PART 180—[AMENDED]

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

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

§ 180.165 [Removed]

2. By removing § 180.165 *Perfluidone; tolerances for residues.*

[FR Doc. 92-14849 Filed 6-29-92; 8:45 am]
BILLING CODE 6560-50-F

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40 CFR Part 180

[OPP-300228; FRL-3845-9]

Nitrapyrin; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of tolerances listed in 40 CFR 180.350 for the combined residues of the soil microbicide nitrapyrin (2-chloro-2-(trichloromethyl)pyridine) in or on the raw agricultural commodities rice grain and rice straw. EPA is initiating this action because all registered uses of nitrapyrin on rice have been voluntarily cancelled.

DATES: Written comments, identified by the document control number [OPP-300228], must be received on or before August 31, 1992.

ADDRESSES: By mail, submit written comments to: Public Response Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Critchlow, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 724B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5226.

SUPPLEMENTARY INFORMATION: In January 1986, pursuant to a submission by the registrant for nitrapyrin, EPA authorized the amendment of all registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for nitrapyrin products to delete the directions for use on the growing crop rice.

The tolerances under the Federal Food, Drug, and Cosmetic Act for nitrapyrin on rice grain and straw were obtained in conjunction with the FIFRA registration. EPA has no information to suggest that nitrapyrin is used on food exported to the U.S.

Since nitrapyrin is no longer registered for use on rice, and a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA now proposes to revoke the tolerances listed in 40 CFR 180.350 for residues of nitrapyrin in or on rice grain and rice straw.

Since it is unlikely that nitrapyrin would persist in soil for more than 5 years and since its registrations for use in rice production as a soil microbicide were voluntarily cancelled more than 5 years ago, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels will be recommended to replace the tolerances upon their revocation.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains nitrapyrin may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal to revoke tolerances in or on rice grain and rice straw listed in 40 CFR 180.350 be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300228]. All written comments filed in response to this petition will be available in the Public Response Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 1128, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action, i.e., it will not have an annual effect on the economy of a least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Since all registrations for use of nitrapyrin on growing rice were voluntarily cancelled by the registrant in January 1986, it is anticipated that little or no economic impact would occur at any level of business enterprises if these tolerances were revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

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

Dated: June 10, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

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

PART 180—[AMENDED]

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

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

§ 180.350 [Amended]

2. Section 180.350 *Nitrapyrin; tolerances for residues* is amended in paragraph (a) by removing the entries "Rice, grain" and "Rice, straw."

[FR Doc. 92-14850 Filed 6-29-92; 8:45 am]
BILLING CODE 6560-50-F

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40 CFR Part 180

[OPP-300246; FRL 4050-4]

Silvex; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of tolerances and interim tolerances listed in 40 CFR 180.319 and 180.340 for the residues of the herbicide and plant regulator silvex [2-(2,4,5-trichlorophenoxy)propionic acid] in or on various raw agricultural commodities. EPA is initiating this action because all registered uses of silvex have been canceled.

DATES: Written comments, identified by the document control number [OPP-300246], must be received on or before (insert date 60 days after publication in the **Federal Register**).

ADDRESSES: By mail, submit comments to: Public Response Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Room 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. Otherwise, all written comments will be available for public inspection in Room 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Critchlow, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5226.

SUPPLEMENTARY INFORMATION: EPA published in the **Federal Register** of October 18, 1983 (48 FR 48434), a Notice of Intent to Cancel registrations of pesticide products containing silvex [2-(2,4,5-trichlorophenoxy)propionic acid], labeled for use on any site not already the subject of an earlier Emergency Suspension Order and Notice of Intent to Cancel (March 15, 1979), which was finalized on January 30, 1985. This 1983 Notice of Intent to Cancel became a final cancellation order on February 11, 1985. Several food uses with established

tolerances were among the uses canceled; these food uses were rice, sugarcane and orchard crops [apples, pears, plums (prunes)]. Continued distribution and sale of existing stocks of silvex products labeled for the canceled uses was allowed for no more than 1 year from the cancellation date. End users who held silvex products labeled for both suspended and non-suspended uses at the time of the suspension order could subsequently use, and could continue to use, such products for any nonsuspended use appearing on the label. Since sale of existing stocks of silvex products was stopped over 7 years ago, EPA believes that no further use of silvex exists. However, because of the existing stocks provision, this cannot be confirmed. Therefore, the Agency is publishing this proposed rule so that those who might be affected are afforded the opportunity to comment on the action.

Because silvex is no longer registered for use on any food crops, and since a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA now proposes to revoke the tolerance listed in 40 CFR 180.340 for residues of silvex in pears and the interim tolerances listed in 40 CFR 180.319 for residues of silvex in apples, plums (prunes), rice and sugarcane.

Since silvex is not considered a persistent chemical and the related uses were canceled so many years ago, there is no anticipation of a residue problem due to environmental contamination. Consequently, the Agency will not recommend action levels to replace the tolerances upon their revocation.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, containing silvex may request by [30 days after publication of this document in the **Federal Register**] that this rulemaking proposal to revoke silvex tolerances and silvex interim tolerances be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Further, EPA requests interested persons to submit information pertaining to whether silvex is used in foreign countries and may be present in or on commodities grown in these countries and imported into the United States. Comments must bear a notation indicating the document control number, [OPP–300246]. All written comments filed in response to this document will be available in the Public Response Section, at the Virginia address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Agency has conducted an analysis in order to satisfy requirements as specified by Executive Order 12291 and the Regulatory Flexibility Act. This analysis is available for public inspection in Room 1128, at the Virginia address given above.

I. Executive Order 12291

Section 3(b) of Executive Order 12291 requires the Agency to initially determine whether a proposed regulatory action being proposed or issued is a "major" rule as defined by section 1(b) of the Executive Order and therefore subject to the comprehensive procedures for conducting a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action. It will not have an annual effect on the economy of at least $100 million, nor cause a major increase in costs and prices, and it will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. enterprises to compete with foreign enterprises in domestic or export markets.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

II. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 et seq.) and it has been determined that it will not have a significant economic impact on small businesses, small organizations and small governmental jurisdictions.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Since all registrations for use of silvex were canceled in October 1983, it is anticipated that little or no economic impact would occur at any level of business enterprises if these tolerances were revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

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

Dated: June 10, 1992.

Victor J. kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I, subchapter E, part 180 be amended as follows:

PART 180—[AMENDED]

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

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

§ 180.319 [AMENDED]

2. In the table to § 180.319 by removing the entry for silvex from the list.

§ 180.340 [REMOVED]

3. By removing § 180.340.

[FR Doc. 92–14852 Filed 6–29–92; 8:45 am]

BILLING CODE 6560–50–F

Notices

Federal Register
Vol. 57, No. 126
Tuesday, June 30, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

NASCO Machines; Intent To Grant an Exclusive Patent License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive patent license to NASCO Machine, Flagstaff, Arizona, on U.S. Patent Application Serial No. 07/712,226, "Greenhouse Illumination System," filed June 7, 1991. Notice of Availability was given in the **Federal Register** on December 17, 1991.

DATES: Comments must be received on or before August 31, 1992.

ADDRESSES: Send comments to: USDA–ARS–Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, room 403, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/504–6786.

SUPPLEMENTARY INFORMATION: The USDA–ARS intends to grant an exclusive license to practice the aforementioned invention. Patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as said company has submitted a complete and sufficient application for a license, promising therein to bring the benefits of said invention to the U.S. public. The prospective exclusive patent license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive patent license may be granted unless, within sixty days from the date of this published Notice, Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

W.H. Tallent,

Assistant Administrator.

[FR Doc. 92–15264 Filed 6–29–92; 8:45 am]

BILLING CODE 3410–03–M

TANADA Corp; Intent To Grant Co-Exclusive Patent Licenses

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant co-exclusive licenses to TANADA Corporation, Fresno, California, and Tre'ce' Inc., Salinas, California, on U.S. Patent Application Serial No. 07/765,732, "PVC/Twine Dispenser for (+)−Disparlure," filed September 26, 1991. Notice of Availability for this invention was given in the **Federal Register** on December 17, 1991.

DATES: Comments must be received on or before August 31, 1992.

ADDRESSES: Send comments to: USDA–ARS–Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, room 403, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone 301/504–6786.

SUPPLEMENTARY INFORMATION: The USDA–ARS intends to grant co-exclusive patent licenses to practice the aforementioned invention. Patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as said companies have submitted complete and sufficient applications for a license, promising therein to bring the benefits of said invention to the U.S. public. The prospective co-exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive licenses may be granted unless, within sixty days from the date of this published Notice, Agricultural Research Service receives written evidence and argument which establishes that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

W.H. Tallent,

Assistant Administrator.

[FR Doc. 92–15261 Filed 6–29–92; 8:45 am]

BILLING CODE 3410–03–M

Forest Service

Key Mining Project, Colville National Forest, Ferry County, Washington; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

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

SUMMARY: This is a revision to the notice of intent to prepare and environmental impact statement (EIS) for Key Mining Project published October 10, 1991 in the **Federal Register** (56 FR 51198). The purpose of this revision is to better reflect project location in the EIS title. This notice revises the EIS title to "Kettle River Key Project Expansion."

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Patricia Egan, District Ranger, P.O. Box 468, Republic, Washington 99166, ph (509) 775–3305.

Dated: June 12, 1992.

Edward L. Schultz,

Forest Supervisor.

[FR Doc. 92–15275 Filed 6–29–92; 8:45 am]

BILLING CODE 3410–11–M

East End Salvage Sales and Restoration Projects, Umatilla National Forest, Grant and Morrow Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) for four to eight salvage sales, and rehabilitation projects, within the Potamus, Swale, and Bald Mountain planning areas. The EIS will tier to the 1990 Land and Resource Management Plan (Forest Plan) EIS and incorporate the Forest Plan, which provides the overall management direction for the area. The Forest Service proposed action will be in compliance with this direction. The planning areas are located on the Heppner Ranger District, approximately 30 miles southeast of Heppner, Oregon, and include 81,330 acres. They include the Bear, Cabin, Upper and Lower Ditch, Mallory, Upper and Lower Potamus, Little Potamus, Swale, and Willow Creek drainages. The drainage boundaries also enclose the Potamus Roadless Area and portions of the Skookum Roadless Area, both of which were considered but not selected for wilderness designation; however, there will be no activity in the roadless areas. The Forest Service proposal includes: (1) Salvage of insect- and disease-damaged timber, (2) development of associated road systems, and (3) rehabilitation of areas of dead and dying trees. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the planning process and final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by July 13, 1992.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Delanne Ferguson, District Ranger, Heppner Ranger District, P.O. Box 7, Heppner, Oregon 97836.

FOR FURTHER INFORMATION CONTACT: Address questions about the proposed action and EIS to David Kendrick, Project Leader, phone (503) 676–9187.

SUPPLEMENTARY INFORMATION: The purpose of the Forest Service proposal is to salvage dead and dying timber resulting from spruce budworm insect infestation and to initiate rehabilitation projects that will facilitate reaching the desired future condition of the area. The proposed action will incorporate the Forest Plan, as amended, which provides goals, objectives, standards and guidelines for the various activities and land allocations on the forest.

The Forest Plan allocates the planning area lands into twelve management areas: (1) Wildlife Habitat, 26% (timber harvest); (2) Timber and Big Game, 24% (timber harvest); (3) Big Game Winter Range, 12% (limited timber harvest); (4) Timber and Forage, 12% (timber harvest); (5) Grass-tree Mosaic, 8% (limited timber harvest); (6) Dedicated Old Growth, 4% (no timber harvest); (7) Nonmotorized Dispersed Recreation, 3% (no timber harvest); (8) Riparian (Fish and Wildlife), 3% (limited timber harvest); (9) Viewshed 2, 2% (limited timber harvest); (10) Managed Old Growth, 0.9% (timber harvest); (11) Special Interest Area, 0.07% (limited timber harvest); and (12) Developed Recreation, 0.03% (limited timber harvest). Private lands (3,700 acres) are also included within the planning area boundary (5% of the area). Although excluded from Forest Service activities, the condition of private lands will be considered when analyzing potential cumulative effects.

The three planning areas were examined in separate environmental analyses which were completed in the spring of 1992. After further consideration, it was decided that an Environmental Impact Statement (EIS) was needed for the combined planning areas in order to disclose potential significant cumulative effects. The proposed action for this EIS would harvest 64 million board feet of timber on 41,410 acres and would not construct any new road. The resulting salvage sales are scheduled for offering in fiscal year 1993.

The major preliminary issues identified to date include:

1. Wildlife Habitat (short-term and long-term considerations, old growth, cavity users, down woody debris, big game escapement/harassment, big game habitat effectiveness, open road densities, and big game travel corridors).
2. Wood Fiber Utilization.
3. Stand Health (mortality, reduced tree stocking levels, progression to the desired future condition).
4. Fire Risk.
5. Fish Habitat (water quality, quantity, flow, and timing).
6. Visuals (Roads 2103 and 53, Penland Lake, views from private lands).

A range of project alternatives will be considered, including a no-action alternative. Based on the issues gathered through scoping, the action alternatives will vary in (1) the amount and location of acres considered for treatment, (2) the amount of road constructed for access, (3) the silvicultural and post-harvest treatment prescribed, and (4) the number, type, and location of rehabilitation projects.

Scoping was conducted for each environmental assessment through letter, newspaper advertisements, and a public meeting on November 30, 1989. The projects were also displayed at two District open houses in the spring and fall of 1991. Continued scoping and public participation efforts will be used by the interdisciplinary team to identify new issues, determine alternatives in response to the issues, and determine the level of analysis needed to disclose potential biologicl, physical, economic, and social impacts associated with this project. The Forest Service will be seeking information, comments, and assistance from other agencies, tribes, organizations, and individuals that may be interested in or affected by the proposed actions. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental process.
4. Exploration of additional alternatives based on the issues identified during the scoping process.
5. Identification of potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available or public review by August, 1992. At that time, copies other draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. The EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is important that those interested in the management of the Umatilla National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of drafts EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft EIS may be waived or dismissed by the court. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc,* v.

Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled for completion by October, 1992. In the final EIS, the Forest Service is required to be responsive to comments received during the comment period for the draft EIS. Jeff D. Blackwood, Forest Supervisor, is the responsible official. He will decide which, if any, of the proposed project alternatives will be implemented. His decision and reasons for the decision will be documented in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR 217).

Dated: June 18, 1992.

Jeff D. Blackwood

Forest Supervisor, Umatilla National Forest.

[FR Doc. 92–15276 Filed 6–29–92; 8:45 am]

BILLING CODE 3410–11–M

Couplet Timber Sale, Umpqua National Forest, Douglas County, OR

AGENCY: Forest Service, USDA.

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

SUMMARY: Notice is hereby given that the Forest Service, USDA, will prepare an environmental impact statement (EIS) for timber harvest in the Couplet Planning Area. The purpose of the EIS will be to develop and evaluate a range of alternatives, including a no action alternative, which respond to the issues generated during the scoping process. This proposal is in accordance with direction set forth in the 1990 Umpqua National Forest Land and Resource Management Plan which provides for timber harvest within applicable standards, guidelines, and management prescriptions; and will be in compliance with the 1990 Umpqua National Forest Final Environmental Impact Statement and the 1988 Final Environmental Impact Statement for Managing Competing and Unwanted Vegetation. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of this proposal must be received by August 1, 1992.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to J. Dan Schindler, District Ranger, Diamond Lake Ranger District, HC 60 Box 101, Idleyld Park, Oregon 97447.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Steve Nelson, Acting Timber Management Assistant, Diamond Lake Ranger District, HC 60 Box 101, Idleyld Park, Oregon 97447; phone (503) 672–5469.

SUPPLEMENTARY INFORMATION: The Couplet EIS Planning Area includes the Couplet Watershed Analysis Area (WAA) located within the Middle North Umpqua Resource Scheduling Area (RSA) of the Umpqua National Forest. The Couplet planning area encompasses about 4,500 acres of National Forest land in the Copeland Creek drainage, south of Twin Lakes and north of the boundary between the Tiller and Diamond Lake Ranger Districts. The planning area is located in all or portions of sections 14, 15, 16, 22, 23, 25, 26, 27, 28, 34, and 35, T.27S., R.2E., Williamette Meridian, Douglas County, Oregon.

The 1990 Umpqua National Forest Land and Resource Management Plan allocates the Couplet EIS Planning Area to Management Areas 1 and 10. Management Area 1 focuses upon providing opportunities for unroaded recreation primarily in a semiprimitive environment. Management Area 10 is primarily devoted to producing timber on a cost efficient, sustainable basis consistent with other resource objectives.

The preliminary issues identified to date include the following:

1. How will timber harvest and road construction affect water quality and the beneficial uses of water from the area? The primary beneficial use is for resident and downstream anadromous fisheries.

2. Should we maintain the roadless character of this part of the Calf-Copeland roadless area or develop it for timber management? The resources affected are biological, recreational, and aesthetic.

3. What level of timber harvest is appropriate in this area given the fact that we have deferred harvest in the past? Within this issue lies our ability to provide timber for local economies and meet the Forest Plan Standards and Guidelines.

The proposed action is to harvest 292 acres containing 9.6 million board feet of timber (gross). New roads would need to be constructed to access harvest areas. Logging systems would be primarily skyline. Silvicultural prescriptions would primarily be regeneration harvest by clearout.

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

1. Identification of issues, defined as unresolved conflicts concerning alternative uses of available resources.

2. Exploration of alternatives to the proposed action based on the identified issues.

3. Identification of potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

An open house will be held to allow public review of the information gathered to date: Umpqua National Forest Supervisor's Office in Roseburg, Oregon on June 29, 1992 from 3 until 8 p.m.

Licenses and permits required to implement the proposed action are already held by the Forest Service who is the lead agency for this project.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 1993. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is very important that those interested in

the management of the Umpqua National Forest participate at that time.

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

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments in the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed by September, 1993. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS; and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Lee F. Coonce, Forest Supervisor, Umpqua National Forest, is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR part 217).

Date: June 19, 1992.

Lee F. Coonce,

Forest Supervisor.

[FR DOC. 92-15277 Filed 6-29-92; 8:45 am]

BILLING CODE 3410-11-M

Radio and Television Broadcast Use Fee Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Radio and Television Broadcast Use Fee Advisory Committee will meet in Washington, DC, on July 14 and 15, 1992, from 9 a.m. to 4 p.m. The Committee is comprised of eleven members. The purpose of the meeting is for the Committee to review information pertaining to fees for radio and television broadcast use on public and National Forest System lands. The designated Federal official on the Committee is Gordon H. Small, Director of Lands, USDA Forest Service. Richard Spight, Diablo Communications, Inc., Point Richmond, California, will chair the meeting, which is open to public attendance; however, participation is limited to Committee members and Forest Service and Bureau of Land Management personnel. Persons who wish to bring communications use fee matters to the attention of the Committee may file written statements with the Executive Secretary of the Committee before or after the meeting.

DATES: The meeting will be held July 14 and 15, 1992.

ADDRESSES: The meeting will be held at the Department of Agriculture, Administrative Building, 12th Street and Jefferson Drive SW., Washington, DC 20250. The meeting will be held in room 104 A on July 14, and in room 108 A on July 15.

Send written comments to J. Kenneth Myers, Executive Secretary, Radio and Television Broadcast Use Fee Advisory Committee, c/o Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (202) 205-1248.

FOR FURTHER INFORMATION CONTACT: Brent Handley, Lands Staff, (202) 205-1264.

Dated: June 26, 1992.

James C. Overbay,

Deputy Chief, National Forest System.

[FR Doc. 92-15448 Filed 6-29-92; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia State Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia State Advisory Committee to the Commission will convene at 12 Noon and adjourn at 2:30 pm on Friday, July 17, 1992, Commission, Headquarters, 1121 Vermont Avenue, NW., Fifth Floor Conference Room, 512, Washington, DC 20425. The purpose of the meeting to develop a project proposal to study data on the treatment of Hispanics in housing programs in the District of Columbia.

Persons desiring additional information, or planning a presentation to the Committee, should contact John I. Binkley, Director, Eastern Regional Office at (202) 523-5264, TDD (202) 376-8116. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

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

Dated at Washington, DC, June 24, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-15253 Filed 6-29-92; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Approval of Triangular Transactions Involving Commodities Covered by a U.S. Import Certificate.

Agency Form Number: No forms but requirements are found at EAR section 768.2(a)(8).

OMB Approval Number: 0694-0009.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 6 reporting/recordkeeping hours.

Number of Respondents: 10.

Avg Hours Per Response: 30 minutes for reporting requirements and 2 minutes for recordkeeping.

Needs and Uses: U.S. purchasers of commodities in foreign countries intending to resell abroad must receive approval from BXA before making a triangular transaction when a U.S. Import Certificate is required.

Affected Public: Businesses and other for-profit institutions, small businesses and organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395-7340, Room 3208, New Executive Office Building, Washington, DC 20503.

Agency: Bureau of Export Administration.

Title: Delivery Verification Certificate.

Agency Form Number: BXA-647P and EAR Section 768.3.

OMB Approval Number: 0694-0016.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 57 reporting/recordkeeping hours.

Number of Respondents: 200.

Avg Hours Per Response: 15 minutes for reporting requirements and 1 minute for recordkeeping.

Needs and Uses: Foreign governments sometimes require U.S. importers of strategic commodities to furnish their foreign supplier with a U.S. Delivery Verification Certificate validating that the commodities shipped to the U.S. were in fact received. This procedure is used to increase the effectiveness of controls over exports of strategic commodities.

Affected Public: Businesses or other for-profit institutions, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395-7340, Room 3208, New Executive Office Building, Washington, DC 20503.

Agency: National Oceanic and Atmospheric Administration.

Title: Coast Pilot Report Form.

Agency Form Number: NOAA Form 77-6.

OMB Approval Number: 0648-0007.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 250 hours.

Number of Respondents: 500.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Coast Pilot reports contain essential marine information for navigators of U.S. coastal and intra-coastal waters that cannot be shown graphically on charts. The form is used to obtain data for annual revisions of the reports from Government employees and private individuals.

Affected Public: Individuals, state or local governments, businesses or other for-profit institutions, Federal agencies or employees, non-profit institutions, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ron Minsk, (202) 395-3084, Room 3019, New Executive Office Building, Washington, DC 20503.

Agency: National Oceanic and Atmospheric Administration.

Title: Fishing Vessel and Gear Damage.

Agency Form Number: NOAA 88-178.

OMB Approval Number: 0648-0094.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 8,000 hours.

Number of Respondents: 400.

Avg Hours Per Response: 20 hours.

Needs and Uses: Application is used by commercial fishermen to file claims under section 10 of the Fishermen's Protective Act. The purpose of the fund is to compensate fishermen for fishing vessel or fishing gear damage or loss caused by foreign or domestic vessels.

Affected Public: Individuals, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ron Minsk, (202) 395-3084, Room 3019, New Executive Office Building, Washington, D.C. 20503.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer as shown above.

Dated: June 24, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-15349 Filed 6-29-92; 8:45 am]

BILLING CODE 3510-CW-F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey—November 1992 Voting and Registration Supplement.

Form Number(s): CPS-1, CPS-260.

Type of Request: New collection.

Burden: 1,380 hours.

Number of Respondents: 69,000.

Avg Hours Per Response: 1 minute.

Needs and Uses: The November Voting and Registration Supplement to the Current Population Survey is collected once every two years. Data is collected on voter and nonvoter behavior and correlated with demographic characteristics. The supplement yields statistics on voter and nonvoter characteristics and current voter trends which are useful for election officials who formulate policies relating to the voting and registration process. Data are also used by colleges, political party committees, research groups, and other private organizations.

Affected Public: Individuals or households.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 23, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-15303 Filed 6-29-92; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Notice of Antidumping Order: High-Tenacity Rayon Filament Yarn From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Cynthia Thirumalai, Office of Antidumping Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; Telephone: (202) 377–1777 or (202) 377–8498, respectively.

Order

Scope of Order

The product covered by this order is high-tenacity rayon filament yarn. High-tenacity rayon filament yarn is a multifilament single yarn of viscose rayon with a twist of five turns or more per meter, having a denier of 1100 or greater, and a tenacity greater than 35 centinewtons per tex. This yarn is currently classifiable under subheading 5403.10.30.40 of the Harmonized Tariff Schedule (HTS). Although the HTS number is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on May 15, 1992, the Department of Commerce (the Department) made its final determination that high-tenacity rayon filament yarn from Germany is being sold at less than fair value (57 FR 21770, May 22, 1992). In its final determination, the Department also found that critical circumstances exist with respect to exports from Germany by Akzo Faser AG. On June 18, 1992, in accordance with section 735(d) of the Act, the International Trade Commission notified the Department that imports of high-tenacity rayon filament yarn from Germany materially injure a U.S. industry. However, the Commission notified the Department that critical circumstances do not exist with respect to any subject imports. As a result of the Commission's negative critical circumstances determination, pursuant to section 735(c)(3) of the Act, the Customs Service will refund all cash deposits and release all bonds collected on high-tenacity rayon filament yarn from Germany entered, or withdrawn from warehouse, for consumption, on or after November 20, 1992, and before February 20, 1992.

Therefore, in accordance with section 736 of the Act, the Department will direct the Customs Service to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of high-tenacity rayon filament yarn from Germany. These antidumping duties will be assessed on all unliquidated entries of high-genacity rayon filament yarn from Germany entered, or withdrawn from warehouse, for consumption on or after February 20, 1992, the date on which the Department published its preliminary determination in the **Federal Register** Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated weighted-average antidumping duty margins as follows:

Producer/manufacturer/exporter	Margin percent
Akzo Faser AG	24.58
All Others	24.58

This notice constitutes the antidumping duty order with respect to high-tenacity rayon filament yarn from Germany, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: June 25, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–15424 Filed 6–29–92; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology

[Docket No. 92658–2158]

Technology Development Center

AGENCY: National Institute of Standards and Technology, Technology Administration, Commerce.

ACTION: Notice soliciting statements of interest in a cooperative arrangement with public and/or non-profit organizations to construct and operate a technology development center.

SUMMARY: The National Institute of Standards and Technology (NIST) intends to solicit statements of interest to enter into a partnership with state and/or local governments and/or non-profit organizations as defined in section 501(c)(3) of the Internal Revenue Code of 1986 to establish a multi-purpose technology development center at NIST's Gaithersburg, Maryland location. The cost of construction and operation of the facility would be entirely financed by the non-Federal partners but could ultimately be operated based on user fees and rents. The purpose of this notice is to publicize NIST's intention and invite state and local jurisdictions and non-profit organizations willing to make the requisite investments to submit statements of interest to NIST. This is not a grant program, nor a procurement action.

DATES: Comments and appropriate offers to participate must be submitted on or before August 31, 1992.

ADDRESSES: Statements of interest and comments should be addressed to: Dr. Donald R. Johnson, Director, Technology Services, Bldg. 221, room A363, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: For questions of a programmatic nature contact: Mr. Donald W. Corrigan, Associate Director for Program Development, Technology Services, 301–975–4500.

For questions of a legal nature contact: Mr. Michael R. Rubin, Deputy Chief Counsel, NIST, 301–975–2803.

SUPPLEMENTARY INFORMATION: In order to be successful, the technology development center, as envisioned, would need to have significant industry support and be closely related to one of NIST's primary missions.

Reliance on present legal authority to support such an innovative arrangement of this scope is problematic. We are seeking offers while also pursuing needed legislative changes.

In the event that NIST receives an appropriate statement of interest, NIST is prepared to seek additional legislative authority to make up to 15 acres on its Gaithersburg site available for a technology development center. While NIST would retain title to the property, NIST is willing to consider the needs of the proposers as to the terms of the arrangement and to request appropriate additional authority in order to be responsive to the needs of the proposers, if necessary.

As envisioned by NIST, the technology development center proposed by any state or local

government or non-profit organization (or combination thereof) would have to fulfill certain minimum public interests to warrant the long term investment of NIST's land. First, it would have to facilitate the transfer of NIST's technical know-how to the private sector. Second, it would have to fulfill the needs of existing industry. Third, it would have to stimulate the growth of new high technology product-oriented businesses in that industry.

NIST is proposing a collaborative arrangement to fulfill a public purpose. Proposers may accept industry commitments of funds to them (provided that any terms of such commitments are acceptable to NIST) and may even propose contracts (provided that they are approved by NIST) to fulfill part of their collaborative responsibilities. However, the center would be operated for the public good in such a manner that any profits generated through the center would have to be reinvested for the benefit of the center.

The concept for the proposed Federal technology development center includes three basic elements. First, there would be facilities focussing on the generic needs of the existing industries including research and development, product testing, evaluation and demonstration. Education and training facilities and technology commercialization activities including market research would also be appropriate. Second, there would be space available (an incubator) to nurture fledgling new high technology product-oriented companies. Third, there would be office space for a variety of support services needed to operate the center and enhance the effectiveness of the industry facilities and the business incubator.

The ultimate success of the proposed technology development center would depend on many factors. Co-location of a service center and the incubator within a single facility would offer both financial and technical synergy. Shared facilities significantly reduce the overall operating costs and the proximity of technical programs will optimize the opportunities for the transfer of NIST know-how. Quality facilities in a high technology environment are important to the success of any such venture focusing on new technology companies.

Geographic location may be equally important. The NIST Gaithersburg site has all the required features. It is centrally located in the Route 270 technology corridor. It has good visibility from Route 270 and full access to the four lanes of Muddy Branch Road via an existing intersection complete with traffic control. Prime industrial land with this location and access would be highly valued. Zoning should not be an issue and, most important of all, the use of the land would enable the capital investment of the partners to be used to construct a larger facility than would otherwise be possible if the cost of the land were included.

Our estimates are for about 75,000 square feet of laboratory and office space in the initial phase of construction. We anticipate $7–8 million will be required for this phase. In addition, we would expect a minimum commitment by the proposers of $1 million in initial operating expenses for the first year and reasonable assurances that $1 million could be available for another four years thereafter. Commitments of support and participation from industry should be included in any proposal. Availability of seed capital for prototype development stage financing as well as a revolving loan fund to support sales by the incubator tenants are desirable.

It should be understood that once the service center was built and operating, it would have to be open to all willing to pay the established fees. Similarly, the incubator would be open to all new companies meeting the established criteria.

We hope that the proposed arrangement can ultimately serve as a model for Federal collaboration on technology diffusion in all regions of the country covering a variety of technology areas with a number of Federal agencies.

It should be understood by any proposers that one condition of any proposed collaborative agreement will be that the Federal government will not be willing to relinquish its ultimate control of the use of the facilities in the event that the collaborators are later unable to fulfill their commitment to the facility's original intended purpose.

Authority: 15 U.S.C. 272 *et seq.*

Dated: June 24, 1992.

John W. Lyons,

Director.

[FR Doc. 92–15348 Filed 6–29–92; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Marine Mammals; Permits

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

ACTION: Withdrawal of Application for Permit (P77#52).

On July 31, 1991, notice was published in the **Federal Register** that an application for a permit to biopsy cetaceans in California Current waters had been received from the National Marine Fisheries Service, southwest Fisheries Science Center, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the regulations governing endangered fish and wildlife permits (50 CFR parts 217–222).

Notice is hereby given that this permit application was withdrawn on April 17, 1992 and the withdrawal request has been acknowledged and accepted.

Documents pertaining to this permit application are available for review in the following offices by appointment.

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310/980–4016).

Dated: June 23, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–15245 Filed 6–29–92; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 4,860,803 (Serial No. 7–244,762) titled "Continuous NITROX Mixer," to Hyperbarics International, Inc., having a place of business in Key Largo, FL. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS received written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The continuous NITROX mixer is a pre-calibrated, continuous flow, gas mixing system and a method which combines pure oxygen and air at atmospheric pressure, to create a final mixture of predetermined composition. Constituent gases are regulated to the same pressure and temperature before oxygen is metered through precision micro-metering valves. The system proportions the amounts of each gas and delivers the final mixture to a common mixing chamber. Delivery pressure can be adjusted up to 3000 PSI, making the system suitable for filling SCUBA or storage cylinders.

The availability of Patent No. 4,860,803 for licensing was published in the **Federal Register**, Vol. 55, No. 138, p. 29255 (July 18, 1990). A copy of the above-identified patent may be purchased from the Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231 for $3.00 each (payable by check or money order).

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Center for the Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 92–15329 Filed 6–29–92; 8:45 am]

BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

Speculative Position Limits—Exemptions From Commission Rule 1.61; Comex Proposed Amendments to Rules 4.47 and 4.48

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed exchange rule changes; request for comments.

SUMMARY: Exchanges are required under Rule 1.61 of the Commodity Futures Trading Commission ("CFTC" or "Commission"), 17 CFR 1.61 (1991), to establish speculative position limits for all option and futures contract markets which do not have Commission-set speculative position limits. Nevertheless, Commission rule 1.61(e), 17 CFR 1.61(e), provides that an exchange may submit for Commission approval exemptions from these requirements which are consistent with the purposes of the rule. The Commodity Exchange, Inc., ("Comex"), by letters dated June 5, and 12, 1992, ("submission"), submitted for the Commission's approval, under Section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1986), and Commission rule 1.61(e), proposed amendments to certain of Comex's speculative position limit rules.

In particular, Comex has proposed to amend Comex rule 4.47 and to add a new 4.48. These proposals would "eliminate position limits in non-spot gold and silver futures" and add a position accountability standard for speculative positions in the non-spot months for both futures and options on gold and silver. The proposed position accountability rule provides that the "owner or controller of a net futures equivalent position in gold or silver * * * shall promptly supply to the Exchange such information as the Exchange may request pertaining to the nature and size of the position, the trading strategy employed with respect to the position, and the position owner's or controller's hedging requirements." The rule further provides that a trader whose position exceeds 6000 contracts

> agree[s], upon request by the Board or the Control Committee, not to increase the position owned or controlled as of the time the request was received; and * * * to comply with any prospective limit prescribed by the Board * * *.

The spot-month speculative position limits for these contracts are not proposed to be modified.

The Commission is of the view that obtaining public comment on these proposed rule amendments will aid it in its consideration of the Comex submission. Accordingly, the Commission is hereby providing notice of, and requesting public comment on, these proposed exchange rule amendments. In addition, the Commission is requesting public comment on the criteria which it deems relevant to its consideration of such request for exemptions under this section.

DATES: Comments must be received by July 30, 1992.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Reference should be made to "Speculative Position Limit Exemptions (Comex)."

FOR FURTHER INFORMATION CONTACT: Blake Imel, Deputy Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–3201.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background

Speculative position limits have been a Congressionally mandated tool for the regulation of futures markets for over a half-century. In particular, Section 4a(1) of the Commodity Exchange Act, 7 U.S.C. 6a(1) (1982) ("Act"), provided the Commission with the authority to:

> Fix such limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market as the Commission finds are necessary to diminish, eliminate, or prevent such burden * * *. Nothing in this section shall be construed to prohibit the Commission from fixing different trading or position limits for different commodities, markets, futures, or delivery months, or for different number of days remaining until the last day of trading in a contract * * *.

Section 4a(1) of the Act.

Consistent with this statutory scheme, the Commission, in 1981, promulgated Rule 1.61, 46 FR 50938 (October 16, 1981). Rule 1.61 requires exchanges to establish speculative position limits for all option and futures contract markets which do not have Commission-set speculative position limits.[1] The commission reasoned that rule 1.61 would assure "that the exchanges would have an opportunity to employ their knowledge of their individual contract markets to propose the position limits they believe most appropriate." *Id.* at 50940. Since its creation, the Commission periodically has reviewed its policies pertaining to both Federal and exchanges-set speculative position limits.[2]

[1] In this regard, it should be noted that the Commission directly administers speculative position limits for futures contracts on those domestic agricultural commodities enumerated in section 2(a)(1)(A) of the Act See, 17 CFR 150.2. In contrast, Commission rule 1.61, 17 CFR 1.61 requires that for all option contracts, and for futures contracts on all other commodities, exchanges adopt and enforce speculative position limits. Exchange-set speculative position limits are approved by the Commission under the standards set forth in rule 1.61 and under Section 5a(12) of the Act. Section 4a(5) of the Act provides that violation of such an exchange-set speculative position limit that has been approved by the Commission, in addition to being an enforceable violation of exchange rules, is also a violation of the Act.

[2] For a discussion of the Commission's initiatives in revising its speculative position limit policies, see, 57 FR 12766–67 (April 13, 1992). The Commission's efforts in this regard are continuing. Most recently, the Commission proposed revisions to Federal speculative position limits, 57 FR 12766,

Continued

Commission rule 1.61(a)(2) establishes the criteria upon which exchanges must set speculative position limits "that will accomplish the purposes of this section." 17 CFR 1.61(a)(2)(1990). Among these criteria are

> position sizes customarily held by speculative traders on such market * * *. In addition to the above or upon a determination that the above standard is inappropriate for setting such limits, a contract market may base its determination on other factors which may include breadth and liquidity of the cash market underlying each delivery month and the opportunity for arbitrage between the futures market and cash market in the commodity underlying the futures contract.

17 CFR 1.61(a)(2)(1991).

In addition, Commission Rule 1.61 provides for certain exemptions from the general requirement of the rule. In particular, Commission Rule 1.61(e) provides that:

> In addition to the express exemptions specified in this section, a contract market may provide and submit for Commission approval, such other exemptions from its position limits adopted pursuant to paragraphs (a) or (b) of this section, consistent with the purposes of this section.

17 CFR 1.61(e)(1991).

B. Past Exemptions Under Commission Rule 1.61(e)

The Commission, on January 2, 1992, approved, under Section 5a(12) of the Act, amendments to, and deletions of, certain rules of the of Chicago Mercantile Exchange ("CME") substituting "position accountability" for speculative position limit rules for both futures and options on futures contracts on three-month Eurodollars and several foreign currencies. In particular, the CME rules approved by the Commission replaced selected speculative position limits with a provisions requiring traders who own or control positions in excess of the then current limit levels to provide to the exchange, upon request, information regarding the nature of the position and the trading strategy employed.

In considering whether to approve the above rule amendments proposed by the CME, the Commission sought comment from the public regarding the criteria for generally determining whether to grant exemptive relief from the requirements of Commission rule 1.61 that every contract market set and enforce speculative position limits and on the relative merits of the specific proposed rule amendments of the CME. 56 FR 51687 (October 15, 1991.)

In that **Federal Register** notice, the Commission stated that:

> Based upon over ten-years experience overseeing the exchange-set speculative limits required under Commission Rule 1.61, the Commission has determined that certain modifications to the structure of these exchange-set speculative limits may be warranted, at least on a limited basis. In the ten years since rule 1.61 was promulgated, the Commission has noted the continued growth in the depth and liquidity of futures and option contracts on foreign currencies and in certain financial futures or options contracts. This continuing growth may have implications for the continuing need for speculative position limits, as currently structured, in those markets.

56 FR 51687 at 51688.

Based upon the criteria of rule 1.61, which include the "breadth and liquidity of the cash market underlying each delivery month and the opportunity for arbitrage between the futures market and cash market in the commodity underlying the futures contract," and its experience in administering Rule 1.61, the Commission stated that it

> would consider exempting three classes of futures and option contracts with varying degrees of exchange supervision for each class. These are futures contracts on foreign currencies and options thereon, and futures and options on financial instruments which have been divided into two broad categories by the relative degree of liquidity in the futures and option markets.

id.

The Commission explained that, for futures contracts on foreign currencies and options thereon, based upon the nearly inexhaustible deliverable supply of these commodities coupled with the very high liquidity of the underlying cash markets and the ease of arbitrage between the cash and futures markets, it would exempt exchanges from all of the requirements under rule 1.61 that exchanges set a speculative position limit for these commodities. For futures contracts and options on financial instruments which exhibit the highest degree of liquidity in both the futures and cash markets, which are readily arbitraged, the Commission noted that any exemption under Commission rule 1.61(e) deleting an absolute position limit should include a level which would trigger distinct reporting requirements by a trader at the request of the applicable exchange. Finally, for contract markets on financial instruments having a highly liquid futures or cash market, but not of the same magnitude as those in the highest class, the Commission stated that an exemption from Rule 1.61 deleting the current absolute limitation on very large speculative positions should include, in addition to the specified reporting requirements, a rule providing for the automatic consent of the trader, when so ordered by the exchange acting in its discretion, not to increase further those positions which exceed the triggering level.[3] See, 56 FR 51688–89.

Consistent with the policies discussed in the above **Federal Register** notice, the Commission, On April 20, 1992, approved deletion of speculative position limits by the Finex Division of the New York Cotton Exchange for its futures and options contract in the U.S. Dollar Index. In addition, on May 4, 1992, the Commission approved similar rule amendments by the Chicago Board of Trade ("CBT") replacing speculative position limits on various of its futures and option contracts on financial instruments with "position accountability" rules. In this regard, the rules approved for the CBT provide for a reporting requirement at a specified triggering level for futures and options on one commodity, and for a reporting requirement coupled with the authority to limit further position increases upon order of the exchange for contracts on two other commodities.

II. Criteria for Considering Expansion of Exemptions

Based upon its over ten-years experience overseeing the exchange-set speculative limits required under Commission rule 1.61, and based upon six months of observation of the operation of the first such exemptions, the Commission believes that the third category of exemption under rule 1.61(e) can be made applicable for the non-spot months of futures and option contracts on metals and energy products. This category of exemption includes both a reporting requirement and the authority of the exchange, at a minimum, to order a trader whose position exceeds the triggering level to halt further increases in the position.

In this regard, the Commission notes that certain of these metals and energy contracts generally are characterized by a high degree of liquidity, at least equivalent to, and in some cases greater than, certain of the financial futures and options contracts which the Commission would exempt, pursuant to Commission rule 1.61(e), under the third category of

after considering the comments received in response to Petitions for Rulemaking by the Chicago Board of Trade and the New York Cotton Exchange to increase the levels of those Federal limits and to amend certain exemptions therefrom, 56 FR 37049 (August 2, 1991). The Comment period on the Notice of Proposed Rulemaking closed on June 12, 1992.

[3] The Commission also noted that all such exemptions under Rule 1.61(e) must include appropriate plans for the continued surveillance and exchange supervision of trading in these contract markets and for monitoring and review of the operation of the exemption.

exemption discussed above. Similarly, these commodities have substantial forward markets that readily are arbitraged with the futures of option markets.

Unlike the futures and options contracts on financial instruments which would be eligible for exemption under the third category, the metal and energy contracts are for physical commodities. As such, there is an apparent limitation on their delivery mechanism which does not exist for contracts on financial instruments. The relative limitation on the capacity to deliver these commodities, when compared to the contract markets on the various financial instruments, makes the above exemption appropriate for these physical commodities only for the deferred trading months. Accordingly, the current spot month limit will continue to be applicable to these contracts, and will continue to be set, under the criteria of Commission rule 1.61, based upon the extent of the deliverable supply underlying the contract.

Finally, the Commission notes that as with all of the exemptions granted under any of the above categories, the exemption must include appropriate plans for the continued surveillance and exchange supervision of trading in these contract markets. In this regard, the Commission notes that any exemptions which it grants will be closely monitored and the operation of the exemption will be reviewed by the Commission after an appropriate, initial period.

III. Proposed Rule Amendments of Comex

On June 5 and 12, 1992, Comex submitted for Commission approval under section 5a(12) of the Act proposed amendments to Comex rule 4.47 and proposed a new rule 4.48. The proposed amendments to rule 4.47 remove the net futures equivalent limit for the non-spot months. Proposed rule 4.48 provides for a "Position Accountability" standard. This rule provides that the owner or controller of a position which reach or exceed the specified level, the exhange

> may request (information) pertaining to the nature and size of the position, the trading strategy employed with respect to the position, and the position owner's or controller hedging requirements. If the position owner or controller fails to provide such information as and when requested, the President or his designee may request, and the Board or upon delegation, the Control Committee may order the reduction of such positions.

The rule further provides that a trader whose position exceeds 6000 contracts

> agree[s], upon request by the Board or the Control Committee, not to increase the position owned or controlled as of the time the request was received; and * * * to comply with any prospective limit prescribed by the Board * * *.

The spot-month speculative position limits for these contracts are not proposed to be modified.

The Comex explained that in proposing this rule, it:

> Believes that attracting the participation of these professionals on the Exchange by eliminating non-spot position limits and instituting position accountability levels will enhance the Exchange's markets for the benefit of all participants in these markets.

Submission at 11–12.

It noted further, however, that

> Comex proposed to retain spot month position limits at their current levels. The retention of relatively low spot month limits is a safeguard against attempts to control the deliverable supply of gold and silver.

Submission at 10.

Finally, Comex noted that its:

> Surveillance staff will continue to detect and prevent any attempted market manipulation. Likewise, they will continue to monitor trading data for, and to detect any potential congestion problems that could ultimately result in a market distortion * * *. Toward this end, Surveillance routinely monitors market activity * * *. They will continue to do so under this new position accountability standard, paying particularly close attention to those accounts currently exceeding the former 6,000 contract position limit level.
>
> Furthermore, the Surveillance staff will obtain all relevant information from large traders carrying gold and silver positions in excess of the 7,500 position accountability level.

Submission at 11.

Based upon the above discussion of the criteria which the Commission has identified as relevant to its determination to expand applicability of the third category of exemption under rule 1.61(e) and Comex' request for such exemptive relief, the Commission is requesting public comment on the proposed rule amendments. In particular, the Commission is requesting that commenters address the following issues.

(1) What are the costs and benefits to the market and to market participants of permitting exemptions from exchange-set speculative position limits, under the criteria outlined above, for futures and options on physical commodities, specifically, on metals and energy products?

(2) Are there any adverse effects from permitting the exemptions from rule 1.61 discussed above?

(3) Speculative position limits have various regulatory effects, including helping to ensure orderly trading and aiding in preventing manipulation or other pricing distortions. To what extent are the current speculative position limits in the non-spot trading months for futures and option contracts on metals and energy products necessary to achieve these effects and will the alternatives discussed above, and, in particular the proposal of Comex, address these regulatory effects? Does retention of a speculative position limit in the spot month address adequately concerns regarding these issues?

(4) Are there other regulatory alternatives which the Commission should consider in determining appropriate criteria for these exemptions?

Issued in Washington, DC this 24th day of June, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–15302 Filed 6–29–92; 8:45 am]

BILLING CODE 6351–01–M

COPYRIGHT ROYALTY TRIBUNAL

CRT [Docket No. 92–2–PBRA]

1992 Ajustment of the Public Broadcasting Royalty Rates and Terms

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of commencement of proceedings.

SUMMARY: The Copyright Act of 1976 requires that the Copyright Royalty Tribunal commence the public broadcasting rate adjustment proceedings on June 30, 1992. This notice announces the commencement of proceedings and specifies certain procedural dates.

DATES: the proceeding is commenced effective June 30, 1992. Notices of Appearance from those parties intending to participate are due August 14, 1992. Direct case testimony is due September 21, 1992.

FOR FURTHER INFORMATION CONTACT: J.C. Argetsinger, Commissioner, Copyright Royalty Tribunal, 1825 Connecticut Avenue NW., suite #918, Washington, DC 20009. (202) 606–4400.

SUPPLEMENTARY INFORMATION: Section 118(b) of the Copyright Act of 1976 (Act) authorizes the Copyright Royalty Tribunal (Tribunal) to establish

reasonable terms and rates of royalty payments with respect to certain uses by public broadcasting entities of published nondramatic musical works, and published pictorial, graphic, and sculptural works. Section 118(c) requires the Tribunal to initiate and to conclude proceedings to establish such rates and terms between June 30, 1982 and December 31, 1982 and at each five-year interval thereafter.

Section 118(b)(2) of the Act states that license agreements voluntarily negotiated at any time between one or more copyright owners and one or more public broadcasting entities shall be given effect in lieu of any determination by the Tribunal. Accordingly, the Tribunal sent a letter on May 1, 1992 to all the parties who had participated in either the 1978, 1982, and/or the 1987 public broadcasting rate adjustment proceedings to determine whether any private agreements had been reached. The Tribunal received comments from Public Broadcasting Service; American Society of Composers, Authors, and Publishers; American Council on Education; National Federation of Community Broadcasters; Broadcasting Music, Inc.; National Public Radio; Harry Fox Agency; National Religious Broadcasters Noncommercial Radio Music License Committee. Generally, the commenters state the preliminary contacts have been made between representatives of the owners and the users, that settlement agreements are expected to be reached, but that none has been reached so far. Accordingly, in lieu of any private settlements, the Tribunal commences the 1992 Public Broadcasting Rate Adjustment Proceedings, effective June 30, 1992.

The Tribunal orders that all parties intending to participate in this proceeding shall file a Notice of Appearance with the Tribunal by August 14, 1992. Written direct cases are due September 21, 1992. The Tribunal expects to hold hearings beginning sometime in October. Further procedural dates will be issued to the participating parties.

The Tribunal reminds the parties that this proceeding must conclude by December 31, 1992, and therefore urges that settlement negotiations be conducted expeditiously

Dated: June 24, 1992.

Cindy Daub,

Chairman.

[FR Doc. 92-15254 Filed 6-29-92; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Academy Board of Visitors; Meeting

Pursuant to section 9355 title 10, United States Code, the Air Force Academy Board of Visitors will meet at the U.S. Air Force Academy, Colorado, 30 July–1 August 1992. The purpose of the meeting is to consider morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

A portion of the meeting will be open to the public on the morning of July 31, 1992. Other portions of the meeting will be closed to the public to discuss matters listed in subsections (2), (4), and (6) of section 552b(c), title 5, United States Code. These closed sessions will include attendance at cadet training programs and discussions with cadets, military staff, and faculty officers involving personal information and opinion, the disclosure of which would result in a clearly unwarranted invasion of personal privacy. Closed sessions will also include executive sessions involving discussions of personal information, including financial information, and information relating solely to internal personnel rules and practices of the Board of Visitors and the Academy. Meeting sessions will be held in various facilities throughout the cadet area.

For further information, contact Major Wayne Taylor, OL C USAFA, (AF/DPPA), the Pentagon, Washington DC 20330-5060, at (703) 697-2919.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-15242 Filed 6-29-92; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Intent to Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings for the Proposed Piñon Pine Integrated Gasification Combined Cycle (IGCC) Power Project

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) to assess the environmental effects of the construction and operation of the proposed Piñon Pine Integrated Gasification Combined Cycle (IGCC) Power Project at the Tracy Power Station, near Reno, Nevada, and to conduct public scoping meetings.

SUMMARY: DOE announces its intent to prepare an EIS pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, to evaluate the environmental impacts of the proposed construction and operation of a project proposed by Sierra Pacific Power Company (SPPC) in Nevada. The proposed project involves the construction and operation of a new coal-fired 80-megawatt electric (MWe) (800 tons/day) air-blown IGCC power plant near Reno, Nevada. SPPC is an investor-owned utility company that would sell the produced electricity to the City of Reno and the surrounding area.

Preparation of the EIS will be in accordance with NEPA, the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508), and the DOE regulations for compliance with NEPA (57 FR 15122, April 24, 1992). The purpose of this Notice is to invite public participation in the process that DOE will follow to comply with NEPA and to solicit public comments on the proposed scope and content of the EIS.

INVITATION TO COMMENT AND DATES: To ensure that the full range of issues related to this proposal is addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Written comments or suggestions to assist DOE in identifying significant environmental issues and the appropriate scope of the EIS will be considered in preparing the draft EIS and should be postmarked by August 7, 1992. Written comments postmarked after that date will be considered to the degree practicable.

DOE will also hold three public scoping meetings in which agencies, organizations, and the general public are invited to present oral comments or suggestions with regard to the range of actions, alternatives, and impacts to be considered in the EIS. The locations, dates, and times for the scoping meetings are provided in the section of this Notice entitled SCOPING MEETINGS. Written and oral comments will be given equal weight and will be considered in determining the scope of the draft EIS. When the draft EIS is completed, its availability will be announced in the **Federal Register**, and public comments will again be solicited. Comments on the draft EIS will be considered in preparing the final EIS. Requests for copies of the draft and/or final EIS, or questions concerning the project, should be sent to Dr. Suellen A. VanOoteghem at the address noted below.

ADDRESSES: Written comments or suggestions on the scope of the EIS, requests to speak at the scoping meetings, or questions concerning the project, should be directed to: Dr. Suellen A. VanOoteghem, Environmental Project Manager, U.S. Department of Energy, Morgantown Energy Technology Center (METC), P.O. Box 880, Morgantown, WV 26507–0880, Telephone: (303) 284–5443.

If you request to speak, please indicate at which scoping meeting(s). Envelopes should be labeled "Scoping for Piñon Pine EIS."

FOR FURTHER INFORMATION CONTACT: For general information on the EIS process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Tel. (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background and Need for the Proposed Action

Under terms of Public Law No. 101–512, Congress provided approximately $600 million to DOE to support the construction and operation of demonstration facilities selected for cost-shared financial assistance as part of DOE's Clean Coal Technology (CCT) Demonstration Program. The CCT projects cover a broad spectrum of technologies having the following in common: (1) All are intended to increase the use of coal in an environmentally acceptable manner, and (2) all are ready to be proven at the demonstration scale.

On January 17, 1991, DOE issued Program Opportunity Notice (PON) Number DE–PSO1–91FE62271 for Round IV of the CCT program, soliciting proposals to conduct cost-shared projects to demonstrate innovative, energy efficient, economically competitive technologies. These technologies must be capable of (1) retrofitting, repowering, or replacing existing facilities while achieving significant reductions in the emissions of sulfur dioxide and/or the oxides of nitrogen, and/or (2) providing for future energy needs in an environmentally acceptable manner. Such existing facilities include coal-fired power generation and industrial processes which utilize coal. The demonstration projects, however, can be at new facilities provided the commercial application of the technology is capable of retrofitting, repowering, or replacing applications and/or providing for future energy needs. In response to the solicitation, 33 proposals were received. Nine projects were selected by DOE for negotiation in September 1991, including the Piñ Pine IGCC Power Project.

SPPC has requested financial assistance from DOE for the design, construction, and operation of an 80–MWe(800 tons of western coal per day) air-blow IGCC demonstration power plant. In addition to using western coal, the demonstration phase of the project will include a run using a higher sulfur eastern coal to prove the efficacy of the technology with a broader range of coals. The proposed project site is at the existing Tracy Station in Storey County, 17 miles east of Reno, Nevada. The Tracy Station currently comprises three oil/gas-fired steam units and two gas turbines; the Piñon Pine Project would be constructed adjacent to the west side of the westernmost steam unit in order to maximize the benefits of the existing infrastructure. As noted in the section of this Notice entitled Identification of Environmental Issues, DOE will evaluate cumulative impacts within the EIS for all important issues in the vicinity of the site. Cost, environmental and technical data from the project would be developed for use by the utility industry in evaluating this technology as a commercially viable power generation alternative. After the anticipated 42-month demonstration period of operation is concluded SPPC intends to continue project operation on a commercial basis.

Proposed Action

The proposed Federal action is for DOE to provide cost-shared financial assistance to SPPC for the design, construction, and operation of an 80–MWe (800 tons of western coal per day) air-blow IGCC demonstration power plant, known as the Piñon Pine Project, to be located at the existing Tracy Station in Storey County, 17 miles east to Reno, Nevada. The proposed project would demonstrate air-blown, fluidized bed, coal gasification technology incorporating hot gas cleanup, evaluate a low-Btu fuel gas combustion turbine, and assess long-term reliability, availability, maintainability, and environmental performance in a utility setting at a size sufficient to determine its potential for commercial scaleup.

The total cost of the proposed project is estimated at over $340 million, with DOE's share being about 50 percent, or $170 million. The project would last approximately 104 months, including design, construction, and demonstration; if the outcome of the NEPA review process is favorable, construction currently is projected to start about December 1993.

Operation of the project during the anticipated 42-month demonstration period would provide the information and experience needed for future applications and commercialization of the air-blown gasifier technology with hot cleanup. Once DOE's involvement is completed, SPPC intends to continue operating the project on a commercial basis.

The existing Tracy Station is located on a 422-acre site in Storey County, approximately 17 miles east of the Reno/Sparks area (population 250,000) and 15 miles west of the town of Fernley (population 7000). This proposed site lies south of the Truckee River, and is characterized as arid high desert (typical of the Great Basin Region). The plant site is located within the Truckee River Canyon at an elevation of about 4280 feet above sea level. The Canyon is mostly undeveloped, and is bordered on each side by mountain ranges climbing 3000 feet above the Canyon floor. The mountains have experienced repeated range fires and are very sparsely vegetated. The Truckee River provides enough moisture to maintain a narrow riparian corridor for the majority of its course. The proposed site is completely disturbed, with all native vegetation removed except for a very small stand of Indian ricegrass mixed with low lying shrubs. The riparian vegetation along the River provides little or no screening of the site from the road. The area is zoned as industrial and has large aggregate extraction facilities to the east and west, and a diatomaceous earth processing plant to the east. Prominent features of the site include the major components of the Tracy Generating Station (exhaust stacks, cooling stacks, generation units, powerline towers and conductor, two switching stations minor outbuildings and oil tanks). The proposed plant would be located adjacent to three existing oil/gas fired boilers with two gas turbines nearly.

The proposed Piñon Pine Project would occupy about 20 acres of the existing 422-acre site owned by SPPC, and would include the following major subsystems and key components:

- Handling system to receive, store, and convey coal,
- Live coal pile on an enclosed cement slab to minimize dust emissions,
- Pressurized fluidized-bed gasifier,
- Gas turbine generator,
- Steam turbine,
- Hot gas cleanup system, including particulate removal by a combination of cyclones and ceramic candle gas filters, and sulfur removal by regenerable fixed bed zinc ferrite reactors,
- Heat recovery steam generator,
- Stack to handle exhaust gases produced by the combustion of fuel gas,

• Silo for ash storage and disposal, and

• Land-storage site marketable byproducts.

Alternatives

Under its authority pursuant to Public Law No. 101–512, DOE is presented with only two alternatives: (1) To cooperatively fund the proposed project; and (2) to decline to find it (the "no action" alternative). In the latter case, the project would not contribute to the objective of the CCT program, which is to make available to the U.S. energy marketplace a number of advanced, more efficient, economically feasible, and environmentally acceptable, coal technologies. The facility probably would not be constructed and operated; therefore, neither potential environmental impacts related to facility construction and operation, nor potential environmental benefits resulting from commercialization of the technology, would occur.

DOE acknowledges the obligation to examine reasonable alternatives which are beyond its immediate authority to implement, but which could also meet the objectives of the CCT Program. DOE is requesting public comment on reasonable alternatives to the Piñon Pine IGCC Demonstration Project.

A Final Programmatic Environmental Impact Statement (PEIS) for the CCT Program was issued by DOE in November 1989 (DOE/EIS–0146). Two alternatives were evaluated in the PEIS: (1) The "no action" alternative, which assumed that the CCT Program was not continued and that conventional coal-fired technologies with flue gas desulfurization and oxides of nitrogen controls to meet New Source Performance Standards would continue to be used; and (2) the proposed action, which assumed that CCT projects were selected and funded, and that successfully demonstrated technologies would undergo widespread commercialization by the year 2010.

Identification of Environmental Issues

The following issues associated with the construction and operation of the proposed Piñon Pine Project will be considered in detail by DOE during its evaluation. This list is neither intended to be all inclusive, nor is it a predetermination of potential impacts. Additions to or deletions from this list may occur as a result of the scoping process.

(1) Air Quality: The effects of air emissions within the region surrounding the site.

(2) Water Resources and Water Quality: The qualitative and quantitative effects on water resources and other water users in the region.

(3) Wetlands: Wetlands identified on-site have not been delineated, but would be warranted if proposed construction would occur within areas identified as potential wetlands. Construction activities and proposed development can be precluded from these areas. However, if a pipeline were to be constructed across the Truckee River, an application would be submitted to the U.S. Army Corps of Engineers, pursuant to their authority under section 404 of the Clean Water Act, for either a Nationwide or an Individual Permit, depending on the extent of the potential disturbance to the delineated wetlands that could result.

(4) Socioeconomics: Potential bearing on communities that might be affected by the project.

(5) Land Use: The potential consequences to land, utilities, transportation routes, and traffic patterns resulting from the project.

(6) Solid Waste: The environmental effects of generation, treatment, transport, storage, and disposal of solid wastes.

(7) Biological Resources: Potential disturbance or destruction of species, including the potential effects on threatened or endangered species of flora and fauna. DOE will consult with the U.S. Fish and Wildlife Service of the U.S. Department of the Interior as to whether a formal consultation is necessary, pursuant to section 7 of the Endangered Species Act, for either the Lahontan Cutthroat Trout (*Oncorhynchus clarki henshawi*) or Cui-ui (*Chasmistes cujus*) fisheries located below the Derby Dam. The Trout is listed as a threatened species, while the Cui-ui sucker is listed as endangered. Both species are known to occur and spawn in the Truckee River.

(8) Cultural Resources: Potential effects on historical, archaeological, scientific, or culturally important sites. The proposed project is located near the Paiute Indian Reservation. Accordingly, DOE will consider concerns that may be raised by Tribe officials.

(9) Cumulative Impacts: CEQ NEPA regulations require that the EIS evaluate the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Cumulative impacts will be evaluated within the EIS for all important issues in the vicinity of the site.

Issues that are significant will be addressed in detail; issues that are not considered significant will be discussed in less detail, or as appropriate to clarify and distinguish impacts among alternatives.

NEPA and the Scoping Process

DOE will comply with the NEPA process as outlined in the CEQ's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508) and DOE's regulations for compliance with NEPA (57 FR 15122, April 24, 1992).

Scoping, which is an integral part of the NEPA process, is a procedure that solicits public input to the EIS process to ensure that: (1) Issues are identified early and properly studied; (2) issues of little significance do not consume time and effort; (3) the draft EIS is thorough and balanced; and (4) delays occasioned by an inadequate draft EIS are avoided (40 CFR 1501.7). DOE's NEPA regulations require that the scoping process commence as soon as practicable after a decision has been reached to prepare an EIS in order to provide an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. The scope of issues to be addressed in a Draft EIS will be determined, in part, from written comments submitted by mail, and comments presented orally or in writing at public scoping meetings (see below). The results of the scoping process will be incorporated into a document called an Implementation Plan (IP), which provides guidance for the preparation of an EIS.

The above preliminary identification of reasonable alternatives and environmental issues is not meant to be exhaustive or final. DOE identified the reasonable alternatives and potential environmental issues shown above based on its experience with similar subjects that have been raised for other comparable DOE projects. DOE considers the scoping process to be open and dynamic in the sense that alternatives other than those given above many warrant examination, and new matters may be identified for potential evaluation. The scoping process will involve all interested agencies (Federal, State, County, and local), groups, and individual members of the public. Interested parties are invited to participate in the scoping process by providing comments on both the alternatives and the issues to be addressed in the EIS. DOE will consider all comments in preparing the IP, which will specify the reasonable alternatives, identify the significant environmental issues to be analyzed in depth, and eliminate from detailed study those alternatives and environmental issues that are not significant or pertinent. When complete, the IP will be available for public review at the locations identified below.

Scoping Meetings

Three public scoping meetings will be held at the locations, on the dates, and at the times indicated below. These scoping meetings will be informal, with presiding officers designated by DOE who will establish procedures governing the conduct of the meetings. The meetings will not be conducted as evidentiary hearings, and those who choose to make statements may not be cross-examined by other speakers. To ensure that everyone who wishes to speak has a chance to do so, five minutes will be allotted to each speaker. Depending on the number of persons requesting to be heard, DOE may allow longer times for representatives of organizations. Persons wishing to speak on behalf of an organization should identify that organization in their request to speak. Persons who have not submitted a request to speak in advance may register to speak at any of the scoping meetings. They will be called on to present their comments as time permits. Oral and written comments will be given equal weight by DOE. Written comments may also be submitted after the scoping meetings, but should be postmarked by August 7, 1992, and forwarded to Dr. Suellen A. VanOoteghem, Environmental Project Manager, Morgantown Energy Technology Center, as provided in the **ADDRESS** section of this Notice. Written comments postmarked after that date will be considered to the degree practicable.

The meetings are scheduled as follows:

1. DATE: Tuesday, July 21, 1992
   TIME: 7 p.m. (Registration opens at 6 p.m.)
   PLACE: Pyramid Lake Paiute Indian Tribal Council Chamber, Nixon, Nevada 89436
2. DATE: Wednesday, July 22 1992
   TIME: 7 p.m. (Registration opens at 6 p.m.)
   PLACE: Lyon County Branch Library, 575 East Main St., Fernley, Nevada 89408
3. DATE: Thursday, July 23, 1992
   TIME: 7 p.m. (Registration opens at 6 p.m.)
   PLACE: City of Reno Council Chambers, 490 South Center St., Reno, Nevada 89503

Complete transcripts of the public scoping meetings will be retained by DOE and made available for inspection during business hours, Monday through Friday, at the Department of Energy Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, and at the Department of Energy, Morgantown Energy Technology Center, 3610 Collins Ferry Road, Morgantown, West Virginia 26505. Additional copies of the public scoping meeting transcripts will also be made available during normal business hours at the following locations:

1. Washoe County Public Library, Government Document Section, 301 South Center St., Reno, Nevada 89503.
2. Lyon County Branch Library, 575 East Main St., Fernley, Nevada 89408.

In addition, copies of the public scoping meeting transcripts will be made available for purchase. Those interested parties who do not wish to submit comments or suggestions at this time, but who would like to receive a copy of the Draft EIS when it is prepared, should notify Dr. Suellen A. VanOoteghem, Environmental Project Manager, Morgantown Energy Technology Center, at the address given in the **INVITATION TO COMMENT** and **DATES** section of this Notice.

Signed in Washington, DC., this 24th day of June 1992, for the United States Department of Energy.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 92-15351 Filed 6-29-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-625-000, et al.]

Illinois Power Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

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

1. Illinois Power Co.

[Docket No. ER92-625-000]

June 19, 1992.

Take notice that on June 3, 1992, Illinois Power Company tendered for filing an addendum containing revisions to rate schedules in its interconnection agreements with Central Illinois Light Company, Central Illinois Public Service Company, City Water, Light and Power, Commonwealth Electric Company, Indiana-Michigan Power, Kentucky Utilities, Southern Illinois Power Cooperative, Tennessee Valley Authority, and Union Electric.

Comment date: July 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Co.

[Docket Nos. ER86-645-006, ER87-140-003, ER87-159-002, and ER87-160-002]

June 19, 1992.

Take notice that on June 15, 1992, Boston Edison Company of Boston, Massachusetts, submitted its filing as required by the Commission's orders Opinion No. 350, 52 FERC ¶ 61,010 (1990) and Opinion No. 350-A, 59 FERC ¶ 61,062 (1992). Boston Edison states that its filing complies with the requirements of those orders, and that is has been served on the affected customers. Those customers and their rate schedule numbers are:

	Rate schedule No.
Commonwealth Electric Company	68
Montaup Electric Company	69
Boylston Municipal Light Department	77
Holyoke Gas & Electric Department	79
Westfield Gas & Electric Light Department	81
Hudston Light & Power Department	83
Littleton Electric Light & Water Department	85
Marblehead Municipal Light Department	87
North Attleboro Electric Department	89
Peabody Municipal Light Plant	91
Shrewsbury Municipal Light Plant	93
Templeton Municipal Lighting Plant	95
Wakefield Municipal Light Department	97
West Boylston Municipal Light Department	99
Middleborough Municipal Gas & Electric Department	102
Reading Municipal Light Department	113

Comment date: June 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Colorado

[Docket No. ER92-603-000]

June 19, 1992.

Take notice that on June 1, 1992, Public Service Company of Colorado (Public Service) tendered for filing a Notice of Cancellation of Public Service's FERC Electric Tariff No. 49.

Comment date: June 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Co.

[Docket No. ER92-597-000]

June 19, 1992.

Take notice that on June 1, 1992, Northern States Power Company tendered for filing a Power and Energy Supply Agreement with the Village of Trempealeau.

Comment date: June 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Las Vegas Cogeneration Limited Partnership

[Docket No. QF89-251-003]

June 19, 1992.

On June 15, 1992, Las Vegas Cogeneration Limited Partnership of Glenway Avenue, Box 1280, Bristol, Virginia 24203, 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 will be located in Clark County, Nevada. The Commission previously certified the facility as a qualifying cogeneration facility, 56 FERC ¶ 62,035 (1991). The instant request for recertification is due to change in equipment resulting in an increase in maximum net electric power production capacity from 42 MW to 45 MW. The operation of the facility is expected to commence on June 1, 1994.

Comment date: July 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Iowa Southern Utilities Co.

[Docket No. ER91-559-003]

June 19, 1992.

Take notice that on June 16, 1992, Iowa Southern Utilities Company tendered for filing its Refund Report in compliance with the Commission's order issued on March 20, 1992, in the above-referenced docket.

Comment date: July 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Pennsylvania Power & Light Co.

[Docket No. ER92-642-000]

June 19, 1992.

Take notice that Pennsylvania Power & Light Company (PP&L) on June 12, 1992, tendered for filing an executed Power Supply Agreement dated as of June 1, 1992 (1992 PSA), between PP&L and UGI Utilities, Inc. (UGI). PP&L states that the 1992 PSA sets forth the terms and conditions under which PP&L will sell power to UGI. When approved, the 1992 PSA will supersede and replace the November 22, 1977, Power Supply Agreement between PP&L and UGI, as supplemented to date, and designated by the Commission as PP&L Rate Schedule No. 68.

PP&L requests an effective date for the 1992 PSA of 60 days from the date of filing, or August 11, 1992. PP&L states that a copy of its filing was served on UGI and the Pennsylvania Public Utility Commission.

Comment date: July 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Central Illinois Public Service Co.

[Docket No. ER92-647-000]

June 19, 1992.

Take notice that on June 16, 1992, Central Illinois Public Service Company (CIPS) tendered for filing (i) a revision to its Rate Schedule W-1 (Norris Electric Cooperative), and (ii) an Amendment to its Agreement for the Purchase of Power by Norris Electric Cooperative (Norris). Under the Rate Schedule revision, proposed to be effective March 20, 1992, CIPS will decrease the demand charge for service to Norris. Under the Amendment CIPS and Norris are extending the term of the Agreement ten years.

CIPS requests an effective date of March 20, 1992 for revision of the Demand Charge and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served upon Norris and the Illinois Commerce Commission.

Comment date: July 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Connecticut Light and Power Co.

[Docket No. ER92-645-000]

June 19, 1992.

Take notice that on June 15, 1992, Connecticut Light and Power Company (CL&P) tendered for filing a letter agreement that extend the term of a previously filed and accepted exchange agreement dated June 1, 1985 with its amending letters dated October 23, 1986 and November 26, 1991, between CL&P and The United Illuminating Company (UI).

CL&P states that a copy of this filing has been mailed to UI.

CL&P requests that the Commission waive its standard notice period and filing notice regulations to the extent necessary to permit the rate schedule filed to become effective May 1, 1992.

Comment date: July 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Gas and Electric Co.

[Docket No. ER92-595-000]

June 19, 1992.

Take notice that on June 10, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment to its original filing in this docket filed on June 1, 1992.

Comment date: July 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Consumers Power Co.

[Docket No. ER92-646-000]

June 19, 1992.

Take notice that on June 16, 1992, Consumers Power Company (Consumers) tendered for filing two supplemental agreements which relate to agreements under which Consumers provides service to the City of Eaton Rapids (Eaton Rapids). One supplemental agreement increases the maximum amount of service available under an interruptible wholesale agreement. The other established Consumers as Eaton Rapids' sole supplier of wholesale for resale electric service.

Copies of the filing were served upon the Michigan Public Service Commission and Eaton Rapids.

Comment date: July 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Madison Gas and Electric Co.

[Docket No. ER92-244-000]

June 19, 1992.

Take notice that Madison Gas and Electric Company (MGE) on June 6, 1992, tendered for filing a revised Service Schedule A to the Interchange Agreement between itself and Wisconsin Electric Power Company (WEPCO). The submittal addresses certain concerns of the Commission's staff regarding compensation for Limited Term Power and Energy.

WEPCO and MGE respectfully requests an effective date of June 1, 1992.

Copies of the filing have been served on WEPCO and the Public Service Commission of Wisconsin.

Comment date: July 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Public Service Corp.

[Docket No. ER91-665-000]

June 19, 1992.

Take notice that Wisconsin Public Service Corporation (WPSC) on June 15, 1992, tendered for filing an amended and restated agreement with Wisconsin Power and Light Company relating to the construction of substation facilities. This filing amends the original filing of September 24, 1991 and addresses concerns the Commission Staff had with the substation facilities agreement with Wisconsin Power and Light. WPSC requests that the Commission waive its notice requirements to allow the agreements to take effect in accordance with its terms.

Comment date: July 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Duquesne Light Co.

[Docket Nos. ER92-644-000, EC92-18-000, and EL92-34-000]

June 19, 1992.

Take notice that on June 12, 1992, Duquesne Light Company (Duquesne) tendered for filing with the Commission Agreements which primarily provide for the sale by Duquesne to the GPU

Companies (specifically, Metropolitan Edison Company and Jersey Central Power & Light Company) of a total of 350 MW of capacity and energy under market-based rates. The capacity and energy to be provided by Duquesne under the Power Supply Agreement, together with the disposition of a 50 percent interest in the Phillips Station by Duquesne to the GPU Companies, are intended to provide the GPU Companies with a total of 500 MW of capacity and energy. The Power Supply Agreement is proposed to become effective the earlier of January 1, 1994 or the date of commercial operation of the Phillips Station, but in no event earlier than June 1, 1993.

Duquesne also filed a petition requesting the Commission to determine whether the Company's plan to sell its firm, long-term capacity interests (between 400 and 500 MW) in a new transmission line (New Line) proposed to be built between Duquesne and the GPU Companies through a sealed-bid auction is acceptable. Duquesne states that the proposed auction is designed to provide for nondiscriminatory access to all potential wholesale customers. Duquesne states that rights acquired by winning bidders in the New Line may be resold and that Duquesne proposes to offer winning bidders open access to Duquesne's existing transmission network (other than the New Line) at cost-based rates.

Duquesne also states that copies of the filing have been served on the GPU Companies, the Pennsylvania Public Utilities Commission and the New Jersey Board of Regulatory Commissioners.

Comment date: July 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER91-569-002]

June 22, 1992.

Take notice that on June 1, 1992, Entergy Services, Inc. (ESI) as agent for Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service, Inc., tendered for filing its compliance filing in response to a previous Commission order in this docket. No notice of this filing has been issued prior to this time. ESI filed an amendment to its June 1, 1992 filing on June 11, 1992. The Commission issued a notice of the June 11, 1992 amendment and set a response date of June 30, 1992. In order that the response date for both filings be the same, the Commission will set July 13, 1992 as the response date for both the June 1, 1992 filing and the June 11, 1992, filing, and therefore extends the response date for the June 11, 1992 filing to July 13, 1992.

Comment date: July 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Gulf States Utilities Co.

[Docket No. ES92-42-000]

June 23, 1992.

Take notice that on June 10, 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 issue up to $350 million of First Mortgage Bonds, over a two-year period. Also, Gulf States requests exemption from the Commission's competitive bidding regulations.

Comment date: July 9, 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. 92-15314 Filed 6-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-07372T; Texas-57]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

June 24, 1992.

Take notice that on June 22, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that a portion of the Strawn Formation underlying Palo Pinto County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is located within Railroad Commission District 7b and is described as:

T. & P. R.R. Co. Survey, Block 3

All of section 17, A-786
All of section 18, A-1872
All of section 19, A-787
West ½ of section 20, A-1877, A-1935
West ½ of section 29, A-805
All of section 30, A-1875, A-1953

T. & P. R.R. Co. Survey, Block 4

East ½ of section 24, A-1485

The notice of determination also contains Texas' findings that the referenced portion of the Strawn Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-15315 Filed 6-29-92; 8:45 am]

BILLING CODE 6717-01-M

[P-10725-002]

Application Filed with the Commission

June 8, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* License.
b. *Project No.:* 10725-002.
c. *Date filed:* May 29, 1992.
d. *Applicant:* Little Horn Energy Wyoming, Inc.
e. *Name of Project:* Dry Fork.
f. *Location:* In Bighorn National Forest, on Dry Fork in Sheridan County, Wyoming. Townships 56N, and 57N and Ranges 88W and 89W.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).
h. *Applicant Contact:* Mr. Bjorn Omreng, Little Horn Energy Wyoming, Inc., 100 First Stamford Place, Stamford CT 06902.
i. *FERC Contact:* Michael Spencer at (202) 219-2846.
j. *Description of Project:* The proposed project would consist of: (1) A 24-foot-high embankment surrounding an upper reservoir with a surface area of 73 acres

and a 5,350 ac-ft storage capacity located on Dry Fork Ridge; (2) a 10,360-foot-long, 21-foot-diameter power tunnel; (3) a pumped storage powerhouse containing generating units with a capacity of 1,000 MW; (4) a 265-foot-high roller compacted concrete lower dam and reservoir with a surface area of 140 acres and a 9,622 ac-ft storage capacity on Dry Fork; (5) a lower powerhouse containing a generating unit with a capacity of 1,000 kW; (6) approximately 22 miles of improved and new access roads to the project features; (7) an 18-mile-long transmission line; and (8) appurtenant facilities.

k. Under § 4.32 (b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 92-15265 Filed 6-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-07294T, Mississippi-3, Addition 2]

State of Mississippi; NGPA Notice of Determination By Jurisdictional Agency Designating Tight Formation

June 23, 1992

Take notice that on June 19, 1992, the State Oil and Gas Board of Mississippi (Mississippi) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that a portion of the Selma Chalk Formation underlying Lamar and Marion Counties, Mississippi, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is described as:

E.2 of Section 36, Township 2 North, Range 17 West—Marion County
Sections 31, 32 and W.2 of Section 33, Township 2 North, Range 16 West—Lamar County
E/2 of Section 1, E/2 of Section 12 and E/2 of Section 13, Township 1 North, Range 17 West—Marion County
W/2 of Section 3, Sections 4, 5, 6, 7, W/2 of Section 8, W/2 of Section 9, Sections 17, 18 and N/2 of Section 19, Township 1 North, Range 16 West—Lamar County

The notice of determination also contains Mississippi's findings that the referenced portion of the Selma Chalk meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-15259 Filed 6-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-540-000, et al.]

United Gas Pipe Line Company, et al.; Natural Gas Certificate Filings

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

1. United Gas Pipe Line Company

[Docket No. CP90-540-000]

June 19, 1992.

Take notice that on June 17, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP92-540-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act to abandon and remove a meter station serving an Arkansas Louisiana Gas Company (Arkla) farm tap in Caddo Parish, Louisiana, under the Southern's blanket certificate authority in Docket No. CP82-430-000, all as more fully set forth in the application on file with the Commission and open to public inspection.

United states that both Arkla and Arkla's farm tap customer, Mr. Thurmond Taylor, have consented to this proposed abandonment request and that the proposed activity is in compliance with subpart F of part 157 of the Regulations, and that United has complied with the procedures in part 157, subpart F, appendix I, as it relates to environmental compliance. It is further stated that Mr. Taylor plans to replace this service with butane gas service.

Comment date: August 3, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Texas Eastern Transmission

[Docket No. CP82-535-009]

June 22, 1992.

Take notice that on June 15, 1992, [1] Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, filed in Docket No. CP82-535-009 a motion for clarification of its blanket certificate and advance approval of rate treatment requesting that the Commission expand the definition and cost limits of facilities covered under its blanket certificate issued under subpart F of section 157 of the Commission's Regulations and for advance approval of rolled-in rate treatment of those facilities, all as more fully set forth in the motion which is on file with the Commission and open to public inspection.

Texas Eastern asserts that the outer limits of what qualifies under the blanket construction certificate issued pursuant to subpart F of section 157 of the Commission's Regulations is not entirely known. It is noted that the blanket construction certificate covers construction of certain facilities for system supply, facilities needed to facilitate open-access transportation, and facilities to serve customers within certificated volumes. Texas Eastern alleges that the precise scope of what facilities are needed to facilitate open-access transportation and what is within certificated volumes is unclear. Accordingly, Texas Eastern indicates that the Commission should clarify what facilities may be covered under its construction certificate.

Texas Eastern requests that its Order No. 234 blanket authorization be clarified to ensure that it may construct facilities in the supply area to attach gas supplies which may be accessed by shippers and other transporters on its system after restructuring, regardless of the generic Natural Gas Act authority utilized by Texas Eastern to transport the gas. It is indicated that this clarification is critical in order that these shippers may have the opportunity to enjoy a quality of service similar to that previously provided by Texas Eastern as a bundled merchant. It is also indicated that without the ability to connect new gas supplies quickly, the adequacy of natural gas supplies over the long term under Order No. 636 restructuring may be jeopardized. Texas

[1] The petition was tendered for filing on June 8, 1992; however, the fee required by § 381.202 of the Commission's Regulations (18 CFR 381.202) was not paid until June 15, 1992. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

Eastern also argues that shippers' firm capacity entitlements may also be threatened since capacity is dependent in part on supply inputs.

Texas Eastern also requests that the Commission should clarify the rate treatment to be accorded to facilities which are constructed by the interstate pipeline as a provider of transportation and storage services. Texas Eastern states that in order to give its customers the same type of access to new gas supplies that they enjoyed when Texas Eastern acted as a bundled merchant, Texas Eastern should be assured that the costs from facilities constructed under its Order No. 234 blanket certificate would be rolled-in and paid for by all those utilizing Texas Eastern's transportation services. It is also requested that the Commission authorize Texas Eastern to use its Order No. 234 blanket certificate to construct supply facilities of up to $10 million per project and up to $30 million per year, both adjusted for inflation annually, with assurance that such amounts spent would receive rolled-in treatment.

Comment date: July 13, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket Nos. CP89–629–021; CP90–639–012]

June 22, 1992.

Take notice that on June 15, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed a petition to amend in Docket Nos. CP89–629–021 and CP90–639–012 so as to amend earlier certificates of public convenience and necessity under section 7 of the Natural Gas Act and subpart A of part 157 of the Commission's Regulations with regard to the rates to be charged to a shipper, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee received authorization to transport gas, *inter alia*, on behalf of Selkirk Cogen Partners, L.P. (Selkirk) on November 14, 1990, in Phase I of the Iroquois Project (53 FERC ¶ 61,194). Tennessee now states that the approved rate design (as modified by the Commission's October 9, 1991 order in Phase II of the Iroquois Project (57 FERC ¶ 61,047)) is inconsistent with the terms of an agreement between Tennessee and Selkirk. This agreement requires Tennessee to utilize a modified fixed-variable rate design for service to Selkirk. Tennessee also states that Selkirk has indicated that this rate design is critical to the permanent financing and viability of Selkirk's cogeneration project.

Comment date: August 6, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Florida Gas Transmission Company

[Docket No. CP92–535–000]

June 22, 1992.

Take notice that on June 15, 1992, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP92–535–000 a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act for authorization to construct and operate a new meter station in Lake County, Florida and to realign certain volumes of natural gas for Peoples Gas System, Inc. (Peoples) under the certificate issued in Docket No. CP82–553–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

FGT requests authority to construct and operate a new meter station in Lake County, Florida (Lake Murphy delivery point) to accommodate jurisdictional gas deliveries to Peoples under an existing firm sales service agreement (Rate Schedule G) and an existing preferred sales service agreement (Rate Schedule I) and to realign certain volumes of natural gas under the G sales service agreement. Specifically, FGT proposes to increase Peoples' maximum daily contract quantities through the proposed delivery point for its Eustis Division by 100,610 therms during the months of November through March and by 55,940 therms during April. FGT proposes to decrease Peoples' maximum daily contract quantities for the Daytona Beach Division by 2,560 therms during the months of November through March and by 44,980 therms during April. FGT proposes to decrease Peoples' maximum daily contract quantities for the Orlando Division by 98,050 therms during the months of November through March and by 10,960 therms during April.

FGT states that the proposed Lake Murphy delivery point would include a 6-inch diameter turbine meter, two side valves and any other necessary appurtenant facilities. FGT estimates that the total cost of constructing the meter station will be $393,600. FGT proposes that Peoples reimburse FGT for all costs directly and indirectly incurred by FGT for the construction of the meter station.

FGT states that the proposed construction and realignment was requested by Peoples to accommodate the geographic shift of its market requirements. FGT also states that it would not increase total gas deliveries to Peoples nor would it increase the current authorized level of service. FGT further states that its peak day and annual deliveries would not be impacted.

Comment date: August 6, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP92–542–000]

June 23, 1992.

Take notice that on June 19, 1992, Natural Gas Pipeline Company of America (Natural), 701 East 22d Street, Lombard, Illinois 60148, filed in Docket No. CP92–542–000 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 a new delivery point in Cook County, Illinois, for the delivery of natural gas to North Shore Company (North Shore), a local distribution company, which will use the natural gas delivered through the proposed facilities as part of its system supply, under the certificate issued to Natural in Docket No. CP82–402–000, 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.

Natural requests authorization to construct and operate dual 12-inch taps on its 30-inch and 36-inch Howard Street Lines and a dual 12-inch meter in Cook County, Illinois. Natural states that it will operate the new delivery point to provide jurisdictional services, including transportation services pursuant to subpart G of part 284 of the Commission's Regulations for North Shore. Natural states that the proposed delivery point could also be used to provide transportation under subpart B of part 284 of the Commission's Regulations.

It is stated that the volumes to be delivered to the proposed delivery point will be up to 130,000 Mcf per day. It is further stated that construction of the proposed facilities is estimated to be $395,000. Natural states that it has sufficient capacity to provide these services at the proposed delivery point without detriment or disadvantage to Natural's peak day and annual delivery capacity.

Comment date: August 7, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. East Tennessee Natural Gas Company

[Docket No. CP92–541–000]

June 23, 1992.

Take notice that on June 18, 1992, East Tennessee Natural Gas Company (ETNGC), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92–541–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to establish a new delivery point for service to Middle Tennessee Utility District (MTUD), an existing firm sales customer, under ETNGC's blanket certificate issued in Docket No. CP82–412–000, all as more fully described in the request which is on file with the Commission and open to public inspection.

ETNGC requests authorization to establish the new delivery point near Riddleton, Smith County, Tennessee, in response to a request from MTUD. It is stated that ETNGC sells natural gas to MTUD under the terms of its CD–1 Rate Schedule. It is asserted that MTUD requires the delivery point to render service to additional customers in the community of Riddleton, Tennessee, and to provide for additional customer growth in the area. It is further asserted that the deliveries, estimated at 480 Mcf of natural gas per day, will remain within MTUD's existing firm sales entitlement from ETNGC. It is explained that MTUD will reimburse ETNGC for the cost of new facilities required. This cost is estimated at $12,435. It is stated that ETNGC has sufficient capacity to accomplish deliveries at the new delivery point without detriment or disadvantage to its other customers.

Comment date: August 7, 1992, in accordance with Standard Paragraph G at the end of this notice.

7. Tennessee Gas Pipeline Company

[Docket No. CP92–538–000]

June 23, 1992.

Take notice that on June 16, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92–538–000 a request pursuant to § 157.205 of the Commission's Regulations to construct and operate a new delivery point for Encina Transmission Company (Encina), an intrastate pipeline company, in Lamar County, Alabama for an interruptible transportation service under Tennessee's blanket certificate issued in Do. CP82–413–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to construct and operate a 3-inch hot tap on an existing right-of-way located in Lamar County, Alabama to delivery up to 23,000 dekatherms of natural gas per day, on an interruptible basis, under Tennessee's Rate Schedule IT pursuant to an amendment to a gas transportation agreement effective August 1, 1992. Tennessee states that the estimated cost of these facilities is $15,170, which Encina would reimburse to Tennessee. The total quantities to be delivered to Encina after the establishment of this delivery point would not exceed the total quantities authorized to be delivered at currently authorized delivery points and the establishment of this delivery point is not prohibited by Tennessee's existing tariff, it is indicated. Tennessee has sufficient capacity to accomplish deliveries at this new delivery point without detriment or disadvantage to Tennessee's other customers, it is stated.

Comment date: August 7, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If 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. 92–15313 Filed 6–29–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER92–520–000]

New York State Electric & Gas Corp.; Filing

June 19, 1992.

Take notice that New York State Electric & Gas Corporation (NYSEG) on June 16, 1992, tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Regulations, 18 CFR 35.12, a supplemental agreement regarding the Agreement with the Town of Massena, New York Electric Department (Massena) for the sale of up to 30 MW of electric generating capacity and associated energy by NYSEG to Massena (the Agreement). Service under this agreement is scheduled to commence on July 1, 1992. NYSEG filed the Agreement with the Commission on May 1, 1992. The purpose of the supplemental Agreement is to make the scheduling service fee of six-thousand dollars ($6,000.00) per year (subject to 4.5% annual escalation) subject to the Agreements cost-based ceiling on capacity and energy charges.

NYSEG requests that July 1, 1992 be allowed as the effective date of the filing.

NYSEG served copies of the filing upon the New York State Public Service Commission, the New York Power Authority, and the Town of Massena, New York.

Any Person desiring to be heard or to protest said filing should file a motion to

intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 1, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92- 15257 Filed 6-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-87-000]

Transwestern Pipeline Co.; Conference

June 23, 1992.

Take notice that on July 7, 1992, a conference will be convened in the above-captioned docket to discuss Transwestern Pipeline Company's (Transwestern) summary of its proposed plan for implementation of Order No. 636.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Hearing Room 1, Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call David Faerberg at (202) 208-1275 or Marilyn Rand at (202) 208-0327.

Lois D. Cashell,

Secretary.

[FR Doc. 92-15258 Filed 6-29-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-12-NG]

Energy Consultants, 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 granting Energy Consultants, Inc., blanket authorization to export up to 146 Bcf of natural gas from the United States to Mexico over a two-year term beginning on the date of first export delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-56, 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 23, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-15352 Filed 6-29-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-65-NG]

Saratoga Natural Gas Inc.; Application for Blanket Authorization to Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 26, 1992, of an application filed by Saratoga Natural Gas Incorporated (Saratoga) to export 150,000 MMBtu per day of natural gas from the United States to Mexico for a two-year period beginning on the date of first delivery. The proposed exports would take place at any point on the international border where existing pipeline facilities are located. Saratoga would file quarterly reports detailing any transactions.

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 30, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8116.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Saratoga, a Texas corporation with its principal place of business in Houston, Texas, is an independent marketer of natural gas. The exported gas would come from production areas in the United States with surplus supplies of natural gas or would consist of supplies which are incremental to the needs of current purchasers. No contracts for the sale of the proposed exports have been executed, however, the specific details of each export transaction would be filed by Saratoga in conformity with DOE's quarterly reporting requirements. Saratoga anticipates all sales would result from arms-length negotiations and the prices would be determined by market conditions.

This export application will be reviewed under section 3 of the NGA and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

All parties should be aware that if DOE approves this requested blanket export authorization, it may designate a total authorized volume for the two-year term, or 109.5 Bcf of natural gas, rather than the 150,000 MMBtu per day requested by Saratoga, in order to maximize the applicants flexibility of operation.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have 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 address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final 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 590.316.

A copy of Saratoga'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, on June 23, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–15353 Filed 6–29–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–180874; FRL 4074–1]

Receipt of Application for Emergency Exemption to use Fluazinam; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Oklahoma Department of Agriculture (hereafter referred to as the "Applicant") for use of the pesticide fluazinam (CAS No. 7962259–6) to control *Sclerotinia blight* on up to 15,000 acres of peanuts in Oklahoma. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

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

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180874," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 718, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–305–6359).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of the fungicide, fluazinam, available as Fluazinam 50WP from ISK Biotech Corporation, to control *Sclerotinia blight* on up to 15,000 acres of peanuts in Oklahoma. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, the fungicides currently registered to control *Sclerotinia blight* of peanuts, Rovral (iprodione) and Tenn-cop (emulsifiable copper), do not provide adequate control of this disease in Oklahoma. The Applicant claims that annual yield loss in Oklahoma from *Sclerotinia blight* ranges from 5 to 10 percent with higher losses in years with heavier than normal rainfall and cooler than normal temperatures. Yield losses of this magnitude are expected to result in economic losses of more than $11 million over the 15,000 acres needing treatment.

Under the proposed exemption, up to 2 applications of Fluazinam 50WP would be made at 2.0 pounds of product (1.0 pounds a.i.) per acre. A maximum of 4.0 pounds of product (2.0 pounds a.i.) would be applied per acre per season. No applications would be made within 30 days of harvest. A maximum of 60,000 pounds of product (30,000 pounds a.i.) may be needed to treat up to 15,000 acres of peanuts.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the Federal Register and solicit public comment on an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any

currently registered pesticide) [40 CFR 166.24 (a)(1)]. Fluazinam is a new chemical. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Oklahoma Department of Agriculture.

Dated: June 17, 1992.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-15340 Filed 6-29-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Fee Schedule for Processing Map Changes for FY 1992 and FY 1993

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Notice.

SUMMARY: This notice contains the fee schedule for processing certain changes to the National Flood Insurance Program (NFIP) maps to be effective with the final rule for 44 CFR part 72 published elsewhere in this **Federal Register.** The initial fees, pre-authorized spending limits, and hourly rate for conditional Letters of Map Amendment (CLOMAs) and conditional Letters of Map Revision (CLOMRs) have been established through prior rule-making. The procedures for calculating the initial fees, pre-authorized spending limits, and hourly rate for engineering review and administrative processing of Letters of Map Revision (LOMRs) and map revisions listed in this notice are published in the final rule for 44 CFR part 72 elsewhere in this **Federal Register.**

This action is being undertaken to reduce expenses to the NFIP, by allowing for partial recovery of certain costs associated with reviewing projects intended to support changes in NFIP maps. These projects frequently involve the placement of fill, stream channelizations, or construction of bridges, culverts, or levees. In addition, these projects are typically limited in scope and are often done solely to reduce flood risk to a limited area of the floodplain proposed for development so as to offer relief from flood insurance purchase requirements of 42 U.S.C. 4012a, or to secure financing or other benefits.

The fees collected under this activity will be deposited into the National Flood Insurance Fund which is the source of funding for this service. Cost recovery will contribute to maintaining the NFIP as a self-supporting program.

EFFECTIVE DATE: July 30, 1992.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The fee schedule sets forth the fees to be charged for review and processing of certain changes to NFIP maps as of the effective date of the final rule amending 44 CFR part 72. The initial fees, preauthorized spending limits, and hourly rate for CLOMAs and CLOMRs have been established through prior rule-making. The procedures for determining initial fees, pre-authorized spending limits and hourly rate for LOMRs and map revisions are published in the final rule for 44 CFR part 72 elsewhere in this **Federal Register.**

On October 9, 1991, FEMA published at 56 FR 50907, for comment, a Notice containing a proposed fee schedule to take effect as of the effective date of the final rule. During the 60-day comment period, no comments were received concerning the Notice of proposed fees. The Notice was also inadvertently republished at 56 FR 51394 on October 11, 1991.

Four changes have been made in this final Notice, two of which alter paragraph (b) of the Initial Fee Schedule so that the wording agrees with the revised language contained in the final rule published elsewhere in this **Federal Register.** The first is an editorial change in which the fee exemption for LOMAs is stated in a separate sentence. This was done to clarify that all LOMAs are fee exempt. The second change makes the wording of the fee exemption for single lot LOMRs based on fill comply with the revised wording of this exemption in § 72.5(b) of the final rule published elsewhere in this **Federal Register.** The change gives the Administrator discretion in applying the fee exemption for single lot LOMRs based on fill outside the regulatory floodway, thereby clarifying FEMA's original intent to provide relief for individual property owners while avoiding potential use of the fee exemption to circumvent fees for multi-lot or subdivision LOMRs. A third change affects the wording of Paragraph (i) of the Initial Fee Schedule to specify that payment of fees is to be made in U.S. Funds. This change was made in response to recent attempts by requestors of conditional LOMAs and LOMRs to remit payment in foreign funds which cannot be processed due to administrative restrictions. The fourth change, affecting the Summary and Supplementary Information sections of the Notice, and paragraph (a) of the Initial Fee Schedule, provides for fees to be revised periodically, as needed, but no more than once annually, rather than requiring annual publication of a notice of revised fees by August 1. This change is made to provide more flexibility, since it may not always be necessary to revise fees on an annual basis.

Since the primary component of the fees is the prevailing private sector labor rate charged to FEMA for review and processing of the map changes, the fees will vary due to inflation and other economic fluctuations. Therefore, a revised fee schedule will be published periodically, as needed, as a notice in the **Federal Register.** These fees are intended to reduce expenses to the NFIP by allowing for a partial recovery of certain costs associated with effecting these map changes.

In the fee schedule the initial fees are listed according to the type of flood control project involved. The appropriate initial fee is required to be paid by those seeking a LOMR or map revision prior to FEMA's initiation of the review. The initial fee represents the minimum engineering review and administrative processing costs for a LOMR or map revision based on the type of project. The initial fee does not include costs for labor and materials associated with the cartographic processing and preparation of a map revision. The cartographic costs vary depending on the number of map panels affected and the complexity of the changes being incorporated. Therefore, these costs will be calculated on a case-by-case basis. However, based on recent experience, these costs average approximately $2,800 per map panel.

If it is determined that the actual cost associated with the review and processing of a LOMR or map revision will exceed the amount remitted for the initial fee, the requestor will be billed and will have to remit payment prior to receiving FEMA's final determination.

The pre-authorized spending limits listed in the fee schedule below denote the amount at which FEMA will suspend review of a given case and seek written authorization from the requestor prior to proceeding with the review. This limitation gives the requestor the option of discontinuing the review at that time. This affords the requestor protection against the possibility of a given review

becoming more costly than anticipated by the requestor.

Initial Fee Schedule

The hourly rate upon which the following fees and pre-authorized spending limits are based, is $35 per hour.

(a) for CLOMAs and for CLOMRs, the initial fees have been established by prior rulemaking. Those initial fees, subject to the provisions of § 72.4, shall be paid by the requestor in the following amounts:

(1) Single lot CLOMA	$175
(2) Single lot CLOMR (based strictly on the proposed placement of fill outside the regulatory floodway)	175
(3) Multi-lot/subdivision CLOMA	245
(4) Multi-lot/Subdivision CLOMR (based strictly on the placement of fill outside the regulatory floodway)	245
(5) Review of new hydrology	245
(6) New bridge or culvert (no channelization)	490
(7) Channel modifications only	560
(8) Channel modification and new bridge or culvert	735
(9) Levees, berms, or other structural measures	945
(10) Structural measures on alluvial fans	2,800

(b) For LOMRs or map revisions that follow a CLOMR issued by FEMA, the initial fee, subject to the provisions of § 72.4, for all categories listed under paragraph (c) below will be $200, so long as the as-built conditions are the same as the proposed conditions upon which FEMA based the issuance of the CLOMR. There are no fees for LOMAs. There are no fees for single lot LOMRs, which meet the requirements set forth in § 72.5(b) of the final rule, and are based strictly on the placement of fill outside of the regulatory floodway, regardless of whether they are issued following a CLOMA or CLOMR.

(c) For LOMRs or map revisions which do not follow a CLOMR issued by FEMA, the initial fee, subject to the provisions of § 72.4, shall be paid by the requestor in the following amounts:

(1) Multi-lot/Subdivision LOMR (based strictly on the placement of fill outside the regulatory floodway)	$445
(2) New bridge or culvert (no channelization)	690
(3) Channel modification only	760
(4) Channel modification and new bridge or culvert	935
(5) Levees, berms, or other structural measures	1,145
(6) Structural measures on alluvial fans	3,000

(d) For projects involving combinations of the actions listed under paragraphs (a), (b), or (c) above, the initial fee shall be that charged for the most expensive action of those that compose the combination.

(e) Following completion of FEMA's review for any CLOMA, CLOMR, LOMR, or map revision, the requestor will be billed at the established hourly rate for any actual costs exceeding the initial fee incurred during the review. The hourly rate is currently $35.00 per hour.

(f) In the event that the revision request results in a map revision, the requestor will be notified and billed for costs of cartographic preparation and processing of the revised map. This work will not be initiated until FEMA has received payment. The cost of reprinting and distributing the revised Flood Insurance Rate Map (FIRM) or Flood Boundary Floodway Map (FBFM), or both, will be borne by FEMA.

(f) Requestors of CLOMAs, CLOMRs, LOMRs and map revisions will be notified of the anticipated total cost if the total cost of processing the request, including estimated costs for cartographic preparation and processing of a map revision, will exceed the pre-authorized spending limits listed in (1) through (4) below. The pre-authorized spending limits vary according to the type of review performed and are based on the established hourly rate.

(1) CLOMAs, CLOMRs, LOMRs and map revisions based on fill outside the regulatory floodway	$700
(2) CLOMRs, for the review of new hydrology and CLOMRs, LOMRs and map revisions based on channel modifications, bridges and culverts, or a combination of these	1,500
(3) CLOMRs, LOMRs and map revisions based on levees, berms, or other structural measures	2,500
(4) CLOMRs, LOMRs and map revisions based on structural measures on alluvial fans	5,000

(g) In the event that processing costs are anticipated to exceed the pre-authorized spending limits listed in (1) through (4) above, processing of the request will be suspended pending FEMA receipt of written approval from the requestor to proceed.

(h) The entity that applies to FEMA through the local community for review will be billed for the cost of the review. The local community incurs no financial obligation for fees under the reimbursement procedures of 33 CFR part 72 as a result of transmitting the application by another party to FEMA.

(i) Payment of both the initial fee and final cost shall be by check or money order payable to U.S. funds to the National Flood Insurance Program and must be received by FEMA before the CLOMA, CLOMR, or LOMR will be issued, or before the cartographic processing will begin for a map revision. (Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: June 22, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-153161 Filed 6-29-92; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Hispaniola Discussion Agreement; et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-010977-014.

Title: Hispaniola Discussion Agreement.

Parties: United States Atlantic and Gulf/Hispaniola Steamship Freight Association, AFRAM Lines (U.S.A.), Ltd., Zim Israel Navigation Co., Tropical Shipping and Construction Co. Ltd., U.S.A. Tecmarine Incorporation d/b/a Tecmarine Lines, Antillean Marine Shipping Corporation, Seaboard Marine Ltd.

Synopsis: The proposed amendment will delete Zim Israel Navigation Co. as a party to the Agreement.

Agreement No.: 224-200060-021.

Title: Port of New Orleans/Coastal Cargo Terminal Agreement.

Parties: Port of New Orleans ("Port"), Coastal Cargo Company ("Coastal").

Synopsis: The amendment acknowledges Coastal's options to cancel twenty sections of leased premises at the Galvez Street Wharf located at the Port and to have Coastal's rent reduced proportionately.

Agreement No.: 224–200493–002.

Title: Port Authority of New York and New Jersey/Maher Terminals, Inc. Terminal Agreement.

Parties: Port Authority of New York and New Jersey Maher Terminals, Inc. ("Maher").

Synopsis: The subject modification provides for an extension, through June 30, 1993, of Maher's use of the open area adjacent to its Fleet Street Container Terminal.

Agreement No.: 224–200676.

Title: Port of New York and New Jersey and Sea-Land Services, Inc.

Parties: The Port of New York and New Jersey ("Port"), Sea-Land Services, Inc. ("Sea-Land")

Synopsis: The Agreement provides for the Port to make incentive payments to Sea-Land for each container with cargo that is loaded or unloaded at the Port and shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200677.

Title: Port Authority of New York and New Jersey/Polish Ocean Lines Terminal Agreement.

Parties: Port Authority of New York and New Jersey ("Port Authority"), Polish Ocean Lines ("Carrier").

Synopsis: The Agreement provides for the Port Authority, under its Container Incentive Program, to pay the Carrier $20 per import and $40 per export container with cargo, loaded or unloaded at the port and shipped by rail to or from points more than 260 miles from the port.

Agreement No.: 224–200679.

Title: Port of New York and New Jersey and DELMAS AAEL, Co.

Parties: The Port of New York and New Jersey ("Port") DELMAS AAEL, Co. ("DELMAS")

Synopsis: The Agreement provides for the Port to make incentive payments to DELMAS for each container with cargo that is loaded or unloaded at the Port and shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200683

Title: Port of New York and New Jersey and Lykes Brothers Steamship Company, Inc.

Parties: The Port of New York and New Jersey ("Port"), Lykes Brothers Steamship Company, Inc. ("Lykes")

Synopsis: The Agreement provides for the Port to make incentive payments to Lykes for each container with cargo that is loaded or unloaded at the Port and shipped by rail to or from points more than 260 miles from the Port.

By Order of the Federal Maritime Commission.

Dated: June 24, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–15308 Filed 6–29–92; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817 (e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: American Canadian Caribbean Line, Inc., P.O. Box 368, 461 Water Street, Warren, Rhode Island 02885.

Vessel: MAYAN PRINCE.

Dated: June 24, 1992.

Joseph C Polking,

Secretary.

[FR Doc. 92–15263 Filed 6–29–92; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Canadian Caribbean Line, Inc. and MP Leasing Corp., 461 Water Street, Warren, RI 02885.

Vessel: MAYAN PRINCE.

Dated: June 24, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–15262 Filed 6–29–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Banc One Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) 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, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are 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 must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 24, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio, and Banc One Colorado Corporation, Columbus, Ohio; to acquire 100 percent of the voting shares of Affiliated Bankshares of Colorado, Inc., Denver, Colorado, and Intermountain Bankshares of Colorado, Inc., Denver, Colorado, and thereby indirectly acquire Affiliated National Bank - Alemeda, Lakewood, Colorado, Affiliated National Bank - Boulder, Boulder, Colorado, Affiliated National Bank - Center, Center, Colorado, Affiliated National Bank - Colorado Springs, Colorado Springs, Colorado, Affiliated National Bank - Craig, Craig, Colorado, Affiliated National Bank - Delta, Delta, Colorado, Affiliated National Bank - Denver, Denver, Colorado, Affiliated National Bank - Englewood, Englewood, Colorado, Affiliated National Bank - Fort Collins, Fort Collins, Colorado, Affiliated National Bank - Fruita, Fruita, Colorado, Affiliated National Bank - Greenley, Greenley, Colorado, Affiliated National Bank - Lakeside, Wheat Ridge, Colorado, Affiliated National Bank - Littleton, Littleton, Colorado, Affiliated National Bank - Loveland, Loveland, Colorado, Affiliated National Bank - Montrose, Montrose, Colorado, Affiliated National Bank - Salida, Salida, Colorado, Affiliated National Bank - University Hills, Denver, Colorado, and Affiliated National Bank - Westminster, Westminster, Colorado.

In connection with this application, Applicants also propose to acquire and operate First Colorado Bankshares Insurance Company, Denver, Colorado, and Affiliated Bankshares Insurance Agency, Inc., Denver, Colorado, pursuant to §§ 225.25(b)(8)(i) and (iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 24, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–15319 Filed 6–29–92; 8:45 am]

BILLING CODE 6210–01–F

NGLC, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 24, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. NGLC, Inc., Miami, Florida; to become a bank holding company by acquiring 92 percent of the voting shares of Peoples National Bank of Commerce, Miami, Florida.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. CB Financial Corporation, Jackson, Michigan; to merge with First of Charlevoix Corporation, Charlevoix, Michigan, and thereby indirectly acquire First State Bank of Charlevoix, Charlevoix, Michigan.

2. Heartland Bancorp, Inc., El Paso, Illinois; to acquire 100 percent of the voting shares of First National Bank and Trust Company in Gibson City, Gibson City, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Commonwealth Financial Corporation, Louisville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Commonwealth Bank and Trust Company, Louisville, Kentucky.

Board of Governors of the Federal Reserve System, June 24, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–15320 Filed 6–29–92; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 902 3116]

BelAge Plastic Surgery Center, P.C., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Virginia-based plastic surgery center and its founder from misrepresenting the likelihood of risks or scarring, the length of the recovery period, the amount of pain, or the need for pain medication, following plastic or cosmetic surgery.

DATES: Comments must be received on or before August 31, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael McCarey, FTC/H–200, Washington, DC 20580, (202) 326–3303.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of BelAge Plastic Surgery Center, P.C., and George F. Miller, Jr., M.D., individually and as an officer of BelAge Plastic Surgery Center, P.C., hereinafter sometimes referred to as "proposed respondents," and it appearing that respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between BelAge Plastic Surgery Center, P.C., by its duly authorized officer, and George F. Miller, Jr., M.D., individually and as an officer of BelAge Plastic Surgery Center, P.C., and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent BelAge Plastic Surgery Center, P.C., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 4900 Seminary Road, Alexandria, Virginia 22311.

2. Proposed respondent George F. Miller, Jr., M.D., is an individual medical doctor who founded BelAge Plastic Surgery Center, P.C., and is an officer and director of the corporate respondent. He directs, controls and formulates the acts and practices of BelAge Plastic Surgery Center, including the acts and practices alleged in the complaint herein, His business address is 4900 Seminary Road, Alexandria, Virginia 22311.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondents waive: (a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby and related material pursuant to § 2.34 of the Commission's rules, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

1. *Advertising, offering for sale or promotion* does not include any statement made by respondents or their representatives, agents or employees to a patient after the patient has agreed to purchase the procedure represented.

2. *Recovery period* means the period between when a typical patient of respondents has had the surgery represented and when such patient actually returns to a normal schedule, including social activities and full-time employment, but excluding strenuous exercise.

3. In order for a disclosure to be made "prominently" it must be in the same typeface and color contrast as the representation which triggers the disclosure.

4. *Typical or typically* means in the majority of instances or the majority of patients.

I.

It is Ordered that respondents BelAge Plastic Surgery Center, P.C. a Virginia Corporation, its successors and assigns, and its officers, and George F. Miller, Jr., M.D., individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale or promotion of any cosmetic or plastic surgical procedure, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or by implication:

A. Representing that the results from any cosmetic or plastic surgical procedure can be achieved easily, simply or quickly or that the recovery period following any surgical procedure is quick, easy, or simple, when the recovery period is likely to be more than five days, unless the length of the recovery period is clearly and prominently disclosed in close proximity to such representation.

B. Making any representation as to when patients can resume a normal schedule or return to work or making any other representation regarding recovery experience, which does not describe the recovery experience of a typical patient of respondents, unless one of the following is clearly and conspicuously disclosed in close proximity to such representation: (1) The recovery experience of a typical patient of respondents, or (2) that patients will experience the represented recovery experience only under limited or atypical circumstances.

C. Representing that following breast augmentation, breast reduction, or any other cosmetic or plastic surgical procedure for which patients typically take narcotic pain medications during the post-operative period, patients are likely to experience no pain, or only mild discomfort, or are unlikely to require narcotic pain medication; provided, however, that this paragraph shall not apply if respondents can demonstrate that their patients atypically do not take narcotic pain medication during the post-operative period for the procedure in question;

D. Representing that any cosmetic or plastic surgery procedure which entails serious adverse risks is safe unless respondents clearly and prominently disclose that such procedure entails adverse risks. For purposes of this Order, the following disclosure shall be deemed adequate to satisfy this disclosure requirements:

Of course, plastic surgery, like any surgery, has risks. Your surgeon will discuss the risks with you in detail.

The disclosure required by this paragraph shall be made either (1) in close proximity to such representation or (2) in the case of a written representation, on the same page as the representation, in which case the disclosure must be boxed and isolated from all other material, and be in the same typeface and color contrast as the largest and most noticeable representation on that page which triggers the disclosure.

E. Misrepresenting the likelihood of serious adverse risks associated with any plastic or cosmetic surgical procedure or device implanted through any such procedure;

F. Misrepresenting the likelihood of permanent, extensive or conspicuous scare resulting from breast reduction, breast lift or abdominoplasty, or any other cosmetic or plastic surgical procedure which typically results in permanent and conspicuous scars;

G. Misrepresenting the length of the recovery period following any cosmetic or plastic surgical procedure; provided, however, that nothing in this order shall prevent respondents from making any truthful representation as to when a typical patient of respondents returns to work;

H. Representing, contrary to fact, that little or no pain or discomfort is typically experienced as a result of undergoing any cosmetic or plastic surgical procedure;

I. Misrepresenting the need for pain medication or the type of pain medication that is likely to be needed to relieve pain following any cosmetic or plastic surgical procedure; provided, however, that nothing in this order shall prevent respondents from making any truthful representation regarding the pain medication taken by a typical patient of respondents.

II.

It is Further ordered That respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, the filing of a bankruptcy petition, or any other change in the corporation(s) which may affect compliance obligations arising out of the order.

III.

It is Further ordered That respondents and their successors or assigns, shall distribute a copy of this order to each of their officers, agents, representatives, independent contractors and employees who are engaged in the preparation and placement of advertisements or promotional materials, who communicate with patients or potential patients, who perform surgical services or who have any responsibilities with respect to the subject matter of this Order.

IV.

It is Further ordered That, for a period of ten years from the date of entry of this Order, the individual respondent named herein shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment, with each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment.

V.

It is Further ordered That respondents shall maintain for a period of three years from the date the document is created or used, whichever is later, documents demonstrating the manner and form of respondents' compliance with this order. *It is Further ordered* That such documents shall be made available to the Commission or its staff for inspection and copying within 30 days of receipt of a request for an inspection.

VI.

It is Further ordered That respondents and their successors or assigns, shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from BelAge Plastic Surgery Center ("BelAge"), located in Alexandria, Virginia, and George F. Miller, Jr., M.D., the owner and director of BelAge (collectively, the "respondents"). Respondents market and provide cosmetic surgery to the public.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it would withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondents deceptively promoted a variety of cosmetic surgery procedures and breast implants. Under this agreement, the respondents will cease and desist from making misrepresentations concerning the likelihood of serious adverse risks associated with any cosmetic surgery procedure or device implanted thereby, and from making certain misrepresentations concerning the likelihood of permanement, extensive or conspicuous scars, the length of the recovery period, the pain typically experienced and the need for pain medication, following cosmetic or plastic surgery.

This matter concerns claims made for various cosmetic surgical procedures and breast implants contained in BelAge's promotional brochure entitled "Everything You've Always Wanted To Know About Plastic Surgery." The complaint accompanying the proposed consent order alleges that respondents violated Section 5 of the Federal Trade Commission Act in making certain representations contained in this brochure.

Specifically, according to the complaint, respondents' brochure contained false and misleading statements that silicone breast implants do not interfere with mammography; that breast lift surgery in unlikely to result in permanent and conspicuous scars; that the recovery period following face lift and breast reduction is likely to be very short; that a protruding chin or jaw can usually be corrected through surgery which involves a very short recovery time; and that following ostoplasty (surgery to correct protruding ears), breast augmentation and breast reduction, most patients will experience no pain or only mild discomfort and are not likely to require narcotic pain medication to relieve pain. Further, according to the complaint, respondents represented that cosmetic surgery is safe and failed to disclose that such surgery entails serious adverse risks. In light of respondents' representations that such surgery is safe, such failure to disclose is false and misleading, according to the complaint.

Part I(A) of the proposed order would prohibit respondents from making representations that the results from any cosmetic surgical procedure can be achieved easily or quickly, or similar

representations, when the recovery period is likely to be more than five days, unless respondents disclose the length of the recovery period.

Part I(B) prohibits respondents from making any representation regarding recovery experience which does not describe the recovery experience of a typical patient of respondents, unless respondents disclose either the recovery experience of a typical patient of respondents or that patients will experience the represented recovery experience only under limited or a typical circumstances.

Parts I(C), (H) and (I) prohibit misrepresentations about the pain patients are likely to experience or the pain medication patients are likely to require following cosmetic surgery procedures.

Part I(D) prohibits respondents from representing that any cosmetic surgery procedure which entails serious adverse risks is safe unless respondents disclose that such procedure entails adverse risks.

The order in Part I(E) also prohibits respondents from misrepresenting the likelihood of serious adverse risks associated with any cosmetic surgical procedure or device implanted through any such procedure. This provision would prohibit future misrepresentations about the risks of breast implants, other implanted devices, and any cosmetic surgical procedure.

The order, in Part I(F), would prohibit misrepresenting the likelihood of permanent, extensive or conspicuous scars resulting from any cosmetic surgical procedure which typically results in permanent and conspicuous scars, and, in Part I(G), would prohibit misrepresenting the length of the recovery period following any cosmetic surgical procedure.

Parts II–VI of the proposed order contain various record keeping, compliance and notification requirements, which are standard in Commission orders.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 92–15279 Filed 6–29–92; 8:45 am]

BILLING CODE 6750–01–M

[Docket 9246]

University Health, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a non-profit corporation and two of its subsidiaries, for ten years, from acquiring St. Joseph Hospital or any other hospital in the Augusta, Georgia area—and from consolidating the operations of respondents' University Hospital with those of St. Joseph or any other local general hospital—without prior FTC approval.

DATES: Comments must be received on or before August 31, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark Horoschak or Oscar Voss, FTC/S–3115, Washington, DC 20580. (202) 326–2756 or 326–2750.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's rules of practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The agreement herein, by and between University Health, Inc., a corporation, University Health Services, Inc., a corporation, and University Health Resources, Inc., a corporation (hereinafter sometimes collectively referred to as "respondents"), by their duly designated officers and their attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent University Health, Inc., is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 1350 Walton Way, Augusta, Georgia 30910. Respondent University Health Services, Inc., is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 1350 Walton Way, Augusta, Georgia 30910. Respondent University Health Resources, Inc. is a for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 810 13th Street, Augusta, Georgia 30910.

2. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violation of section 7 of the Clayton Act, and have filed an answer to said complaint denying said charges.

3. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondents that their proposed acquisition would have violated the law, if it had been consummated, as alleged in the compliant issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and

if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's rules, the Commission may, without further notice to respondents, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreement-to order to respondents' addresses as stated in this agreement shall constitute service. Respondents waive any right they may have to any other manner of service. The compliant may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Respondents have read the compliant and the order contemplated hereby. Respondents understand that once the order has become final, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

I.

It is Ordered That, for the purposes of this order, the following definitions shall apply:

A. "University" means University Health, Inc., University Health Services, Inc., and University Health Resources, Inc., and their directors, trustees, officers, employees, representatives, agents, parents, subsidiaries, affiliates, divisions, successors, and assigns.

B. "Hospital" means a health facility, other than a federally owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized medical staff, that provides 24-hour inpatient care, as well as outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities. For purposes of this order, retirement communities (*e.g.*, the Brandon Wilde facility operated by Autusta Resource Center on Aging, Inc.), or health facilities whose inpatient services are limited to rehabilitation care (*e.g.*, Walton Rehabilitation Hospital in Augusta, Georgia), mental health care, or substance abuse care, are not "hospitals."

C. To "acquire a hospital" means to directly or indirectly acquire the whole or any part of the assets of a hospital; acquire the whole or any part of the stock or share capital of, the right to designate directly or indirectly directors or trustees of, or any equity or other interest in, any person which operates a hospital; or enter into any other arrangement to obtain direct or indirect ownership, management or control of a hospital or any part thereof, including but not limited to a lease of or management contract for a hospital.

D. To "operate a hospital" means to own, lease, manage, or otherwise control or direct the operations of a hospital, directly or indirectly.

E. "Affiliate" means any entity whose management and policies are controlled or directed in any way, directly or indirectly, by the person with which it is affiliated.

F. "Person" means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

G. The "Augusta area" means the area consisting of Richmond and Columbia Counties in Georgia, and Aiken County, South Carolina.

H. The "Commission" means the Federal Trade Commission.

II.

It is Further ordered That, for a period of ten (10) years from the date this Order becomes final, University shall not, without the prior approval of the Commission:

A. Acquire any hospital in the Augusta area; or

B. Permit any hospital it operates in the Augusta area to be acquired by any person that operates, or is in the process of acquiring, any other hospital in the Augusta area.

Provided, however, that such prior approval shall not be required for:

(a) The establishment of a new hospital service or facility (other than as a replacement for a hospital service or facility not operated by University, pursuant to an agreement or understanding between University and the person operating the replaced service or facility);

(b) Any transaction exempt from the requirements of Paragraph III of this order by operation of subpart (b) of the proviso to that Paragraph III; or

(c) Any transaction subject to this Paragraph II of this Order if the fair market value of (or, in case of a purchase acquisition, the consideration to be paid for) the hospital, part thereof or interest therein to be acquired does not exceed one million dollars ($1,000,000).

III.

It is Further Ordered That, for a period of ten (10) years from the date this Order becomes final, University shall not, without providing advance notification to the Commission, enter into any joint venture or other arrangement with any other hospital in the Augusta area for the joint establishment or operation of any new hospital, hospital medical or surgical diagnostic or treatment service or facility, or part thereof in the Augusta area. Such advance notification shall be required upon University's issuance of a letter of intent for, or execution of an agreement to enter into, such a transaction, whichever is earlier.

No notification shall be required by this Paragraph III of this Order for any transaction for which notification is required to be made, and has been made, pursuant to section 7A of the Clayton Act, 15 U.S.C. 18a, or for which prior approval by the Commission is required, and has been requested, pursuant to Paragraph II of this order.

The notification required by this paragraph III of this Order shall be made according to the Notification and Report Form set forth in the appendix to part 803 of title 16 of the Code of Federal Regulations, as amended, and shall be prepared and transmitted in accordance with the requirements of that part, except that notification need not be transmitted to the United States Department of Justice. The notification required by this paragraph III of this Order shall apply to University and shall not apply to any other party to the transaction. If the transaction for which notification is required by this paragraph III of this Order requires state regulatory approval under a health facilities certificate of need law, University may, in lieu of the foregoing notification, submit to the Commission a copy of the application for such state approval.

Provided, however, that no transaction shall be subject to this paragraph III of this Order if:

(a) The fair market value of the assets to be contributed to the joint venture or other arrangement by hospitals not

operated by University does not exceed one million dollars ($1,000,000); or

(b) The service, facility or part thereof to be established or operated is to engage in no activities other than the provision of the following services: Laundry; data processing; purchasing; materials management; billing and collection; dietary; industrial engineering; maintenance; printing; security; records management; laboratory testing; personnel education, testing, or training; or health care financing (such as through a health maintenance organization or preferred provider organization).

IV.

It is further ordered That, for a period of ten (10) years from the date this Order becomes final, University shall not permit all or any substantial part of any hospital it operates in the Augusta area to be acquired by any other person unless the acquiring person files with the Commission, prior to the closing of the acquisition, a written agreement to be bound by the provisions of this order, which agreement University shall require as a condition precedent to the acquisition.

V.

It is further ordered That University shall, one year after the date this Order becomes final and annually for nine (9) years thereafter, file with the Commission a verified written report setting forth in detail the manner and form in which it has complied and intends to comply with this Order.

VI

It is Further ordered That, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to University made at its principal offices, University shall permit any duly authorized representatives of the Commission:

1. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in University's possession or control relating to any matter contained in this Order; and

2. Upon five days' notice to University and without restraint or interference from University, to interview its officers or employees, who may have counsel present, regarding such matters.

VII

It is Further ordered, That University shall notify the Commission at least thirty (30) days prior to any proposed change, such as dissolution, assignment, sale resulting in the emergence of a successor corporation or association, or the creation or dissolution of subsidiaries or affiliates, which may affect compliance obligations arising out of this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from University Health, Inc. and its affiliates University Health Services, Inc. and University Health Resources, Inc. (hereinafter collectively referred to as "respondents"). The agreement would settle charges by the Federal Trade Commission that respondents' proposed acquisition of a competing hospital in Augusta, Georgia would have violated section 7 of the Clayton Act if it had been carried out.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or issue and serve the agreement's proposed order.

The Complaint

The Commission issued an administrative complaint against the three respondents on April 2, 1991. According to the complaint, respondents operate University Hospital, a general acute care hospital in Augusta, Georgia, and related health care facilities. Respondents agreed to acquire St. Joseph Hospital, another general acute care hospital in Augusta. The complaint alleges that University and St. Joseph were competitors in the market for general acute care hospital services in a three-county area including Augusta and surrounding communities. That market, according to the complaint, was already highly concentrated, and entry by new competitors would be difficult. The complaint charged that if respondents carried out their agreement to acquire St. Joseph, the effect of that acquisition would be substantially to lessen competition in the Augusta area hospital market, in violation of section 7 of the Clayton Act.

The proposed acquisition challenged in the administrative complaint was never completed. Shortly after the Commission issued the complaint, the proposed acquisition was preliminarily enjoined by a Federal court, pursuant to section 13(b) of the FTC Act. See Federal Trade Commission v. University Health, Inc., 938 F.2d 1206 (11th Cir. 1991). The court's injunction prohibiting the acquisition will remain in effect until the Commission gives final approval to the proposed consent order, or until the Commission's administrative proceeding against University is otherwise concluded.

The Proposed Consent Order

The first paragraph of the proposed order defines the respondents subject to the order, and certain other terms used in the order.

Paragraph II would prohibit respondents from acquiring, without the prior approval of the Federal Trade Commission, all or any significant part of a general acute care hospital in Richmond or Columbia Counties in Georgia, or Aiken County in South Carolina. It would also prohibit respondents from transferring, without prior Commission approval, any general hospital or significant part thereof they operate in that area to another person operating (or in the process of acquiring) a general hospital in the area. These provisions, in combination, would give the Commission authority to prohibit any substantial combination of the general acute care hospital operations of University with those of any other general hospital in the Augusta area, unless University convinced the Commission that a particular transaction would not endanger competition in the Augusta area hospital market.

Paragraph III would require respondents to provide advance notice to the Commission of joint ventures with other local hospitals for the establishment of new hospital facilities or services in the Augusta area. This Paragraph would not apply to transactions subject to the prior approval requirement of paragraph II, or to the Clayton Act's premerger notification requirements.

Both paragraph II and paragraph III would not cover acquisitions and joint ventures where the value of the acquired assets, or the assets contributed to a joint venture by participants other than respondents, is $1 million or less. Nor would those Paragraphs apply to joint ventures between University and other hospitals which are limited to the provision of certain specified hospital support services (such as laundry or laboratory testing) or the establishment of new health plans (such as health maintenance organization). In addition,

paragraphs II and III would both expire ten years after the order becomes final.

Paragraph IV of the proposed order would prohibit, for ten years, respondents from transferring any hospital in the Augusta area to a non-respondent without first filing with the Commission an agreement by the transferee to be bound by the order. Paragraphs V and VI of the proposed order require respondents to make annual reports to the Federal Trade Commission, and to make certain documents and personnel available to the Commission upon request, so the Commission may verify compliance with the order. Finally, paragraph VII of the proposed order requires respondents to notify the Commission at least thirty days before any proposed change in corporate structure that may affect compliance with the order.

The purpose of this analysis is to invite public comment concerning the proposed order, to assist the Commission in its determination whether to make the order final. This analysis is not intended to constitute an official interpretation of the agreement and the proposed order or to modify their terms in any way.

The agreement is for settlement purposes only and does not constitute an admission by respondents that their proposed acquisition would have violated the law, as alleged in the Commission's complaint.

By direction of the Commission, Commissioner Owen dissenting.

Donald S. Clark,

Secretary.

[FR Doc. 92–15278 Filed 6–29–92; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Urban Community-Based School Readiness Service Integration Coalition

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Request for application for a grant to implement a plan of integrated services in support of the School Readiness goal of the America 2000 Education Strategy.

SUMMARY: On April 18, 1991, the President announced AMERICA 2000: An Education Strategy. This bold and comprehensive initiative to change American education establishes national goals to be achieved by the year 2000. The first goal states the following: By the year 2000, all children will start school ready to learn

There is a serious need for innovative, community-based service delivery approaches which integrate multiple services and providers into holistic systems that address the diverse needs of school-age children from five through eighteen years old and their families, and longitudinally ensure that children arrive at school each day ready to learn, and successfully complete school and transition into employment and/or higher education, and independent living. This grant announcement furthers this developmental process by providing support for the organization and operational testing of a previously developed strategic plan for an integrated service system for a school-age population of children and their families.

CLOSING DATE: The closing date for submitting applications under this announcement is August 14, 1992.

FOR FURTHER INFORMATION CONTACT: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., room 405F, Hubert H. Humphrey Building, Washington, DC 20201, Phone (202) 245–1794.

Part I. Background and Purpose

A. School Readiness Goal of the American 2000 Education Strategy

On April 18, 1991, the President announced AMERICA 2000: An Education Strategy. This bold and comprehensive initiative to change American education establishes national goals and objectives with four distinct but interdependent "Themes or Tracks."

Goal One is being carried out together with the Department of Education to ensure a coordinated and comprehensive strategy for its fulfillment. The first goal states the following: By the year 2000, all children in America will start school ready to learn.

Objectives: All disadvantaged and disabled children will have access to high quality and developmentally appropriate preschool programs that help prepare children for school.

Every parent in America will be a child's first teacher and will devote time each day helping his or her preschool child learn; parents will have access to the training and support they need.

Children will receive the nutrition and health care needed to arrive at school with healthy minds and bodies, and the number of low birthweight babies will be significantly reduced through enhanced prenatal health systems.

The fourth Track involves the development of communities which provide the environment and climate to ensure opportunities to learn. Track 4 leads to a broadening of the concept of school readiness to ensure that all children arrive at school each day ready to learn. This acknowledges that readiness for school is an on-going state throughout the school years, rather than a condition to be reached upon school entry. The President has assigned lead responsibility for Track Four to assist in developing these "communities where learning will happen" to the Secretary of Health and Human Services. This grant announcement will support implementation of a community-based plan of services that directly focuses on Goal 1.

B. Community Coalitions

There is a serious need for innovative, community-based service delivery approaches which integrate multiple services and providers into holistic systems that address the diverse needs of school-age children from five through eighteen years old and their families, and longitudinally ensure that children arrive at school each day ready to learn, and successfully complete school and transition into employment and/or higher education, and independent living. Building workable and productive coalitions at the community level is a positive and essential step in developing such comprehensive and effective school readiness, service integration approaches. In addition, considerable time and effort must be spent conceptualizing and planning such complex interactive service systems.

Some communities in the country have organized broad coalitions of service providers, public and private organizations. They have developed or are working toward plans for an integrated service system with the goal of longitudinal, comprehensive health, educational, employment, and human service support to meet the needs of at risk children and families. Funds from Federal and State governments and private foundations have supported the development of these coalitions and strategic plans for service integration for school-age children. Specifically, the Office of the Assistant Secretary for Planning and Evaluation (OASPE) within the U.S.Department of Health and Human Services (DHHS) has participated in this national effort by funding a series of community-based service integration facilitation and planning grants, and, in conjunction

with the Council of Governors' Policy Advisors, state-wide planning activities. As a result, communities around the country are at different stages of readiness to begin implementation. However, the existence of strategic plans and collaborative coalitions are not sufficient to ensure successful implementation. Implementation, like strategic planning, must be carefully organized, tested, and gradually introduced in order to translate "theory" into sustained "practice." Implementation of plans for a model service delivery system is a vital next step in attempting to introduce systems change. This grant announcement furthers this developmental process by providing support for the initial stages of implementing a previously developed strategic plan for an integrated service system for a school-age population of children and their families.

C. Eligible Applicants and Funding

Pursuant to section 1110 of the Social Security Act, the Assistant Secretary for Planning and Evaluation, DHHS, is seeking applications from urban community-based coalitions of service providers and local governing agencies to implement their existing strategic plans for innovative integrated service delivery systems for school-age children and their families. Applications will be accepted from public organizations, private non-profit organizations, and for-profit organizations that can demonstrate comprehensive involvement of service providers, service recipients, and community leaders. These funds are only available to initiate and place the strategic plan into operation. Continuation of the program beyond the first year is the responsibility of the applicant. Therefore, an applicant will only be funded for one year.

Part II. Prerequisites and Content of Applications for a Grant Under This Announcement.

An organization receiving a grant under this announcement must be a member of a local urban community coalition or an entity responsible to such a coalition. The coalition must have already developed a strategic plan for reforming the delivery of health and social services for school-aged children and their families which includes a close linkage to the public education system. The coalition must demonstrate sufficient community support so that implementation of the strategic plan has a reasonable chance of success.

A. Prerequisite: A Strategic Plan for Services

The Strategic plan that has been developed must address at a minimum:

1. *Integrated Services.* The integration of a comprehensive array of services, such as, child welfare services, education, employment and training, health, mental health, public assistance, housing and youth services, in a coordinated proactive delivery system involving a variety of relevant service providers and community based organizations for school-aged children and their families. At a minimum the system of service must include public education, health, and child welfare systems as active providers of service. Systems should attempt to address the problems caused when individuals and their families must spend resources and time attempting to locate and access services, and when services are delivered in an uncoordinated and fragmented fashion by multiple providers.

2. *Case Management/Advocacy.* A comprehensive case management/advocacy function, as a key element of the integrated service system, which assesses family/client needs and, through a participatory process involving families/clients, and other relevant individuals, develops and oversees the implementation and evaluation of a Service Plan for children and their families. If the proposed service system includes plans to redesign the existing intake systems, this should be described. Likewise, any plans to modify existing practices regarding the sharing of information about families and children between agencies must be described. A system that tracks children and families across service providers is desirable.

3. *Collaborative and Community Based.* A collaboration of variety of leaders, practitioners, and consumers from the relevant sectors of the community to administer the project and carry out its design and implementation. This collaboration should include business, education, social services, medical services, politics and government, community leadership and potential clients. The active involvement and roles of these individuals must be described in sufficient detail in the implementation plan so that decision making processes and relationships between the members of the coalition are explicitly stated.

4. *School Linkages.* Specific linkage with public schools. Local schools must be an integral part of all planning and implementation efforts by committing resources to the project and by demonstrating a willingness to consider alternatives to the traditional educational system, for example, decentralized school site administration, greater parental involvement and changes in curriculum, and instructional approaches.

Although it is impossible to identify precisely all the elements necessary for restructuring a service system, experience has demonstrated that the following characteristics are also important and must be considered:

Outcome Oriented. Measurable and attainable outcomes for families and children receiving services. Measurement of outcomes are supported by strong data collection methods and a plan for on-going evaluation of impacts and outcomes. Such data are also useful for identifying needed services' modifications.

Family Centered. A focus on approaches which recognize the importance of the family and its primary role in ensuring that children and youth are healthy, secure, and ready to benefit from available educational services. In addition, applicants must recognize that often the needs of parents and other family members must be met concurrently with the needs of individual children.

Community Based. A focus on the needs of the community and allowance for differences among communities based on unique cultural and service delivery needs. It is entirely possible in an application involving multiple communities or sub-communities that services are not identical across all sites.

Needs Based. A design based on the needs of the children and families to be served and not the unique characteristics of the service programs to be used. Every effort must be made to ensure flexibility and comprehensiveness in the availability of services. There must be clearly stated objectives for eliminating artificial and bureaucratically imposed barriers to services, inadequate accountability to consumers, and lack of clearly identified responsibility for family-focused services. Alternative intake procedures, locations, funding mechanisms and staffing must be seriously considered as a means of ensuring appropriate and effective responses to family needs.

B. Content of Application

1. Workplan

An applicant must develop a specific workplan to implement all of the elements of the broader strategic plan (Part II, A).

The applicant must describe the precise plans for implementing the components of the strategic plan across school and/or community sites. An applicant could choose to implement all of components under a centralized administration or, for example, could elect to issue small grants to schools or other community-based organizations to implement the various school-linked components. Regardless of the method employed, such a plan should identify specific sites (e.g., schools, community locations) and the time frame for offering services at those locations. The agencies which will participate in each site's service delivery and the nature of their participation should be described. Estimated numbers of individuals to be served and the anticipated dates for full service also should be included. As much detail as possible including such things as the logistical concerns or plans, e.g., physical space, equipment, record keeping, staff deployment, staff training, on-site control and supervision, hours of operation, etc. should be provided.

The workplan should provide a schedule for implementation and provide a monitoring tool of the process. The workplan will describe (a) planning objectives, (b) the key results to be achieved (c) the anticipated events along the way, (d) key assumptions on which objectives are based, (e) projected dates and (f) required resources.

The plan should include evidence of a committment from the major participants that ensures continuation of the plan and resulting system after the initial first year of implementation without continued direct federal demonstration funds. The plan must also describe the source and amount of the required minimum of a 50% match of federal funds. (Note that this match must be new funding and not reallocated from other sources. See Section V, C, 2 for details.)

C. Evaluation

In addition to the data collection and plan for accountability which should be a part of the workplan, each grantee must provide for an independent evaluation of the process of implementation itself. It is this process evaluation which will provide lessons for other communities entering the implementation phase of their efforts to reform service systems.

The implementation evaluation should be conducted by an independent evaluation team or researches experienced in process evaluations, implementation studies, case studies, and other field approaches. The evaluation should focus on describing both the anticipated and the unanticipated processes of the implementation of the service integration strategy. The purpose of the documentation and analysis of unanticipated implementation issues is not to derive a judgment about the original plans, but rather to develop a better understanding of the factors affecting implementation and to derive lessons for wider-scale application. In designing the implementation study particular attention must be paid to assuring that the range of program administrator and other interview subjects represent the full range of local perspectives on the demonstration and that the interview guidelines are sufficiently detailed to elicit information not only about the implementation problems encountered, but the range of solutions considered, and about the apparent effects of the approaches actually used.

Some of the topics that are to be addressed in this case study include:

a. The socio-political context of the community within which the targeted sites are located and the socio-economic characteristics of the areas to be served by the sites.

b. A description of the staff who are involved in direct service, their professional identities, level of education, years of experience, etc.

c. A detailed description of the operation of other major programs, e.g., AFDC, Food Stamps, Medicaid, Child Welfare, Title I, Employment and Training, Juvenile Justice, United Way, etc., and their financing which are included in a system of integrated services.

d. A description of the automated systems used in tracking clients and services, any sharing of information about clients in electronic or non-electronic form between agencies, and a discussion of any confidentiality issues that arise.

e. A description of the various levels (from the overall policy board at the highest level, through middle management levels within and between agencies, to the site level involving staff and consumers from different agencies) at the collaboration must occur and the processes which influence each level.

f. A description of the processes designed to assure shared responsibility/accountability and community involvement.

g. A detailed description of the case management system and of the services as they are to be provided.

h. Any available information on initial service provision.

Part III. Organization of Applications—Outline of Narrative Description

An application must contain the required Federal forms, title page, table of contents, and the sections listed below. All pages of the narrative should be numbered. Each applicant must present their responses to the "Prerequisites and Content of Applications for Receiving a Grant under this Accouncement" delineated in Section II within the structure presented below.

A. *Abstract.* Provide a one-page summary of the proposed project.

B. *Rationale.* Include a brief overview which documents the local need for the proposed project, justifies the approach to be taken, and identifies any theoretical or empirical basis for the approach proposed along with appropriate supporting citations of the pertinent professional literature.

C. *Goals and Objectives.* Present the goals of the implementation effort and related objectives in observable terms. These goals and objectives should be used in the development of the evaluation criteria.

D. *Population.* Define the population of children and families, in terms of number and relevant characteristics, to be served by the project.

E. *Strategic Plan. See Section II.A.* Provide a copy of the strategic plan for the integration of services upon which the implementation phase will be based. Include all mission statements and inter-agency agreements that have been accepted by the coalition members.

F. *Implementation Work Plan. See Section II, B–1.* Present a detailed description of how the strategic plan will be implemented. It will be helpful if specific steps and milestones can be presented in the form of a series of Gantt or PERT charts.

G. *Evaluation. See Section II, B–2.* Describe how the services of an independent evaluator will be obtained and provide assurances that the evaluation will meet the specifications listed in Part II, B–2 above.

H. *Staffing.* List primary staff, identifying the agency for which they work, the percentage of time they will commit to the project, and whether federal funds will be used to pay for their services. Job descriptions and a staffing chart showing the relationship to staff to the various organizations must also be included. Curriculum Vitae or job descriptions for key staff must be appended.

I. *Organizational Capacity.* Briefly describe the applicant's (or larger coalition's) organizational capabilities

and experience in government, education, health, or human services.

J. *Budget.* Submit a request for federal funds using Standard Form 424A. In addition, include a detailed breakdown of all Federal line items along with a brief narrative description or justification for these line items. This detailed breakdown should separate items for which Federal funds are requested from items to be provided by other sources, with those other sources identified. Documentation must be included which substantiates the existence of a commitment to provide the required non-Federal share. (See Section V, paragraph C below for specific requirements regarding this non-Federal local contribution.)

Part IV. Receipt and Processing of Applicants

A. Deadline for Submittal of Applications

The closing date for submittal of applications under this announcement is August 14, 1992. Applications must be postmarked or hand delivered to the application receipt point no later than 5 p.m. on August 14, 1992. Hand-delivered applications will be accepted Monday through Friday, excluding federal holidays, prior to and on August 14, 1992, during the working hours of 9 a.m. to 5 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW. in Washington, DC. When hand-delivering an application, call (202) 245–1794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as meeting the deadline if it is either: (1) Received at, or hand-delivered to, the mailing address on or before August 14, 1992, or (2) postmarked before midnight of the deadline date, August 14, 1992, and received in time to be considered during the competitive review process within two weeks of the deadline date.

When mailing applications, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. It there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an applicant will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the August 14, 1992, deadline are considered late applications and will not be considered or reviewed in the current competition. DHHS will send a letter to this effect to each late applicant.

DHHS reserves the right to extend the deadline for all proposals due to acts of God, such as floods, hurricanes, or earthquakes; due to acts of war; if there is widespread disruption of the mail; or if DHHS determines a deadline extension to be in the best interest of the government. However, DHHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

b. Initial Screening

Applications will be initially screened for compliance with the timeliness, completeness, and cost-sharing requirements. If judged in compliance, the application then will be reviewed by government personnel, augmented by outside experts where appropriate. Three (3) copies of each application are required. Applicants are encouraged to send an additional seven (7) copies of their application to ease processing, but applicants will not be penalized if these extra copies are not included. There is no limitation on the length of the narrative; however extraneous materials such as videotapes should not be included and will not be reviewed.

C. Review Process

Applications will be evaluated by a panel of reviewers according to the criteria set forth below. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the application. The relative weights are shown in parentheses.

D. Criteria for Evaluation

1. Goals, Objectives, and Need for Assistance (10 points)

a. *Rationale.* Is there a clear rationale for the project, including a documented need?

b. *Goals and Objectives.* Are the goals and objectives presented in observable, measurable terms, and how well do they reflect the specific program requirements delineated in the grant announcement?

c. *Population.* Is the population to be addressed clearly defined in terms of characteristics, age, and number to be served; and is it representative of the target population the grant announcement addresses?

2. Project Design and Approach (40 points)

a. *Strategic Plan.* Is the history of the process of building a community coalition and engaging in the strategic planning effort described? How completely does the strategic plan address the comprehensive integrated service system described in Section II of this announcement? Did significant individuals and organizations participate in the strategic planning process? Was the strategic plan based on a needs assessment at either the system or client level? Do the objectives/goals of the strategic plan reinforce each other and the concept of service integration? Are adequate management information systems proposed? Is implementation likely to occur?

b. *Implementation Plan.* Is the plan reasonable? Are the activities listed for each objective sufficiently detailed to ensure successful, timely implementation? Do they demonstrate an adequate level of understanding by the applicant of the practical problems involved in executing such a complex project? Is there substantive evidence that the local community is committed to implement the plan?

c. *Coordination.* Is the mechanism for coordinating services for each client and communicating across systems or providers sufficiently specific to ensure success?

3. Evaluation (20 points)

Does the applicant propose an independent evaluation of the implementation process? Does the applicant demonstrate an understanding of the practical difficulties of working with an independent evaluator and a resolve to successfully conduct the evaluation? Does the applicant provide assurance that the topics and issues identified in Part II, B–2 will be address?

4. Organization and Staffing (10 points)

a. *Staff.* Are the number and type of staff positions sufficient to achieve project objectives?

b. *Expertise.* Do staff have appropriate background to implement this project as documented in curriculum vitae?

c. *Organizational Capacity.* Does the organization(s) have sufficient experience to ensure success? Is the collaborative decision making process described in terms that assure accountability to the communities and families to be served?

5. Budget (20 points)

a. Is the proposed budget reasonable and sufficient to ensure implementation?

b. Are the required local matching funds being provided and is this commitment reliable?

Note: Additional points in this may be credited under this criterion for local contributions that exceed the one-half cost sharing requirement.

c. Is evidence provided that the local share of costs represent an additional effort and not a reallocation of existing resources?

d. Are funds allocated to carry out the evaluation?

E. Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary for Planning and Evaluation will either: (a) Approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application.

2. *Notification of disposition.* The Assistant Secretary for Planning and Evaluation will notify the applicants of the disposition of their applications. If approved, a signed notification of the grant award will be sent to the business office named in the ASPE checklist.

Part V. Other Notices and Requirements

A. Applicable Regulations

1. "Grants Programs Administered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR part 63).

2. "Administration of Grants" (45 CFR part 74).

B. Effective Date and Duration

1. The grants awarded pursuant to this announcement are expected to be made on or about September 5, 1992.

2. Projects will be 15 months in duration.

C. Statement of Funds Availability and Cost Sharing Requirement

1. Up to $500,000 is available for one grant to be awarded in Fiscal Year 1992 under this announcement.

2. All applicants must contribute at least one-half (i.e., $1 for every $1 of federal funds) of the total cost of the project. For example, an applicant who applies for $500,000 in Federal funding must provide at least $500,000 towards the project, for a total combined project cost of $1,000,000. The applicant's share of project costs must be derived from non-federal sources and must be made in cash from the applicant or third parties. Assurances must be provided that these local funds represent a new level of effort and not a reallocation of existing resources. In-kind contributions may not be counted to fulfill the local cost sharing requirement. Donated or loaned goods or services such as staff, space, equipment, or other services which are usually considered as in-kind contributions are hereby excluded from consideration toward the local contribution. However, this exclusion should not be interpreted as a prohibition of in-kind contributions toward the total costs of the project. The exclusion applies only to the calculation of the required local match.

3. Nothing in this application should be construed as committing the Assistant Secretary to make any award.

D. Reports

The grantee must submit the reports listed below.

1. *Progress Reports.* At the request of the project officer submit a quarterly summary of accomplishments by objectives.

2. *Final Report.* Produce a written report of the independent evaluation and other relevant project information. The specific format and content for this report will be provided by the project officer.

E. Application Instructions and Forms

Copies of applications should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., room 405F, Hubert H. Humphrey Building, Washington, DC 20201, Phone (202) 245–1794. Questions concerning the preceding information should be submitted to the Grants Officer at the same address. Neither questions nor requests for applications should be submitted after July 30, 1992. IMPORTANT—The Application for Federal Assistance (Standard Form 424A) revised 4/88, must be submitted.

F. Federal Domestic Assistance Catalog

This program is not listed in the Catalog of Federal Domestic Assistance.

G. State Single Point of Contact (E.O. 12372)

DHHS has determined that this program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," because it is a program that is national in scope and does not directly affect State and local governments. Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. 12372.

Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. 12372.

Martin H. Gerry,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 92–15247 Filed 6–29–92; 8:45 am]

BILLING CODE 4150-04-M

Agency for Toxic Substances and Disease Registry

[ATSDR–45]

Availability of Administrative Reports of Health Effects Studies

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the availability of Administrative Reports of seven ATSDR health effects studies.

SUPPLEMENTARY INFORMATION: Sections 104(i)(7) and (9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended (42 U.S.C. 9604(i)(7) and (9)), provide the Administrator of ATSDR with the authority to conduct pilot studies, epidemiologic and other health studies, and to initiate health surveillance programs to determine the relationship between human exposure to hazardous substances in the environment and adverse health outcomes.

Regulations entitled, "Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities" (42 CFR part 90) set forth general procedures that ATSDR follows in conducting health effects studies. Section 90.11 of the regulation, which concerns the reporting of results of health assessments and health effects studies, provides that reports of health effects studies conducted under section 104(i) of the CERCLA shall be available to the general public upon request.

Availability

The reports of the health effects studies listed below are now available through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22151, telephone (703) 487–4650. There is a charge for these reports as determined by NTIS.

Health effects study	NTIS document No.
Study of disease and symptom prevalence in residents of Yukon and Cokeburg, Pennsylvania, ATSDR/HS–91/10.	PB91–151084/AS
Mercury exposure study, Charleston, Tennessee, ATSDR/HS–91/11.	PB91–15142/AS
Benzene, groundwater exposure study, Nesmith, South Carolina, ATSDR/HS–92/12.	PB92–123801/AS

Health effects study	NTIS document No.
Child lead exposure study, Leeds, Alabama, ATSDR/HS-92/13.	PB92-123793/AS
Philadelphia neighborhood lead study, Philadelphia, Pennsylvania, ATSDR/HS-92/14.	PB92-123777/AS
Exposure study of volatile organic compounds, Southeast Rockford, Illinois, ATSDR/HS-92/15.	PB92-124072/AS
Arsenic and lead exposure study of residents living near the Rocker Operable Unit of the Silver Bow Creek Superfund Site, Rocker, Montana, ATSDR/HS-92/16.	PB92-166537/AS

In accordance with 42 CFR 90.11, copies of these final reports have been distributed to the Environmental Protection Agency, the appropriate state and local government agencies, and the affected local communities.

ATSDR previously announced the availability of a set of nine final reports of health effect studies (55 FR 31445, August 12, 1990). Additional final reports will be announced semiannually in the **Federal Register** as they become available.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Lybarger, M.D., M.S., Director, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road NE., Mailstop E-31, Atlanta, Georgia 30333, telephone (404) 639-6200.

Dated: June 24, 1992

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92-15273 Filed 6-29-92; 8:45 am]

BILLING CODE 4160-70-M

[ATSDR-54]

Quarterly Public Health Assessments Completed and Public Health Assessments To Be Conducted in Response to Requests From the Public

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice contains the following: (1) A list of sites for which ATSDR has completed a public health assessment, or issued an addendum to a previously completed public health assessment, during the period January-March 1992. This list includes sites that are on, or proposed for inclusion on, the National Priorities List (NPL) and a non-NPL site for which ATSDR has prepared a public health assessment in response to a request from the public (petitioned site). (2) A list of sites for which ATSDR, during the same period, has accepted a request from the public to conduct a public health assessment (petitioned public health assessment). Acceptance for a request for the conduct of a public assessment is based on a determination by the Agency that there is a reasonable basis for conducting a public health assessment at the site.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E-32, Atlanta, Georgia 30333, telephone (404) 639-0610.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments, public health assessments with addenda, and petitioned public health assessments which were accepted by ATSDR during October-December 1991 was published in the **Federal Register** on March 17, 1992, (57 FR 9259). The quarterly announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities (42 CFR part 90). This rule sets forth ATSDR's procedures for the conduct of public health assessments under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604(i)), and appeared in the **Federal Register** on February 13, 1990, (55 FR 5136).

Availability

The completed public health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487-4650. There is a charge determined by NTIS for these public health assessments. The NTIS order numbers are listed in parentheses after the site name.

1. Public Health Assessments or Addenda Completed or Issued

Between January 1, 1992, March 31, 1992, public health assessments or addenda to public health assessments were issued for the sites listed below:

NPL Sites

California
- Sulphur Bank Mercury Mine—Clearlake—(PB92-160993)
- Western Pacific Railroad—Oroville—(PB92-161009)

Connecticut
- Nutmeg Valley Road—Wolcott—(PB92-174572)

Massachusetts
- Baird and McGuire—Holbrook—(PB92-172899)

Michigan
- Allied Corp Kalamazoo Plant—Kalamazoo—(PB92-166560)
- Metamora Landfill—Metamora—(PB92-170158)
- Spiegelberg and Rasmussen Dump Sites—Brighton—(PB92-174440)

Minnesota
- Union Scrap Iron and Metal—Minneapolis—(PB92-140367)

New Hampshire
- Coakley Landfill—Greenland—(PB92-166412)

Pennsylvania
- Hranica Landfill—Buffalo Township—(PB92-166503)
- Welsh Landfill—Honeybrook—(PB92-170315)

Petitioned Site

Georgia
- Southern Wood Piedmont Company—Augusta—(PB92-167543)

2. Petitions for Public Health Assessments Accepted

Between January 1, 1992, and March 31, 1992, ATSDR determined that there was a reasonable basis to conduct public health assessments for the sites listed below in response to requests from the public. As of March 31, 1992, ATSDR initiated public health assessments at these sites.

Pennsylvania
- New Cumberland Army Depot—New Cumberland

Texas
- West Dallas Lead Slag Sites—West Dallas

Dated: June 24, 1992.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92-15274 Filed 6-29-92; 8:45 am]

BILLING CODE 4160-70-M

Food and Drug Administration

[Docket No. 92N-0191]

The Upjohn Co.; Withdrawal of Approval of NADA's; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the Federal Register of May 28, 1992 (57 FR 22479), that announced the withdrawal of approval of two new animal drug applications (NADA's) held by the The Upjohn Co. The document was published with some inadvertent errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Robin F. Thomas, Office of Policy (HF-27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

In FR Doc. 92-12472, appearing on page 22479, in the Federal Register of Thursday, May 28, 1992, in the third column, at the end of the document, the name and title "Michael R. Taylor, Deputy Commissioner for Policy" are corrected to read "Gerald B. Guest, Director, Center for Veterinary Medicine".

Dated: June 24, 1992.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 92-15300 Filed 6-29-92; 8:45 a.m.]

BILLING CODE 4160-01-F

[Docket No. 92N-0266]

Drug Export; Pseudoephedrine Hydrochloride Controlled-release Caplets, 240 mg

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that KV Pharmaceutical has filed an application requesting approval for the export of the human drug Pseudoephedrine Hydrochloride Controlled-release Caplets, 240 mg to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that KV Pharmaceutical, 2503 South Hanley Rd., St. Louis, MO 63144-2555, has filed an application requesting approval for the export of the human drug Pseudoephedrine Hydrochloride Controlled-release Caplets, 240 mg to Canada. This drug is indicated for use as temporary relief of nasal congestion due to the common cold, hay fever or other upper respiratory allergies, and nasal congestion associated with sinusitis; promotes nasal and/or sinus drainage. The application was received and filed in the Center for Drug Evaluation and Research on May 27, 1992, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 10, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 12, 1992.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 92-15299 Filed 6-29-92; 8:45 a.m.]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Availability of Funds for Nursing Education Loan Repayment Agreements for Service in Certain Health Facilities

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately $1.4 million will be available in fiscal year (FY) 1992 for awards under section 836(h) of the Public Health Service (PHS) Act to repay up to 60 percent of the nursing education loans of registered nurses who agree to serve for a minimum of 2 years and up to 85 percent for 3 years' service in certain health facilities in the United States with a critical shortage of nurses. Although the program's authorization expired on September 30, 1991, awards will be made under the provisions of the FY 1992 Appropriations Act of the Department of Health and Human Services, Public Law (Pub. L.) 102-170.

The HRSA, through this notice, invites registered nurses to apply for participation in this loan repayment program. Approximately 192 loan repayment awards may be made to registered nurses under this program in FY 1992.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting health priorities. These programs will contribute to the Healthy People 2000 objectives by improving access to primary health care services through coordinated systems of care for medically underserved populations in both rural and urban areas. Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-01) or Healthy People 2000 (Summary Report, Stock No. 017-001-

00473–01) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (telephone number: 202 783–3238).

ADDRESSES: Application materials with a list of counties (parishes) with the greatest shortage of nurses may be obtained by calling or writing, and completed applications should be returned to the Loan Repayment Programs Branch, c/o Norris S. Lewis, M.D., Director, Division of Health Services Scholarships, Bureau of Health Care Delivery and Assistance, HRSA, room 620, 12300 Twinbrook Parkway, Rockville, Maryland 20852, (301 443–0743). The new 24-hour toll-free phone number is 1–800 435–6464. The application form has been approved under Office of Management and Budget number 0915–0140.

DATES: To receive consideration for funding, individuals must submit their applications by August 15, 1992. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date; or

(2) Sent on or before the deadline and received in time for submission to the reviewing program official. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Late applications will not be considered for funding and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: For general information and technical assistance, contact Mr. Clarke E. Gordon, Chief, Loan Repayment Programs Branch, at the above address and phone number.

SUPPLEMENTARY INFORMATION: Section 836(h) of the PHS Act provides that the Secretary will repay a portion of an individual's educational loans incurred for nursing education costs if that individual enters into an agreement with the Secretary to serve as a registered nurse for 2 or 3 years in a variety of eligible health facilities or in a health facility determined by the Secretary to have a critical shortage of nurses. For an individual who is selected to participate in this program and serve in an approved facility as determined by the Secretary, repayment shall occur on the following schedule:

(1) Upon completion of the first year of agreed upon service, the Secretary will pay 30 percent of the principal of, and interest on, each loan which was unpaid as of the beginning date of service;

(2) Upon completion of the second year of agreed upon service, the Secretary will pay another 30 percent of the principal of, and interest on, each loan which was unpaid as of the beginning date of service; and

(3) Upon completion of a third year of agreed upon service, the Secretary will pay another 25 percent of the principal of, and interest on, each loan which was unpaid as of the beginning date of service. Provided, that

(4) No more than 85 percent of the principal of any loan which was unpaid as of the beginning date of service will be paid under this program.

Notwithstanding the requirement of completion of practice each year, the Secretary will, on or before the due date, pay any loan or loan installment which may fall due within the period of service for which the borrower may receive payments under this program, if the borrower is providing service as agreed to and will continue to do so for the period required.

Prior to entering an agreement for repayment of loans, the Secretary will require that satisfactory evidence be provided of the existence and reasonableness of the educational loans.

These loans repayment amounts are unrelated to any salary paid to the nursing education loan repayment recipient by the health facility by which he or she has been employed.

To be eligible to participate in this program, an individual must:

(1) Have received a baccalaureate or associate degree in nursing, a diploma in nursing, or a graduate degree in nursing prior to initiation of service;

(2) Have outstanding educational loans for nursing education costs;

(3) Agree to serve full-time for not less than 2 years in the following eligible health facilities: An Indian Health Service health center; a Native Hawaiian health center; a public hospital (operated by a State, county, or local government); a community or migrant health center; a nursing facility as defined in section 1905 or 1919(a) of the Social Security Act; a rural health clinic; or in a health facility determined by the Secretary to have a critical shortage of nurses; and

(4) Plan to begin employment as a registered nurse no later than September 30, 1992.

In entering into agreements, as required under Section 836(h) of the PHS Act, the Secretary will give priority to applicants:

(1) With the greatest financial need; and

(2) Who agree to serve in health facilities described in paragraph (3) above that are located in geographic areas with a shortage of and need for registered nurses, as determined by the Secretary.

After applying the priorities listed above, the Secretary will give preference to applicants who: (1) Seek repayment of loans made by educational or financial institutions; (2) agree to serve for 3 years; and (3) are not already employed in eligible facilities.

BREACH OF AGREEMENT: Participants in this program who fail to fulfill an agreement with the Secretary under this statute shall be liable to reimburse the Secretary for any payments made during the service period pursuant to such agreement.

OTHER AWARD INFORMATION: This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, since payments to individuals are not covered.

The OMB *Catalog of Federal Domestic Assistance* number for this program is 93.908.

Dated: May 7, 1992.

John H. Kelso,

Acting Administrator.

[FR Doc. 92–15286 Filed 6–29–92; 8:45 am]

BILLING CODE 4160–15–M

Social Security Administration

Privacy Act of 1974, Altered System of Records

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: Altered system of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)), we are issuing public notice of our intent to make a major alteration to the system of records entitled "Personal Identification Number File (PINFILE), HHS/SSA/OPIR, 09–60–0214." The proposed alteration expands the categories of individuals covered by the system to include certain employees of the Department of Health and Human Services (DHHS) and other Federal government agencies who have been granted direct terminal access to SSA data bases.

DATES: We filed a report of an altered system of records with the Chairman, Committee on Government Operations of the House of Representatives, and the Chairman, Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on June 23, 1992. The proposed altered system of

records will become effective on August 27, 1992, unless we receive comments on or before that date which would result in a contrary determination

ADDRESSES: Interested individuals may comment on this proposal by writing to the SSA Privacy Officer, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Hash, SSA Systems Security Officer, 3208 Annex, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (410) 965–2765.

SUPPLEMENTARY INFORMATION:

I. Discussion of the Proposed Expansion of the Categories of Individuals Covered by the PINFILE System of Records

SSA manages and operated its own telecommunications system known as the Customer Information and Control System (CICS). The system provides the terminal equipment and telecommunications network for the electronic transmission of information related to SSA's programs between SSA's central office in Baltimore, Maryland and its filed office locations.

The PINFILE system of records maintains information about employees who, because of their particular job duties, need access to certain data bases under CICS. Certain individuals are granted direct terminal access to the system. Once an individual is granted access, a personal identification number (PIN) must be assigned and certain information placed in the PINFILE. The categories of individuals covered by the PINFILE system of records include SSA employees and some employees of the Disability Determination Services, and some Health Care Financing Administration employees, intermediaries and carriers.

SSA proposes to alter the categories of individuals covered by the PINFILE system of records to include certain employees of the Department of Health and Human Services, and certain employees of other Federal government agencies to whom SSA decides to grant direct terminal access.

This alteration will allow SSA to provide information to Federal agencies in an efficient and cost effective manner. PINs will be issued to all new individuals who are authorized direct terminal access to the telecommunications systems and appropriate data entered into the PINFILE system of records.

II. Effect of the Proposed Alteration on the Rights of Individuals

Information in the PINFILE system of records will be used only for the purpose of determining which individuals are authorized access to SSA data bases.

Only security officers (regional and local security officers, component security officers, systems security officers and managers with security responsibilities) will have access to data in the PINFILE. SSA will assign special command codes, numbers, and function codes to each security officer. Since the PINFILE complies with the principles of the Privacy Act, we anticipate no untoward effect on the privacy or other personal or property rights of individuals.

We anticipate no untoward effect on disclosures relating to individuals.

Dated: June 22, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Report of Altered System of Records

Personal Identification Number File (PINFILE), HHS/SSA/OPIR

09–60–0214

I. Purpose and Background of the Proposed Alteration

The Social Security Administration (SSA) manages and operates its own telecommunications system known as the Customer Information and Control System (CICS). The system provides the terminal equipment and telecommunications network for the electronic transmission of information related to SSA programs between SSA's central office in Baltimore, Maryland and its field office locations.

The PINFILE maintains information about employees who, because of their particular job duties, need access to certain data bases included under CICS. Once an individual is granted access, a personal identification number (PIN) must be assigned and certain information placed in the PINFILE. The categories of individuals covered by the PINFILE system of records include SSA employees and some employees of the Disability Determination Services, and Health Care Financing Administration employees, carriers and intermediaries.

SSA proposes to alter the PINFILE system of records to include certain employees of the Department of Health and Human Services and other Federal government agencies to whom SSA decides to grant direct terminal access. This alteration will allow SSA to provide that access in an efficient and cost effective manner.

Memoranda of understanding will be negotiated with Federal government agencies granted direct terminal access privileges. Those memoranda will include stringent security and disclosure safeguards. Personal Identification Numbers (PINs) will be issued to all new individuals who are authorized direct terminal access to the telecommunications system and appropriate data will be entered into the PINFILE system of records.

II. Paperwork Reduction Act Compliance

Data collection from the public for the system is subject to the Paperwork Reduction Act of 1980. We have complied with all provisions of that law.

III. Authority for Maintenance of the System

Section 205(a) of the Social Security Act and 5 U.S.C. section 552a(e)(10) provide the authority for maintenance of the PINFILE system.

IV. Evaluation of the Probable or Potential Effect of the Proposed Alteration on the Rights of Individuals

1. Effect on the privacy or other personal or property rights of individuals—only security officers (regional security officers, local security officers, component security officers, systems security officers, and managers with security responsibilities) will have access to data in the PINFILE. SSA will assign special command codes, numbers, and function codes to each security officer. Since the PINFILE complies with the principles of the Privacy Act, we anticipate no untoward effect on the privacy or other personal or property rights of individuals.

2. Effect on the disclosure of information relating to individuals—we anticipate no untoward effect on disclosures relating to individuals.

V. The Reason for Individual Retrieval

SSA maintains records in the PINFILE by personal identifiers in order to identify users of its telecommunications and computer systems.

VI. A Description of the Steps Taken to Minimize the Risks of Unauthorized Access

The PINFILE itself forms the basis for a system which minimizes the risk of unauthorized access to SSA data files and personal data. The PINFILE limits access to all SSA data files which users can access by the CICS. Access to the PINFILE is limited to regional and local, component, systems security officers, and managers with security

responsibilities. Daily reports are used to monitor additions, deletions, and changes to the PINFILE.

VII. Supporting Documentation

1. We have attached copies of the preamble and notice of altered PINFILE system.

2. Agency Rules—Implementation of the proposed alteration to the PINFILE system of records does not require that we make any changes to existing Agency rules.

3. Exemptions Requested—We are not requesting any exemptions from specific provisions of the Privacy Act.

4. Matching Report—The proposed altered system of records does not require a matching report in accordance with the Computer Matching and Privacy Protection Act of 1988.

The Social Security Privacy Act system of records, published in the U.S. Department of Health and Human Services Privacy Act Issuances (1989 Compilation of the **Federal Register**), and known as the Personal Identification Number File (PINfile) number 09–60–0214, is the system of records that contains personal information regarding individuals who have been assigned personal identification numbers which allow access to SSA's computerized data bases. The system of records is being amended to include additional Federal employees and certain housekeeping changes are being made. The new material and housekeeping changes are as follows:

09–60–0214

SYSTEM NAME:

—In first line, change (PINfile) to (PINFILE), and OA to OPIR
—In eighth line, add "some" before Health Care Financing,
—In ninth line, after the word intermediaries add "and certain employees of the Department of Health and Human Services (HHS) and employees of other Federal government agencies who have been granted direct terminal access to SSA's data bases.", and
—In the eighteenth line, change PINfile to PINFILE.

ROUTINE USES OF RECORDS MAINTAINED * * *:

—Remove number 2, all of 2(a), all of 2(b), and the first 6 lines of 2(c),
—The following paragraph beginning "Information may be disclosed to * * * (and ending) relating to the system of records." should be renumbered as 3,
—The following paragraph beginning "Disclosure may be to DOJ, * * * (and ending) not be disclosed under this routine use unless disclosure is expressly permitted by the IRC." should be renumbered as 2, and
—The last word, "expressly", in the penultimate line of new number two should be deleted.

STORAGE:

—In the first line, change PINfile to PINFILE.

RETRIEVABILITY:

—In the first line, change PINfile to PINFILE.

SAFEGUARDS:

—In the first line and penultimate lines, change PINfile to PINFILE.

RETENTION AND DISPOSAL:

—The first line should read "Disk files are permanent; the magnetic tape backup file is maintained for 7 operational days and then erased."

NOTIFICATION PROCEDURE:

—The third line should read "shown above and providing his * * *"

RECORD SOURCE CATEGORIES:

—In the first line, change PINfile to PINFILE.

[FR Doc. 92–15238 Filed 6–29–92; 8:45 am]
BILLING CODE 4190–29

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–966–4230–15; AA–10662]

Publication, Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to the Bristol Bay Native Corporation for approximately 72 acres. The lands involved are in the vicinity of Ugashik, Alaska, within T. 30 S., R. 46 W., Seward Meridian.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News and The Borough Post. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 30, 1992 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Mary Jane Piggott,

Chief, Branch of Southwest Adjudication.

[FR Doc. 92–15280 Filed 6–29–92; 8:45 am]
BILLING CODE 4310–JA–M

[AZ–920–02–4212–13; AZA–23677]

Arizona: Exchange of Public and Private Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Issuance of Land Exchange Documents.

SUMMARY: Notice is hereby given of the completion of a land exchange between the United States and Mary Sharon and Hayden Wayne Pitrat. The United States transferred 585.84 acres of public land in Yavapai County, Arizona, and the Pitrats' transferred 235.94 acres of private land in Mohave and LaPaz Counties, Arizona.

FOR FURTHER INFORMATION CONTACT: Laura Wood, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 640–5534.

SUPPLEMENTARY INFORMATION: On June 4, 1992, the Bureau of Land Management transferred the following described land to Hayden Wayne and Mary Sharon Pitrat by Patent No. 02–92–0018 pursuant to Section 206 of the Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 16 N., R. 1 W.,
Sec. 1, lots 1–8 incl., S½NW¼, SW¼, SW¼SE¼.

Comprising 585.84 acres in Yavapai County, Arizona.

In exchange for these lands, the United States acquired the following described lands from Mary Sharon and Hayden Wayne Pitrat:

Gila and Salt River Meridian, Arizona

T. 10 N., R. 14 W.,
Sec. 6, lots 6 & 7, E½SW¼, W½SE¼.

Comprising 66 acres in Mohave County, Arizona, and 169.94 in LaPaz County, Arizona.

The values of the Federal public land and the private land were appraised at

$351,504.00 and $350,000.00. A payment of $1504.00 was made by the Pitrat's to the United States in order to equalize the values.

This exchange has enabled the Bureau of Land Management to acquire a segment of land along the Bill Williams River for wildlife and recreation use and for protection and management of associated riparian habitat.

Mary Jo Yoas,

Chief, Branch of Lands Operations.

[FR Doc. 92–15241 Filed 6–29–92; 8:45 am]

BILLING CODE 4310–32–M

National Park Service

Pecos National Historical Park, New Mexico; Intent to Prepare a General Management and Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare a general management plan and environmental impact statement for Pecos National Historical Park, New Mexico.

SUMMARY: The National Park Service will prepare a General Management Plan (GMP) and an Environmental Impact Statement (EIS) for Pecos National Historical Park, Santa Fe and San Miguel Counties, New Mexico, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 and Public Laws 101–313 and 101–536. Planning will be done by a team consisting of the park superintendent and staff, along with technical specialists from the National Park Service (NPS) offices in Santa Fe and Denver. The Denver office will be assuming the responsibility for coordinating this planning effort.

The GMP will establish the overall direction for the park, indicating the broad goals and objectives for managing the area over the next 10 to 15 years. It will address resource protection, visitor programs, public access, facility needs, disposition of existing facilities and research needs, among other topics. The GMP/EIS will examine a range of alternatives for managing the park and will assess the potential environmental impacts of the alternatives.

Located about 25 miles southeast of Santa Fe, Pecos National Historical Park has been a cultural crossroads between the Great Plains and the Rio Grande Valley for centuries. Indians, Spaniards, and Anglos all passed this way seeking trade, treasure, and conquest. The 6,600-acre park is one of the Southwest's major archaeological and historical sites. The remains of one of the largest indian pueblo villages in New Mexico and at least three Spanish Franciscan churches are preserved there. The park's other cultural and natural resources include a segment of the Pecos River (one of five year-round, free-flowing rivers in the state), dozens of early pueblo sites, portions of the Santa Fe National Historic Trail, and Glorieta Battlefield, a site which played a major role in the American Civil War in the West.

Congress established the original 365-acre Pecos National Monument in 1965 "* * * in order to set apart and preserve for the benefit and enjoyment of the American people a site of exceptional historic and archaeological importance. * * * including the remains and artifacts of the seventeenth century Spanish mission and ancient Indian pueblo* * *

On June 27, 1990, Congress added 5,500 acres of the surrounding Forked Lightning Ranch to the original monument and changed its name to Pecos National Historical Park (Public Law 101–313). The new park was established "* * * to recognize the multi-theme history, including the cultural interaction among diverse groups of people, of the Pecos area and its "gateway" role between the Great Plains and the Rio Grande Valley and to provide for the preservation and interpretation of the cultural and natural resources of the Forked Lightning Ranch." On November 8, 1990, Congress added the 677-acre Glorieta Unit to the park to "* * * preserve and interpret the Battle of Glorieta and to enhance visitor understanding of the Civil War and the Far West" (Public Law 101–536).

The NPS planning team will work closely with American Indian tribes and Hispanic groups with traditional ties to the area, service organizations, businesses, public interest groups, and local news media to keep the public informed and involved throughout the planning process. To assist the planning team in preparing the GMP/EIS, interested and affected government agencies, businesses, groups, and individuals are encouraged to participate throughout the planning process.

A newsletter will be distributed later this year that will describe the planning process and schedule, and will discuss the purposes, significant resources, and possible desired futures or goals for the park. Representatives of the NPS will also be meeting with interest groups to discuss the park's purposes, significance, and desired futures.

As part of the scoping process, a meeting will be held later this year. Meeting participants will assist in determining the scope of issues to be addressed and in identifying the significant issues related to the proposed action. Scoping meeting details will be announced in the project newsletter.

The public is encouraged to send written comments, ideas and suggestions concerning preparation of the GMP/EIS, by July 31, 1992, to: Superintendent, Pecos National Historical Park, Post Office Drawer 418, Pecos, New Mexico 87552.

FOR FURTHER INFORMATION CONTACT: Superintendent, Pecos National Historical Park, at the above address or call 505–757–6414.

Dated: June 8, 1992.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 92–15305 Filed 6–29–92; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 20, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 15, 1992.

Carol D. Shull,

Chief of Registration, National Register.

Mississippi

Alcorn County

Steele, L.C., House, 515 Fourth St., Corinth, 92000855

Oktibbeha County

Bardwell House, 309 Blackjack Rd., Starkville, 92000890

Warren County

Bethel African Methodist Episcopal Church [Vicksburg MPS], 805 Monroe St., Vicksburg, 92000858

Blum House, [Vicksburg MPS], 1420 Cherry St., Vicksburg, 92000859

Vicksburg Public Library, Old [Vicksburg MPS], 819 South St., Vicksburg, 92000857

Ohio

Lorain County

Johnson Steel Street Railway Company General Offices Building, 1807 E. 26th St., Lorain, 92000887

Lorain YMCA Building, Jct. of E. 28th St. and Pearl Ave., Lorain, 92000886

Ottawa County

Gill—Luchsinger—Bahnsen House and Barn, 426 E. 4th St., Port Clinton, 92000888

Texas

Travis County

Central Christian Church, 1110 Guadalupe St., Austin, 92000889

Utah

Box Elder County

Knudson Brothers Building, 63 S. Main St., Brigham City, 92000893

Oregon Short Line Depot, 800 West and Forest St., Brigham City, 92000891

Cache County

Zollinger, Ferdinand, Jr., House, 193 N. 100 East, Providence, 92000892

Sanpete County

Seeley, William Stuart, House, 150 S. State St., Mt. Pleasant, 92000894

West Virginia

McDowell County

Lincoln, John J., House, N of US 52, Elkhorn, 92000900

Mason County

Elm Grove, 2283 US 35 N, Southside, 92000897

Mercer County

Country Club Hill Historic District (South Bluefield MPS), Along Whitethorn, Lebanon and Liberty Sts., Bluefield, 92000878

Easley House (South Bluefield MPS), 1500 College Ave., Bluefield, 92000879

Jefferson Street Historic District (South Bluefield MPS), Along Jefferson St. between Cumberland Rd. and College Ave., Bluefield, 92000877

South Bluefield Historic District (South Bluefield MPS), Along Mountain View Rd., Bland Rd., Oakhurst and Parkway, Bluefield, 92000876

Upper Oakhurst Historic District (South Bluefield MPS), Along Oakhurst Ave., Groveland Dr., Edgewood Rd. and Mountain View Rd., Bluefield, 92000875

Monongalia County

Second Ward Negro Elementary School, Jct. of White and Posten Aves., Morgantown, 92000896

Monroe County

Spring Valley Farm (Boundary Increase), NE of Union on US 219, Union vicinity, 92000901

Ohio County

Beagle Hotel (National Road MPS), National Rd. .1 mi. W of Valley Grove Rd., Valley Grove vicinity, 92000863

Bloch Brothers Tobacco Company (Industry in Wheeling MPS), 4000 Water St., Wheeling, 92000881

Burkham, Isaac, House (National Road MPS), 163 E. Nationl Rd., Triadelphia, 92000870

Eckhart, Alice B., House (National Road MPS), 147 E. National Rd., Valley Camp, 92000865

Feay Inn (National Road MPS), 9 Burkham Ct., Wheeling, 92000872

Feay, Rachel, House (National Road MPS), 204 E. National Rd., Triadelphia, 92000867

Hazel—Atlas Glass Company (Industry in Wheeling MPS), 89 15th St., 58 19th St., Wheeling, 92000882

National Road Corridor Historic District (National Road MPS), National Rd. from Bethany Pike to Park View Ln., Wheeling, 92000874

National Road Mile Markers Nos. 8, 9, 10, 11, 13, 14 (National Road MPS), Along National Rd. from Mt. Echo to Triadelphia, Mt. Echo vicinity, 92000873

Purcell, James, House (National Road MPS), National Rd. .3 mi. W of WV–PA state line, Mt. Echo vicinity, 92000860

Reed's Mill and House (National Road MPS), National Rd., .2 mi. W of Atkinson Rd., Valley Grove vicinity, 92000862

Reymann Brewing Company (Industry in Wheeling MPS), Jct. of Rock Point Rd. and 17th St., Wheeling, 92000884

Schmulbach Brewing Company (Industry in Wheeling MPS), 3300 McColloch St., Wheeling, 92000885

Shields, Dr. Thomas K., House (National Road MPS), 170 E. National Rd., Triadelphia, 92000869

Springer, Benjamin, House (National Road MPS), 391 E. National Rd., Triadelphia, 92000866

Sterling Products, Incorporated (Industry in Wheeling MPS), 89 19th St., Wheeling, 92000883

Stone Tavern at Roney's Point (National Road MPS), Jct. of E. National and Roney's Point Rds., Roney's Point, 92000864

Thompson, Josias, House (National Road MPS), 155 E. National Rd., Triadelphia, 92000871

Weiss, Herman A., House (National Road MPS), 202 E. National. Rd., Triadelphia, 92000868

Randolph County

Rich Mountain Battlefield, 6 mi. W of Beverly on Rich Mountain Rd., Co. Rt. 37/8, Beverly vicinity, 92000899

Upshur County

Southern Methodist Church Building, 81 W. Main St., Buckhannon, 92000898

Wood County

Parkersburg High School—Washington Avenue Historic District, Washington Ave. from Park Ave. to Dudley Ave., including 2101 Dudley, Parkersburg, 92000895

Wisconsin

Marathon County

Fricke—Menzer House, 105 Main St., Marathon, 92000856

[FR Doc. 92–15191 Filed 6–29–92; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55; Sub-No. 364X]

CSX Transportation, Inc.—Abandonment Exemption—in Muskegon County, MI

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon a .83-mile rail line between milepost CGD–0.54, at Valuation Station 28+53.37, and milepost CGD–1.37, at Valuation Station 72+17.5, in Muskegon County, MI.[1]

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no CSXT overhead traffic on the line; and (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in complainant's favor within the 2-year period. CSXT further certified that the notice requirements at 49 CFR 1105.12 and 49 CFR 1152.50(d) (1) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on July 30, 1992, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail

[1] CSXT states that the Michigan Shore Railroad will continue its operations over the line following abandonment by CSXT.

[2] A stay will be issued routinely where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment (SEE), cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

use/rail banking requests under 49 CFR 1152.29 [4] must be filed by July 10, 1992. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 20, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to CSXT's representative: Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEE will issue an environmental assessment (EA) by July 5, 1992. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 18, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–15343 Filed 6–29–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32084]

San Pedro & Southwestern Railway Co.—Acquisition and Operation Exemption—Southern Pacific Transportation Co.

San Pedro & Southwestern Railway Co., a noncarrier, has filed a verified notice of exemption to acquire and operate certain properties of Southern Pacific Transportation Company in Cochise County, AZ. The transaction includes the purchase of approximately 71.99 miles of rail line extending from Curtiss (MP NA 1040.15) to the end of the line at Douglas (MP N 1107.96), with an equation near Fairbank (MP NA 1050.57=MP N 1046.39); the purchase of approximately 5.6 miles of line from Bisbee Junction (MP 1085.0) to the end of the line at Bisbee (approximately MP 1090.6); and the lease of 7.31 miles of line from Benson (MP NA 1032.84) to Curtiss (MP NA 1040.15). The exemption became effective on June 10, 1992.

Any comments must be filed with the Commission and served on: Fritz R. Kahn, suite 700, The McPherson Building, 901 15th Street NW., Washington, DC 20005.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 23, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–15341 Filed 6–29–92; 8:45 am]

BILLING CODE 7053–01–M

[Finance Docket No. 32086]

Union Pacific Railroad Co. and Southern Pacific Transportation Co.—Joint Relocation Project Exemption

On June 8, 1992, Union Pacific Railroad Company (UP) and Southern Pacific Transportation Company (SP) filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate a line of railroad in Stanislaus and San Joachin Counties, CA. The joint project involves: (1) Acquisition of overhead trackage rights by UP over SP's rail line between milepost 115.5 near Modesto, CA, and milepost 93.92 near Lathrop, CA, a distance of approximately 21.58 miles; (2) construction by UP of two connector tracks with SP's tracks at Lathrop and Modesto, and (3) incidental abandonment of UP's line between UP's milepost 27 and UP's milepost 30 near Modesto, a distance of 3 miles.[1] The transaction was to have been consummated on or after June 15, 1992.

The line relocation will enable UP to eliminate operations over a rail line located through busy city streets in Modesto, thereby alleviating traffic congestion. The Commission will assume jurisdiction over the abandonment and construction components of a relocation project only where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation over BN, 4 I.C.C.2d 95 (1987). Under these standards, the joint relocation project, including the incidental abandonment (as modified) and construction components, qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions in Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980), and as clarified in Wilmington Term RR, Inc.—Pur & Lease—CSX Transp., Inc. 6 I.C.C.2d 799 (1990), *aff'd sub nom. Railway Labor Executives' Ass'n* v. *ICC*, 930 F.2d 511 (6th Cir. 1991).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Joseph D. Anthofer, 1416 Dodge Street, room 830, Omaha, NE 68179.

Dated: June 24, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–15342 Filed 6–29–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Department Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on *June 19, 1992* a proposed Consent Decree in *United States* v. *Cordova Chemical Company., et al.*, Civil Action No. G89–0961–CA, was lodged with the United States District Court for the Western District of Michigan. The proposed Consent Decree resolves the liability of the Settling Defendant, Arnold Ott, for past response costs under section 107 of CERCLA at the Ott/Story/Cordova Superfund Site ("Site") located at Muskegon, Michigan. Under the terms of the Consent Decree, the Settling Defendant has agreed to

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[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[1] The scope of the incidental abandonment was limited by a letter filed June 16, 1992, to allow continued service to a shipper on the line at approximately milepost 25.60 inadvertently overlooked in the original filing.

reimburse EPA for past costs of $250,000.00.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Cordova Chemical Company et al.*, D.J. Ref. No. 90–11–2–481.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Michigan, Federal Building, room 589, 110 Michigan, NW., Grand Rapids, MI 49503, the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004, 202–347–2072. A copy of the proposed Consent Decree can be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $3.00 (25 cents per page reproduction charge) payable to the Consent Decree Library.

Roger Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–15326 Filed 6–29–92; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Microelectronics and Computer Technology Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") on March 13, 1992 filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain information. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to damages under specified circumstances.

On December 21, 1984, MCC and its shareholders filed their original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633). MCC and its shareholders filed additional notifications on March 29, 1985, July 30, 1986, November 7, 1986, December 23, 1986, February 25, 1987, December 23, 1987, March 4, 1988, August 16, 1988, September 19, 1989, January 16, 1990, March 7, 1990, April 11, 1990, July 11, 1990, October 2, 1990, January 17, 1991, March 1, 1991, July 30, 1991, November 12, 1991, and February 11, 1992. The Department published notices in the **Federal Register** in response to these additional notifications on April 23, 1985 (50 FR 15989), September 10, 1986 (51 FR 32263), December 8, 1986 (51 FR 44132), February 3, 1987 (52 FR 3356), March 19, 1987 (52 FR 8661), January 22, 1988 (53 FR 1859), March 29, 1988 (53 FR 10159), September 22, 1988 (53 FR 36910), October 26, 1989 (54 FR 43631), March 8, 1990 (55 FR 8612), April 9, 1990 (55 FR 13200), May 8, 1990 (55 FR 19114), October 24, 1990 (55 FR 42916), December 28, 1990 (55 FR 53367), February 11, 1991 (56 FR 5424), July 1, 1991 (56 FR 29976), August 29, 1991 (56 FR 42757), January 15, 1992 (57 FR 1760), and March 24, 1992 (57 FR 10190), respectively. On October 21, 1985, MCC filed an additional notification for which **Federal Register** notice was not required.

MCC has initiated, and will administer and conduct, a venture to develop software, programming, applications, network and transmission technologies, and equipment to accelerate the introduction and development of multi-media applications in the United States and internationally. Corning Incorporated located in Corning, NY; North American Philips located in Knoxville, TN; and Bieber-Taki Associates located in Englewood, NJ have become participants in this venture and Associate Members of MCC. Southwestern Bell Technology Resources located in St. Louis, MO, is also participating in this venture as a deemed subsidiary of Bellcore which is located in Livingston, NJ and is an existing MCC shareholder.

Valhalla Corporation located in Bellevue, WA has become an Associate Member of MCC and a participant in the Cyc Project within MCC's Advanced Computing Technology Program.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–15328 Filed 6–29–92; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of June 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–26,902; Babcock Industry, Acco Controls Group, Des Arc, AR

TA–W–27,120; NWL Conrol System, Kalamazoo, MI

TA–W–26,997; Bipolar Integrated Technology, Inc., Beaverton, OR

TA–W–27,129; Cricketeer Manufacturing Co., Harrodsburg, KY

TA–W–27,130; Joseph & Feiss Co., Cleveland, OH

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–27,182; Daniel Bruce Marine, Galiano, LA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–27,179; Tuboscope, Inc., Corpus Christi, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–27,241; Hanover Energy Service, Odessa, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–27,085; Offshore Logistics D/B/A Air Logistics, New Iberia, LA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA—W—27,148; CAE—Link Corp., Binghampton, NY

Aircraft flight simulators made by the subject firm are not imported because of their highly technical specification requirements.

TA–W–27,055; Defontaine, Inc., Wales, WI

U.S. imports of ball and roller bearings and parts declined absolutely and relative to domestic shipments in 1991 compared to 1990.

TA–W–27,031; Simplex Ceiling Corp., Parsippany, NY

Increased imports did not contribute importantly to worker separation at the firm.

TA–W–27,213; Fiber Materials, Inc., Rumford Center, ME

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA–W–27,150; Nordic-Calista Services, Anchorage, AK

A certification was issued covering all workers separated on or after April 8, 1991.

TA–W–27,151; Alaska Well Services, Inc. Anchorage, AK

A certification was issued covering all workers separated on or after April 8, 1991.

TA–W–27,156 & TA–W–27,157; Halliburton Services, Duncan Mfg Center Duncan, OK & Davis Mfg Center, Davis, OK—OK & Dallas, TX

A certification was issued covering all workers separated on or after April 7, 1991.

TA–W–27,139; Tuscarora Plastic Technical Service Group, New Brighton, PA

A certification was issued covering all workers separated on or after March 23, 1991 and before February 29, 1992.

TA–W–26,961; Bonney Forge Corp., Allentown, PA

A certification was issued covering all workers separated on or after July 1, 1991.

TA–W–27,207; Grace Drilling Co., Odessa, TX

A certification was issued covering all workers separated on or after April 22, 1991.

TA–W–27,293; Johnson and Johnson, Milltown, NJ

A certification was issued covering all workers separated on or after May 7, 1991.

TA–W–27,133, TA–W–27,134; Clayton W. Williams, Jr., Inc., Houston, TX and San Antonio, TX

A certification was issued covering all workers separated on or after April 2, 1991.

TA–W–27,099; Hanovia, Inc., Newark, NJ

A certification was issued covering all workers separated on or after March 24, 1991.

TA–W–27,108; Valeo Engine Cooling, Inc., Truck Div., (Formerly Blackstone Corp.), Jamestown, NY

A certification was issued covering all workers separated on or after May 10, 1992.

TA–W–27,106; Sensus Technologies, Uniontown, PA

A certification was issued covering all workers engaged in the production of registers separated on or after March 29, 1991.

TA–W–27,138; Joyce Elaine Garments, Inc., Pittsfield, IL

A certification was issued covering all workers separated on or after March 27, 1991.

TA–W–27,137; and TA–W–27,137A; BJ Services Co. USA, Pleasanton, TX and Houston, TX

A certification was issued covering all workers separated on or after April 7, 1991.

TA–W–27,143; New Reserve Gas, Oklahoma City, OK

A certification was issued covering all workers separated on or after April 7, 1991.

TA–W–27,008; BP Exploration, Inc., Houston, TX and Operating at Various Locations in The Following States: A; AL, B; CA, C; LA, D; MS, E; OH, F; OK, G; TX

A certification was issued covering all workers separated on or after February 1, 1992.

TA–W–27,147, TA–W–27,159 & TA–W–27,160; Santa Fe Minerals, Inc., Dallas, TX, Middletown, CA and Live Oak, CA

A certification was issued covering all workers separated on or after April 7, 1991.

TA–W–26,161, TA–W–27,162 & TA–W–27,163; Santa Fe Minerals, Inc., Tyrone, OK, El Reno, OK and Tulsa, OK

A certification was issued covering all workers separated on or after April 7, 1991.

TA–W–27,164 and TA–W–27,165; Santa Fe Minerals, Inc., Lafayette, LA and Fort Smith, AR

A certification was issued covering all workers separated on or after April 7, 1991.

TA–W–27,227; Petersburg Mfg., Co., Petersburg, PA

A certification was issued covering all workers separated on or after April 29, 1991.

TA–W–27,169 and TA–W–27,169A; SEDCO Forex Resources, Inc., (A Subsidiary of Schlumberger Technology Corp.), North American Region, U.S. Operations Office, Dallas, TX & All Other Mobile Marine and Land Based Units & Offices Operating Out of/In The State of Texas

A certification was issued covering all workers separated on or after April 7, 1991.

I hereby certify that the aforementioned determinations were issued during the month of June 1992. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 23, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–15298 Filed 6–29–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,309]

Chevron USA Production Co., Midland, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 26, 1992 in response to

a worker petition which was filed on May 26, 1992 on behalf of workers at Chevron USA Production Company, Midland, Texas.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–27,267). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 22d day of June, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–15296 Filed 6–29–92; 8:45 am]

BILLING CODE 4510–30–M

General Dynamics; Termination of Investigation

In the matter of General Dynamics Corp., TA–W–27,221 General Dynamics Convair Division, San Diego, CA; TA–W–27,222 General Dynamics Space System Division, San Diego, CA; TA–W–27,223 General Dynamics Pomona Division, Pomona, CA; TA–W–27,224 General Dynamics Air Defense Systems Division, Pomona, CA.

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 4, 1992 in response to a worker petition which was filed by the International Association of Machinists and Aerospace Workers Union on May 4, 1992 on behalf of workers at General Dynamics Corporation at the following facilities: General Dynamics Convair Division, San Diego, California; General Dynamics Space Systems Division, San Diego, California; General Dynamics Pomona Division, Pomona, California; General Dynamics Air Defense Systems Division, Pomona, California.

A negative determination applicable to the petitioning group of workers was issued on June 22, 1992 (TA–W–27,117 (A–D)). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 22d day of June 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–15295 Filed 6–29–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27, 113]

North Star Steel Co., St. Paul, MN; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 13, 1992 in response to a worker petition which was filed on behalf of workers at North Star Steel Company, St. Paul Minnesota.

A negative determination applicable to the petitioning group of workers was issued on March 31, 1992 (TA–W–26, 787). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 19th day of June 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–15294 Filed 6–29–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–26, 874]

Stevenson Co-Ply, Inc. Stevenson, WA; Revised Determination on Reconsideration

On June 12, 1992, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers at Stevenson Co-Ply, Inc., Stevenson, Washington. This notice will soon be published in the **Federal Register.**

Investigaiton findings show that the subject plant produced primarily plywood and softwood veneer. The workers were not separately identifiable by product. The findings also show that worker separations began in early 1991 and all production ceased on January 24, 1992.

On reconsideration, new information was obtained showing that oriented strand board (osb) and wafer board are like and directly competitive with plywood. The Department resurveyed Stevenson's customers for imports of osb and wafer board. The survey showed that several large customers increased their purchases of imported osb and wafer board in 1991 compared to 1990 and in the first five months of 1992 compared to the same period in 1991.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the former workers of Stevenson Co-Ply, Inc., in Stevenson, Washington were adversely affected by increased imports of articles like or directly competitive with the plywood produced at Stevenson Co-Ply, Inc. in Stevenson, Washington. In accordance with the provisions of the Act, I make the following revised certification for the Stevenson Co-Ply workers in Stevenson, Washington.

All workers of Stevenson Co-Ply, Inc., in Stevenson, Washington who became totally or partially separated from employment on or after January 31, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of June 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service Unemployment Insurance Service.

[FR Doc. 92–15297 Filed 6–29–92; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance Company Grants Panel B Section) to the National Council on the Arts will be held on July 18, 1992 from 2 p.m.-5 p.m. in room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, as amended, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: June 25, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–15310 Filed 6–29–92; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance Company Grants Panel A Section) to the National Council on the Arts will be held on July 14–17, 1992 from 9 a.m.–8 p.m. and July 18 from 9:30 a.m.–12:30 p.m. in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on July 18 from 9:30 a.m.–12:30 p.m. The topic will be policy discussion.

The remaining portions of this meeting on July 14–17 from 9 a.m.–8 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: June 25, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–15311 Filed 6–29–92; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Touring Networks/Theater Initiative/Opera-Musical Theater Initiative Section) to the National Council on the Arts will be held on July 16–17, 1992 from 9 a.m.–5 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on July 17 from 9 a.m.–5 p.m. The topics will be policy discussion and guidelines review.

The remaining portion of this meeting on July 16 from 9 a.m.–5 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation for the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: June 19, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–15312 Filed 6–29–92; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982, the Nuclear Regulatory Commission (NRC) published in the **Federal Register** (47 FRN 596–600), as final, certain amendments to 10 CFR parts 71 and 73 (effective July 6, 1982), which require advance notification to Governors or their designees concerning transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in part 73 is for spent nuclear reactor fuel shipments and the notification for part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR part 73).

The following list updates the names, addresses and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the Federal Register on or about June 30, to reflect any changes in information.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

States	Part 71	Part 73
Alabama	Col. Ned W. McHenry, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36192–0501, (205) 242–4378.	Same.
Alaska	Mead Treadwell, Deputy Commissioner, Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 105, Juneau, AK 99801–11795, (907) 465–5050.	Same.
Arizona	William A. Wright, Acting Director, Arizona Radiation Regulatory Agency, 4814 South 40th Street, Phoenix, AZ 85040, (602) 255–4845, After hours: (602) 223–2212.	Same.
Arkansas	Greta J. Dicus, Director, Division of Radiation Control and Emergency Management Programs, Arkansas Department of Health, 4815 West Markham Street, Little Rock, AR 72205, (501) 661–2301, After hours: (501) 661–2136 or 661–2000.	Same.
California	George M. Edgerton, Chief, Enforcement Services Division, California Highway Patrol, 444 North Third Street, Suite 310, Sacramento, CA 95814, (916) 445–3253.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

States	Part 71	Part 73
Colorado	Major Lonnie J. Westphal, Officer in Charge, Region 2, Colorado State Patrol, 700 Kipling Street, Denver, CO 80215, (303) 239-4406, After hours: (303) 239-4501.	Same.
Connecticut	Honorable Timothy R.E. Keeney, Commissioner, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106, (203) 566-2110.	Same.
Delaware	Patrick W. Murray, Secretary, Department of Public Safety, P.O. Box 818, Dover, DE 19903, (302) 739-4321	Same.
Florida	Harlan Keaton, Public Health Physicist Manager, Office of Radiation Control, Department of Health & Rehabilitative Services, P.O. Box 680069, Orlando, FL 32868-0069, (407) 297-2095.	Same.
Georgia	Al Hatcher, Director, Transportation Division, Public Service Commission, 1007 Virginia Avenue, Suite 310, Hapeville, GA 30354, (404) 559-6600.	Same.
Hawaii	Bruce S. Anderson, Ph.D., Deputy Director for Environmental Health, State Department of Health, 1250 Punchbowl Street, Honolulu, HI 96813, (808)548-4139.	Same.
Idaho	Captain David C. Rich, Department of Law Enforcement, Idaho State Police, MCSAP, 6050 Corporal Lane, Boise, ID 83704, (208) 327-7180.	Same.
Illinois	Thomas W. Ortciger, Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 785-9868 (24 Hour), 24 Hrs Emergency: (217) 785-0600.	Same.
Indiana	Lloyd R. Jennings, Superintendent, Indiana State Police, 301 State Office Building, 100 North Senate Avenue, Indianapolis, IN 46204, (317) 232-8241, After hours: (317) 232-8248.	Same.
Iowa	Ellen M. Gordon, Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, IA 50319, (515) 281-3231.	Same.
Kansas	Frank H. Moussa, M.S.A., Technological Hazards Administrator, The Adjutant General's Department, Division of Emergency Preparedness, P.O. Box C-300, Topeka, KS 66601, (913) 266-1409 After hours: (913) 296-3176.	Same.
Kentucky	Donald R. Hughes, Sr., Director, Division of Community Safety, Department for Health Services, 275 East Main Street, Frankfort, KY 40621, (502) 564-3700.	Same.
Louisiana	Captain Louis Cook, Louisiana State Police, 265 South Foster Drive, P.O. Box 66614, Baton Rouge, LA 70896, (504) 925-6113.	Same.
Maine	Chief of the State Police, Maine Dept. of Public Safety, 36 Hospital Street, Augusta, ME 04333, (207) 289-2155	Same.
Maryland	Colonel James E. Harvey, Chief, Services Bureau, Maryland State Police, 1201 Reisterstown Road, Pikesville, MD 21208, (301) 486-3101.	Same.
Massachusetts	Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Public Health, 150 Tremont Street, 11th Floor, Boston, MA 02111, (617) 727-6214.	Same.
Michigan	Captain Allen L. Byam, Commanding Officer, Special Operations Division, Michigan Department of State Police, 714 S. Harrison Road, East Lansing, MI 48823, (517) 336-6187,.	Same.
Minnesota	John R. Kerr, Plans & Operations Coordinator, Minnesota Division of Emergency Management, B5—State Capitol, St. Paul, MN 55155, (612) 296-0481, After hours: (612) 649-5451.	Same.
Mississippi	James E. Maher, Director, Mississippi Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39296-4501, (601) 352-9100 (24 hours).	Same.
Missouri	Richard D. Ross, Director, State Emergency Management Agency, 1717 Industrial Drive, P.O. Box 116, Jefferson City, MO 65102, (314) 751-9779, After hours: (314) 751-2748.	Same.
Montana	Mr. Adrian Howe, Chef, Occupational Health Bureau, Environmental Sciences Division, Department of Health & Environmental Sciences, Room A113, Cogswell Bldg., Helena, MT 59620, (406) 444-3671, After hours: (406) 442-1425.	Bill Good, Acting Administrator, Disaster & Emergency, Services Division, P.O. Box 4789, Helena, MT 59604-4789, (406) 444-6911.
Nebraska	Colonel Ron Tussing, Superintendent, Nebraska State Patrol, P.O. Box 94907, Lincoln, NE 68509, (402) 471-2406, After hours: (402) 471-4545.	Same.
Nevada	Stanley R. Marshall, Supervisor, Radiological Health Section, Bureau of Health Protection Services, Nevada Division of Health, 505 East King Street, Carson City, NV 89710, (702) 687-5394.	Same.
New Hampshire.	Richard M. Flynn, Commissioner, New Hampshire Dept. of Safety, James H. Hayes Building, Hazen Drive, Concord, NH 03305, (603) 271-3636 (24 hours).	Same.
New Jersey	Kent Tosch, Manager, Department of Environmental Protection & Energy, Bureau of Nuclear Engineering, CN 415, Trenton, NJ 08625, (609) 987-2031.	Same.
New Mexico	Roland K. Lough, Chief, Emergency Management Bureau, Department of Public Safety, P.O. Box 1628, Santa Fe, NM 87504-1628, (505) 827-9222, After hours: (505) 294-7932.	Same.
New York	Donald A. DeVito, Director, State Emergency Mgmt. Office, Public Security Building, State Campus, Albany, NY 12226, (518) 457-2222.	Same.
North Carolina	Major Walter K. Chapman, Director, Administrative Services, North Carolina Highway Patrol Headquarters, P.O. Box 27687, Raleigh, NC 27611, (919) 733-7952, After hours: (919) 733-3861.	Same.
North Dakota	Dana K. Mount, Director, Divison of Environmental Engineering, Department of Health, 1200 Missouri Avenue, Box 5520, Bismarck, ND 58502-5520, (701) 221-5188, After hours: (701) 224-2121.	Same.
Ohio	James R. Williams, Chief of Staff, Ohio Emergency Management Agency, 2825 W. Granville Road, Columbus, Oh 43235-0301, (614) 889-7150.	Same.
Oklahoma	Dave McBride, Commissioner of Public Safety, Oklahoma Department of Public Safety, 3600 N. King Avenue, P.O. Box 11415, Oklahoma City, OK 73136-0145, (405) 425-2424 (24 hours).	Same.
Oregon	David Stewart-Smith, Director, Facilities Regulation, Oregon Department of Energy, 625 Marion Street, N.E., Salem, OR 97310, (503) 378-6469.	Same.
Pennsylvania	George M. Johnson, Director, Response and Recovery, Pennsylvania Emergency Management Agency, P.O. Box 3321, Harrisburg, PA 17105, (717) 783-8150, After hours: (717) 783-8150.	Same.
Rhode Island	William A. Maloney, Associate Administrator, Motor Carriers, Division of Public Utilities and Carriers, 100 Orange Street, Providence, RI 02903, (401) 277-3500.	Same.
South Carolina	Heyward G. Shealy, Chief, Bureau of Radiological Health, South Carolina Department of Health & Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 734-4632, After hours: (803) 253-6497.	Same.
South Dakota	Gary N. Whitney, Division Director, Emergency Management, 500 E. Capitol, Pierre, SD 57501-5060, (605) 773-3231	Same.
Tennessee	John White, Assistant Deputy Director, Tennesee Emergency Management Agency, State Emergency Operations Center, 3041 Sidco Drive, Nashville, TN 37204, (615) 741-0001, After hours: (Inside TN) 1-800-262-3300, (Outside TN) 1-800-258-3300.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

States	Part 71	Part 73
Texas	David K. Lacker, Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, TX 78756, (512) 834-6688.	Col. Joe E. Milner, Director, Texas Department of Public Safety, 5805 N. Lamar Blvd, Austin, TX 78752, (512) 465-2000.
Utah	Larry F. Anderson, Director, Bureau of Radiation Control, 288 N. 1460 West, P.O. Box 16690, Salt Lake City, UT 84116-0690, (801) 538-6734, After hours: (801) 538-6333.	Same.
Vermont	Patrick J. Garahan, Secretary, Vermont Agency of Transportation, 133 State Street, Montpelier, VT 05602, (802) 828-2657	Same.
Virginia	Michael M. Cline, Director of Operations, Department of Emergency Services, Commonwealth of Virginia, 310 Turner Road, Richmond, VA 23225, (804) 674-2400.	Same.
Washington	Robert J. Huss, Deputy Chief, Washington State Patrol, General Administration Building, Mail Stop AX-12, Olympia, WA 98504-0612, (206) 586-2340.	Same.
West Virginia	Colonel J. R. Buckalew, Superintendent, Department of Public Safety, 725 Jefferson Road, South Charleston, WV 25309, (304) 746-2111.	Same.
Wisconsin	Robert M. Thompson, Administrator, Wisconsin Division of Emergency Government, 4802 Sheboygan Ave., Room 99A, P.O. Box 7865, Madison, WI 53707, (608) 266-3232.	Same.
Wyoming	Captain L. S. Gerard, Motor Carrier Officer, Wyoming Highway Patrol, 5300 Bishop Boulevard, P.O. Box 1708, Cheyenne, WY 82002-9019, (307) 777-4317, After hours: (307) 777-4323.	Same.
District of Columbia.	Norma J. Stewart, Program Manager, Pharmaceutical and Medical Devices Control Division, Department of Consumer and Regulatory Affairs, 614 H Street, NW, Washington, DC 20001, (202) 727-7219, After hours: (202) 727-6161.	Same.
Puerto Rico	Santos Rohena, Jr., Chairman, Environmental Quality Board, P.O. Box 11488, Santurce, PR 00910, (809) 722-1175 or (809) 725-5140.	Same.
Guam	Fred M. Castro, Administrator, Guam Environmental Protection Agency, P.O. Box 2999, Agana, Guam 96910, (671) 646-7579.	Same.
Virgin Islands	Alexander Farrelly, Governor, Government House, Charlette Amalie, St. Thomas, Virgin Islands 00801, (809) 774-0001	Same.
American Samoa.	Mr. Pati Faiai, Government Ecologist, Environmental Protection Agency, Office of the Governor, Pago Pago, American Samoa 96799, (684) 633-2304.	Same.
Commonwealth of the Northern Mariana Islands.	Nicolas M. Leon Guerrero, Director, Department of Natural Resources, Commonwealth of Northern Mariana Islands Government, Capitol Hill, Saipan, MP 96950, (670) 322-9830 or (670) 322-9834.	Same.

Questions regarding this matter should be directed to Mindy Landau at (301) 504-2308.

Dated at Rockville, Maryland this 10th day of June, 1992.

For the Nuclear Regulatory Commission.

Carlton Kammerer,

Director, Office of State Programs.

[FR Doc. 92-15333 Filed 6-29-92; 8:45 am]

BILLING CODE 7590-01-M

Availability of Proposed Revision to Staff Technical Position Regarding Concentration Averaging and Encapsulation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of a proposed revision, in part, of the 1983 Staff Technical Position on Radioactive Waste Classification. The revision is entitled, [Proposed] "Technical Position on Concentration Averaging and Encapsulation." The Position provides guidance on the interpretation of §§ 61.55(a)(8) of 10 CFR part 61 as it applies to the classification (e.g., Class A, B, or C waste) of a variety of different types and forms of low-level radioactive waste.

The Technical Position on Radioactive Waste Classification was initially developed in 1983 to provide guidance to low-level radioactive waste generators on four specific topics regarding waste classification: (1) Acceptable Materials Accountability Programs; (2) Determination and Verification of Radionuclide Concentrations and Correlations; (3) Concentration Volumes and Masses; and (4) Reporting on Manifests. Because of the desirability of attempting to achieve consistent waste classification positions among the Commission and Agreement State regulatory authorities, and because of the impact of waste classification positions on other programs (e.g., DOE's program to accept greater-than Class C waste), a need was identified to expand upon, further define, and replace guidance provided on the third of the four topics, "Concentration Volumes and Masses." This need resulted in the development of a [Proposed] "Technical Position on Concentration Averaging and Encapsulation." Copies of the proposed "Technical Position on Concentration Averaging and Encapsulation" are being distributed (under separate cover) to licensees. Copies are also being distributed (separately) by NRC's Office of State Programs to Agreement States, Non-Agreement States, State Liaison Officers, and others who are on the NRC's Compact Distribution List.

ADDRESSES: Copies of the proposed Technical Position may be obtained by writing to W.R. Lahs at Mail Stop 5E-2 OWFN, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments on this proposed Technical Position are solicited and should be sent by August 26, 1992, to the Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A final position will be issued following NRC staff review of the comments received.

FOR FURTHER INFORMATION CONTACT: W.R. Lahs, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504-2569.

Dated at Rockville, Maryland, this 17th day of June 1992.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Chief Low-Level Waste Management Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 92-15323 Filed 6-29-92; 8:45 am]

BILLING CODE 7590-01-M

Commonwealth Edison Co.; Byron Station, Unit Nos. 1 and 2; Braidwood Station, Unit Nos. 1 and 2; Issuance of Amendment Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 47 to Facility Operating License No. NPF-37, Amendment No. 47 to Facility Operating License No. NPF-66, Amendment No. 36 to Facility Operating License No. NPF-72, and Amendment No. 36 to Facility Operating License No. NPF-77, issued to Commonwealth Edison Company (CECo, the licensee), which revised the Technical Specifications for operation of the Byron Station, Unit Nos. 1 and 2, and Braidwood Station, Unit Nos. 1 and 2, located in Ogle County and Will County, Illinois, respectively. The amendments are effective as of the date of issuance.

The amendments modified the Technical Specifications to eliminate the surveillance requirement of venting the ECCS discharge piping inside the containment. This change will only effect the conduct of the surveillance on Byron Unit 1 and Braidwood Unit 1.

The application for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 25, 1991 (56 FR 28934). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of these amendments will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendments dated March 17, 1989, as supplemented on August 25, 1989, March 12, 1990, and June 10, 1991, (2) Amendment Nos. 47, 47, 36, 36 to Licensee Nos. NPF-37, MPF-66, NPF-72, NPF-77, respectively, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the local public document rooms located at: for Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects-III/IV/V.

Dated at Rockville, Maryland this 22 day of June 1992.

For the Nuclear Regulatory Commission.

Anthony H. Hsia, Project Manager,

Project Directorate III-2, Division of Reactor Projects-III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-15324 Filed 6-29-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-155]

Consumers Power Co. (Big Rock Point Plant); Exemption

I

The Consumers Power Company (CPCo, the licensee) is the holder of Facility Operating License No. DPR-6 which authorizes operation of the Big Rock Point Plant (the facility) at a steady-state power level not in excess of 240 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in Charlevoix County, Michigan. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Section 50.62(c)(3) of 10 CFR part 50 requires that each boiling water reactor (BWR) must have an alternate rod injection (ARI) system that is diverse (from the reactor trip system) from sensor output to the final actuation device. Section 50.62(d) requires CPCo to submit a proposed schedule for implementation of all applicable requirements of 10 CFR 50.62, "Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants," to the Commission. By letter dated October 14, 1985, CPCo submitted an implementation schedule as required by 10 CFR 50.62.

This exemption pertains specifically to 10 CFR 50.62(c)(3), the alternate rod injection system, and was requested by CPCo in its December 29, 1986 submittal. The proposed exemption pertains to the installation of an ARI system at the Big Rock Point Plant.

The subject of ATWS, and the manner in which this potential problem should be considered in the design of nuclear power plants, has been discussed extensively by the Commission and the nuclear industry. In April of 1978, the Commission published NUREG-0460, "Anticipated Transients Without Scram for Light-Water Reactors." This report summarized technical considerations related to ATWS and made a number of recommendations. In describing methods to reduce the risk associated with ATWS events (NUREG-0460, Vol. 1, Section 6) the Commission states that three general means of attaining the objective of risk reduction are available: (1) Reducing the frequency of occurrence of transients which challenge the reactor protection system, (2) increasing the reliability of the protection system, and (3) providing systems that mitigate the consequences of ATWS events. In Volume 3 of NUREG-0460, published in December of 1978, the NRC staff recognized that the engineering, cost, and risk analyses performed by the staff for the designs addressed in Volumes 1 and 2 of NUREG-0460 are not applicable to a number of early operating plants (including Big Rock Point) due to significant differences in design from more modern plants. The NRC staff stated that plant-specific analyses would be required to address the relative effectiveness of various modifications for the improved prevention or mitigation of ATWS events.

In the Statements of Consideration for the ATWS Rule (49 FR 26036), the NRC stated that older plants (those licensed to operate prior to August 22, 1969) may be granted an exemption from these amendments if they can demonstrate that their risk from ATWS events is sufficiently low. Factors important to this demonstration of low risk could include power level, unique design features that could prevent or mitigate the consequences of an ATWS event, remaining plant operating lifetime, or remote siting. The NRC further stated that a reduction in the frequency of challenges to plant safety systems

should be a prime goal of each licensee and that ATWS risk reductions can also be achieved by reducing the much larger frequency of transients which call for the reactor protection system to operate.

In its October 14, 1985 letter, CPCo committed to perform a risk analysis to determine the efficacy of the implementation of ARI. The licensee certified that the standby liquid control (SLC) system meets the requirements of 10 CFR 50.62(c)(4), and that the control capacity (the concentration and flow rate of the sodium pentaborate solution used to shut down the reactor) for the system exceeds the criteria provided in NRC Generic Letter 85–03, "Clarification of Equivalent Control Capacity for Standby Liquid Control Systems." In this letter, CPCo also requested an exemption from the requirements of 10 CFR 50.62(c)(5), which requires the installation of an automatic recirculation pump trip (RPT) feature. On March 20, 1986, the Commission issued an exemption from 10 CFR 50.62(c)(5) for the Big Rock Point Plant.

By letter dated October 1, 1986, CPCo submitted a plant-specific evaluation of the risks associated with ATWS events at Big Rock Point. This probabilistic risk analysis included evaluations of alternatives to the installation of an ARI system, including the installation of a simplified ARI and the improvement of secondary system stability following a load rejection event. The risk analysis determined that the installation of a full ARI system provided little benefit beyond the risk reduction associated with the improvement of secondary system response to transients from high power levels. The installation of an ARI would result in a core damage frequency (CDF) of 3.2E-5/RY (reactor year), while improvement of secondary system stability needed to assure 100% load reject capability would result in a CDF of 3.6E-5/RY. However, improvement of secondary system response would also reduce the plant risk associated with non-ATWS events. The NRC staff has reviewed the licensee's risk analysis and has found the licensee's conclusion that improving the plant load rejection capability is an acceptable alternative to the installation of an ARI system.

By letter dated May 15, 1990, CPCo submitted additional information concerning the installation of a single reactor recirculation pump trip feature, which is initiated upon a sensed load rejection. This feature is intended to permit the plant to continue to operate following a load rejection event by immediately reducing reactor power to approximately 60% of the initial level. Although the Commission's exemption from the ATWS Rule requirements for the installation of a RPT feature still applies, the licensee determined that the installation of a simplified RPT would improve the response of the secondary system to load rejections. The licensee has provided a computer model of the Big Rock Point reactor, main steam, and feedwater systems which indicates that reducing reactor power will prevent the main feedwater pumps from tripping due to low suction pressure (caused by high level in the condenser and the automatic opening of the condensate reject valve), thus preventing a subsequent reactor scram due to low steam drum level. While no test has been performed to validate this conclusion, the computer model has been shown to correctly predict plant parameters as observed during a load rejection test performed on July 6, 1972 from 63 Mwe, which resulted in a reactor scram. Additionally, the Big Rock Point Plant has successfully experienced load rejection events in November of 1971 while operating at 40 Mwe (approximately 55% power) and in April of 1978 from 38 Mwe (approximately 53% power) without a reactor scram. No other load rejection events have occurred from this power level. The recirculation pump trip feature was installed during the 1990 refueling outage.

The Big Rock Point Plant design is markedly different from the design of other BWRs. The plant is equipped with 6 reactor steam drum safety values with a combined capacity of approximately 200% of the rated steam flow of the reactor, which is significantly larger than the relief capacity of other BWRs. This large relief capacity reduces the risk associated with failure of the reactor coolant pressure boundary from overpressurization during ATWS events. Additionally, a separate Reactor Depressurization System is capable of passing 425% of the rated steam flow in order to reduce pressure in the reactor so that the core spray system can provide a source of water for cooling. Other BWRs are not equipped with a separate depressurization system.

The Big Rock Point containment structure includes approximately 1,000,000 cubic feet of free air volume, causing the response of the containment to ATWS events to resemble the response of a large, dry PWR containment. Additional pressure suppression is provided by the containment spray system. Other BWR containments utilize an integral pressure suppression pool to limit the increase in containment pressure associated with an ATWS.

The response of large PWR containments to ATWS events is significantly different from the response of the typical BWR containment designs. Thus, the Big Rock Point containment is not susceptible to the failure mechanisms associated with other BWR containments which incorporate an integral pressure suppression pool.

In addition to the implementation of ARI, 10 CFR 50.62 also requires that each BWR facility install a SLC system as a diverse method to shut down the reactor. The SLC system at Big Rock Point delivers approximately 132 gpm of a 19 weight percent sodium pentaborate solution to the reactor. The system uses nitrogen pressure to start flow into the reactor cooling system, while a siphoning action maintains flow of the solution. The SLC system design utilized at other BWR facilities requires pumps and injects the sodium pentaborate at a somewhat lower flow rate. Thus, the SLC system at Big Rock Point is a passive design (with the exception of several explosive valves) and is capable of shutting the reactor down in less than one minute, and injecting enough solution within five minutes to ensure subcriticality at cold conditions. The NRC staff considers the SLC system at Big Rock Point to be significantly more effective than the SLC systems installed at other BWR facilities. Thus, the NRC staff finds that the Big Rock Point Plant possesses a diverse method of shutting down the reactor during an ATWS event.

The operating license for the Big Rock Point Plant, DPR–6, is scheduled to expire on May 31, 2000. The licensee plans to file a request with the Commission to extend the expiration date of the license to recover the construction period of the plant (approximately 28 months), but is currently not a candidate for extension of its operating license beyond 40 years plus the construction period. Thus, the NRC staff finds that the Big Rock Point Plant has a limited remaining plant operating lifetime, as described in 49 FR 26036.

Thus, after considering the licensee's analysis of the potential risk reduction associated with various modifications for the mitigation of ATWS events and the unique features of the Big Rock Point design, the NRC staff concludes that the licensee's improvement of secondary system response to transients, the unique design of the SLC system at the Big Rock Point Plant, the addition of an automatic recirculation pump trip, and the limited remaining operating lifetime of the facility, justify an exemption to 10 CFR 50.62(c)(3) such that the installation

of an ARI system is not required at the Big Rock Point Plant. The staff further concludes that the Big Rock Point Plant meets the criteria for exemption from 10 CFR 50.62(c)(3) as described in the Statements of Consideration for the ATWS Rule.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption, as described in Section II, 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. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present justifying the exemption.

Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 50.62(c)(3) that an ARI system be installed at the Big Rock Point Plant.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (57 FR 3223).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 17th 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. 92-15322 Filed 6-29-92; 8:45 am]

BILLING CODE 7590-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed forms under review are summarized below.

DATES: Comments must be received by July 14, 1992. If you anticipate commenting on the form but finding that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Valerie Settles, Management Services, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 457-7051.

OMB Reviewer: Marshall Mills, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office building, Washington, DC 20503; (202) 395-7340.

Summary of Form(s) Under Review

Type of Respondent: Business or other institutions (except farms).
Standard Industrial Classification Codes: All.
Description of Affected Public: U.S. companies investing overseas.

Form 1

Type of Request: Revision.
Form No. & Title: OPIC—52; Application for Political Risk Investment Insurance.
Frequency of Use: Other—once per investor per project.
Number of Responses: 200.
Reporting Hours: 400.
Federal Cost: $10,000.
Authority for Information Collection: Section 234(k) of the Foreign Assistance act of 1961, as amended.
Abstract (Needs and Uses): Application is the principal document used to determine if OPIC should issue insurance for investments in less developed countries. The form is needed so OPIC can assess the project risk, the investor's eligibility and U.S. and host country effects.

Form 2

Type of Request: Revision.
Form No. & Title: OPIC—50; Request for Registration for Political Risk Investment Insurance.
Frequency of Use: Nonrecurring.
Number of Responses: 800.
Reporting Hours: 266.
Federal Cost: $1,000.
Authority for Information Collection: Section 231 and 234(a) of Foreign Assistance Act of 1961, as amended.
Abstract (Needs and Uses): OPIC 50 is submitted by eligible investors to register their international investments, and ultimately, to seek OPIC insurance. By submitting Form 50 to OPIC prior to making an irrevocable commitment, the incentive effect of OPIC is demonstrated.

Dated: June 17, 1992.

James Offutt,

Associate General Counsel, Department of Legal Affairs.

[FR Doc. 92-15347 Filed 6-29-92; 8:45 am]

BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30844; File No. SR-MSE-92-07]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Stock Exchange, Inc. Relating to an Amendment to its Certificate of Incorporation

June 19, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 26, 1992, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE proposes to amend the Exchange's Certificate of Incorporation to conform it to amendments to the MSE Constitution, which were previously approved by the Commission.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in

[1] *See* Securities Exchange Act Release Nos. 15762 (April 24, 1979) and 16468 (January 16, 1980) (File Nos. SR-MSE-78-30 and SR-MSE-79-25).

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

1. Purpose

The purpose of the proposed rule change is to conform the Certificate of Incorporation to previous changes that were made in the MSE Constitution.[2] First, provisions in the Constitution relating to options trading at the MSE were deleted. In addition, the position of Chairman of the Exchange was expanded from a part-time position to a full-time position.[3] However, at the time of these filings, conforming changes to the Certificate of Incorporation were inadvertently omitted. The proposed rule filing would conform the Certificate of Incorporation to the changes in the Constitution approved in 1979 and 1980.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(3) of the Act in that the proposed rule is designed to assure a fair representation of the Exchange's members in the selection of the MSE's directors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is concerned solely with the administration of the self-regulatory organization and therefore has become effective pursuant to section 19(b)(3)(A)(iii) of the Act and subparagraph (e) of rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at 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 MSE. All submissions should refer to File No. SR–MSE–92–07 and should be submitted by July 21, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–15332 Filed 6–29–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30840; File No. SR–NASD–92–06]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Designation of NASDAQ National Market System Securities

June 19, 1992.

I. Introduction

The National Association of Securities Dealers, Inc. ("NASD") submitted on February 18, 1992, a proposed rule change pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") and rule 19b–4 [2] thereunder to amend part III, section 1 of Schedule D to the NASD By-Laws [3] to require that a review of an issuer's past corporate governance activities both on and after withdrawal from the NASDAQ National Market System ("NASDAQ/NMS") or a securities exchange which imposes corporate governance requirements be completed prior to NASDAQ/NMS designation. Such review will be for the purpose of determining whether an issuer's withdrawal from NASDAQ/NMS or a securities exchange and a subsequent application to NASDAQ/NMS was for the purpose of evading NASDAQ/NMS or the exchange's corporate governance criteria.

Notice of the proposed rule change together with the terms of substance of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 30560, April 7, 1992) and by publication in the **Federal Register**, (57 FR 12951, April 14, 1992). No comments were received with respect to the proposed rule change.

II. Background

Issuers of securities designated as NASDAQ/NMS securities or listed on certain national securities exchanges are required to comply with non-quantitative ("corporate governance") listing criteria; these criteria are aimed at maintaining standards of corporate responsibility, integrity, and accountability to shareholders. The instant proposal addresses NASD concerns that issuers may evade corporate governance criteria and, in particular, shareholder approval requirements by either: (1) temporarily withdrawing from NASDAQ/NMS, having the securities traded in Regular NASDAQ, the OTC Bulletin Board, the "Pink Sheets" or an exchange with no corporate governance criteria, and then reapplying for NASDAQ/NMS designation; or (2) withdrawing from listing on a securities exchange with corporate governance criteria, and applying either immediately or at some future point for NASDAQ/NMS designation.

Under current rules, NASDAQ/NMS issuers are permitted to withdraw their securities from NASDAQ/NMS within one or two days and have their securities traded in Regular NASDAQ if they meet the qualification requirements under part II of Schedule D to the NASD By-Laws.[4] The qualification requirements applicable to Regular NASDAQ do not, however, contain the corporate governance criteria applicable to NASDAQ/NMS issuers. Therefore, an issuer whose securities are withdrawn from NASDAQ/NMS and traded in Regular NASDAQ or another market without such requirements may undertake certain corporate

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[2] *See supra*, note 1.

[3] The Commission notes that the Certificate of Incorporation is being amended to state, consistent with the MSE Constitution, Article VI, Section 2, that the Chairman be appointed by the Board of Governors. See Securities Exchange Act Release No. 16468 (January 16, 1980).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] *NASD Securities Dealers Manual*, CCH ¶ 1808.

[4] *NASD Securities Dealers Manual*, CCH ¶ 1803.

transactions which would have been violations of the corporate governance criteria under section 5, Article III to Schedule D [5] of the NASD By-Laws if the securities had remained on NASDAQ/NMS. Once the desired transaction has been completed, the issuer may, at any time, reapply for NASDAQ/NMS designation and thereby effectively evade or circumvent NASDAQ/NMS corporate governance criteria.

Similarly, the potential to evade corporate governance standards exists when an issuer withdraws from a securities exchange with corporate governance criteria and subsequently applies for NASDAQ/NMS designation. If the issuer's withdrawal from the exchange was for the purpose of temporarily entering Regular NASDAQ or a market without corporate governance standards in order to complete a corporate action which the exchange's corporate governance criteria would have prohibited, an evasion of corporate governance standards could be deemed to have occurred.

III. Description of Proposal

Given the potential for issuers to evade corporate governance standards and subsequently apply for and receive NASDAQ/NMS designation notwithstanding the prior evasion, the NASD has proposed to amend Part III, section 1 of Schedule D to the NASD By-Laws to require that a review of an issuer's past corporate governance activities both on and after withdrawal from NASDAQ/NMS or another market be completed prior to NASDAQ/NMS designation. Such review will be for the purpose of determining whether a withdrawal from NASDAQ/NMS or a securities exchange and a subsequent application to NASDAQ/NMS was for the purpose of evading NASDAQ/NMS or the exchange's corporate governance criteria.[6]

Should the NASD determine that there have been violations or evasions of corporate governance standards, the proposed rule change would allow the NASD to take any appropriate action based on its determination, including placing restrictions or additional requirements for NASDAQ/NMS designation, or the denial of designation of a security. As proposed, these determinations will be made by the NASD on a case-by-case basis, based on the facts of each situation.

IV. Conclusion

Having considered the instant proposal, the Commission believes the rule change, if approved, will strengthen investor protection and, in particular, the protection of shareholder approval rights. The corporate governance rules found in NASDAQ/NMS listing qualifications and the listing standards of certain securities exchanges afford investors shareholder voting rights for significant corporate events;[7] these rules, the Commission believes, enhance the integrity of the U.S. securities market. The Commission has therefore encouraged self-regulatory organizations ("SROs") to implement corporate governance listing standards that ensure minimal levels of shareholder participation in corporate governance pursuant to shareholder voting rights.[8]

The viability of corporate governance rules, however, is inextricably related to the ability of an SRO to enforce the rules. As is apparent, the value of corporate governance criteria is significantly diminished if the rules may be readily circumvented. Accordingly, the Commission supports the proposed rule change because the proposed amendments to Schedule D of the NASD-By-Laws provide the NASD with a means of enforcing its own corporate governance criteria in addition to a means of recourse should it discover that an issuer has violated or evaded listing standards of an exchange. The proposed review by the NASD for evasions of corporate governance criteria will assist in assuring that those who invest in NASDAQ/NMS securities continue to receive protection commensurate with the stature of the issuers comprising that market.

The Commission acknowledges that the proposal affords the NASD some degree of discretion in deciding the appropriate action to be taken should it determine that an issuer has evaded or violated corporate governance criteria. Specifically, the proposal provides that the NASD may take "any appropriate action, including placing restrictions on or additional requirements for NASDAQ/NMS designation, or the denial of designation of a security." Nonetheless, the Commission believes this discretion is necessary given the purpose of the proposed review. Absent this discretion and flexibility, the NASD would be hindered in its ability to make a case-by-case determination of an issuer's qualification for NASDAQ/NMS designation, which approach the Commission believes will best serve to protect investors and the public interest.[9]

The Commission finds that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which require that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and in general to protect investors and the public interest.[10] The proposed rule change furthers these goals inasmuch as it ensures that investors are permitted participation in significant corporate events. Due to safeguards erected by the proposed rule change, investors will not be deprived of the opportunity to participate in major decisions impacting upon the economic viability and

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[5] *NASD Securities Dealers Manual, CCH ¶ 1812.*

[6] The New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX") have parallel rules which in effect ensure that corporate governance criteria is not evaded through an issuer's efforts to delist from the respective exchanges.

Under NYSE Rule 500, absent special circumstances, a security considered by the Exchange to be eligible for continued listing will not be removed from the list upon request or application of the issuer, unless the proposed withdrawal from listing is approved by the security holders at a meeting at which a substantial percentage of the outstanding amount of the particular security is represented, without objection to the proposed withdrawal from a substantial number of individual holders of the particular security. This rule does however provide that the Exchange will not oppose delisting action by the issuer if the Exchange has denied the listing of an additional amount of such security within the preceding 30 days, and following such action by the Exchange, the majority of the company's directors have approved the delisting and provided notice to stockholders. See NYSE Company Guide, CCH ¶ 2597.

AMEX Rule 18, by contrast, requires, among other things, that the issuer upon withdrawal from the Exchange file with the Exchange a resolution adopted by the board of directors of the issuer authorizing withdrawal and setting forth in detail the reasons for such proposed withdrawal, and the facts in support thereof. See AMEX Company Guide, CCH ¶ 9238.

[7] Section 5(i) of Part III to Schedule D of the NASD By-Laws, for example, requires, among other things, that shareholders approve the issuance of 20% or more of the issuer's outstanding common stock if the issuance is in connection with the acquisition of another company. See NASD Securities Dealers Manual, CCH ¶ 1812.

[8] See, *e.g.*, Securities Exchange Act Release No. 28517 (October 5, 1990), 55 FR 41626 (October 12, 1990). This order approved the adoption of NASD rules prohibiting shareholder disenfranchisement. In approving the proposed rule change, the Commission explicitly encouraged other SRO's to adopt similar listing standards to preserve shareholder voting rights.

[9] This is consistent with the view expressed by the Commission when it approved NASDAQ/NMS corporate governance standards for shareholder approval of certain transactions for NASDAQ/NMS securities. The Commission noted at that time that the NASD should be granted flexibility in structuring its listing standards for the NASDAQ/NMS market. See Securities Exchange Act Release No. 28232 (July 19, 1990), 55 FR 30346 (July 25, 1990) (order approving File No. SR-NASD 89-42).

[10] 15 U.S.C. 78*o*-3(b)(6) (1988).

competitiveness of corporations in which they have invested.

Additionally, the Commission finds that the proposed rule change is consistent with the provisions of section 11A(a)(1)(C)(ii) of the Act, which in pertinent part sets forth as among the goals of the Act the furthering of "fair competition * * * among exchange markets, and between exchange markets and markets other than exchange markets * * *." [11] The Commission is of the opinion that negative competitive implications result if an issuer is permitted to remove itself from listing on an exchange to bypass certain listing requirements and subsequently allowed to list on NASDAQ/NMS with no repercussions for the earlier evasion or violation of the exchange's listing criteria. The instant proposal furthers the goals of section 11A(a)(1)(C)(ii) of the Act by fostering fair competition among market places inasmuch as it institutes a mechanism to discourage issuers from leaving one securities market and entering another solely for the purpose of circumventing listing requirements aimed at protecting investors.

Finally, the proposed amendments will assist in assuring that issuers whose securities are traded in the NASDAQ/NMS meet non-quantitative criteria consistent with a national interest in those securities.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that 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. 92-15330 Filed 6-29-92; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30841; File No. SR-PSE-92-17]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Extension of the PSE's Ten-Up Pilot Program

June 19, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 1, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to extend the Exchange's Trading Crowd Firm Disseminated Market Quote ("ten-up Rule") pilot program through August 14, 1992.[1] The text of the proposed rule change is available at the Compliance Department of the PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In May 1990, the Commission approved the Exchange's ten-up Rule on a one-year bass.[2] Subsequently, the PSE obtained Commission approval to extend the ten-up pilot program through May 14, 1992.[3] The PSE is now requesting a three-month extension of the ten-up pilot program through August 14, 1992, in order to complete its evaluation of the effectiveness of the program and to allow the public to continue to benefit from the ten-up program during the evaluation process. In particular, the PSE states that the extensions of the ten-up pilot program will enable the Exchange to: (1) Complete its evaluation of the program and its effect on the public and members and member organizations, and (2) continue the benefits to the public resulting from the implementation of the ten-up rule during the evaluation process.

The PSE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it promotes just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PSE has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, the requirements of section 6, 11(b), and 11A thereunder, in that it may result in improved quality of PSE options markets and better market maker performances. The ten-up rule provides public customers with the assurance of order execution to a minimum depth of ten contracts at the best disseminated bid or offer. This results in better executions of small customer orders by ensuring greater depth to the PSE options markets.[4]

The Commission notes, as it has in prior orders extending the ten-up Rule, that the Exchange, before seeking permanent approval of the Rule, is expected to study the operation of the ten-up Rule and its effect, if any, on the PSE's options markets. Specifically, the Exchange should study the effect of the ten-up Rule on the speed of execution of trades, its impact on average bid/ask spreads and any increase or decrease in

[11] 15 U.S.C. 78k-1(a)(1)(C)(ii) (1988).

[1] The Exchange's ten-up Rule requires PSE trading crowds to provide a depth of ten contracts for all non-broker/dealer customer orders, at the disseminated market quote at the time such orders are announced or displayed at a trading post. See Securities Exchange Act Release No. 28021 (May 16, 1990), 55 FR 21131 ("Ten-Up Approval Order").

[2] Id.

[3] See Securities Exchange Act Release Nos. 29325 (June 17, 1991), 56 FR 29300 (First Extension), 29909 (November 6, 1991), 56 FR 57914 (Second Extension), and 30418 (February 26, 1992), 57 FR 7832 (Third Extension).

[4] *See supra* note 1.

market depth. The Commission also expects that the Exchange will provide a report to the Commission of its findings on these matters, along with any violations of the ten-up Rule and any complaints about its operations, prior to filing a proposal for the permanent approval of the ten-up rule.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** in order to allow the ten-up pilot program to continue uninterrupted. A three-month extension of the pilot also will provide the PSE with additional time to study the effectiveness of the ten-up Rule in improving the quality of PSE options markets and market maker performance. The PSE's study would be a significant factor in the Commission's analysis of any PSE filing proposing permanent approval of the ten-up rule. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 21, 1992.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR–PSE–92–17) is approved until August 14, 1992, on an accelerated basis.

[5] 15 U.S.C. 78s(b)(2) (1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–15331 Filed 6–29–92; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–18802; 812–7929]

Echo Bay Finance Corp.; Application

June 22, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application of exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Echo Bay Finance Corp.

RELEVANT ACT SECTION: Conditional order requested under section 6(c) of the Act that would exempt applicant from the liquidation preference requirement of subparagraph (a)(2) of rule 3a–5 under the Act.

SUMMARY OF APPLICATION: Applicant seeks a conditional order that would exempt it from the liquidation preference requirement of subparagraph (a)(2) of rule 3a–5; thereby permitting it to issue non-voting preferred stock and use the proceeds to finance the business activities of its parent company and subsidiaries of its parent company without registering as an investment company under the Act.

FILING DATE: The application was filed on May 26, 1992, and amended on June 18, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 14, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 370 17th Street, suite 4050, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Robert A. Robertson, Staff Attorney, at (202) 504–2283, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a direct, wholly-owned subsidiary of Echo Bay Mines Ltd., a Canadian corporation ("EBM"). EBM is primarily engaged in the gold and silver mining business in Canada and the United States. In addition to applicant, EBM has a number of subsidiaries (the "Subsidiaries") that engage in various mining and mining related businesses.

2. Applicant was recently incorporated for the primary purpose of financing the business operations of EBM and the Subsidiaries. It intends to raise funds for this purpose by issuing non-voting preferred stock and investing the proceeds in one or more of EBM and the Subsidiaries.

3. Applicant is planning to raise such funds by means of a registered public offering of its non-voting preferred stock (the "Finance Preferred"). EBM could issue the preferred stock itself, but taxes imposed under Canadian law on the payment of preferred stock dividends make it more attractive for the preferred stock to be issued by a United States entity.

4. The terms of the Finance Preferred will include, among other things, cumulative preferred dividends. The payments of these dividends will be unconditionally guaranteed by EBM. The Finance Preferred, however, will not include a liquidation preference. Covenants in EBM's existing loan agreements limit its ability to guarantee unconditionally a liquidation preference equal to the purchase price of the Finance Preferred. In lieu of a liquidation preference, the Finance Preferred will have a mandatory exchange feature, whereby the shares of Finance Preferred will be exchanged for EBM preferred shares having a liquidation preference (the "EBM Preferred") upon the earliest to occur of the following events (the "Exchange Events"): (a) Applicant shall fail to make a dividend payment on the Finance Preferred, whether or not declared by applicant; (b) applicant shall fail to make a redemption payment in respect of the redemption of Finance Preferred on the date specified for such payment in a notice of redemption; (c) the

consolidated common shareholders' equity of applicant shall at any time be less than $2,500,000; (d) EBM shall fail to own directly or indirectly 100 percent of the capital stock of applicant other than the Finance Preferred; or (e) the voluntary or involuntary, bankruptcy, liquidation, dissolution of winding-up of applicant or EBM.

5. In the event of an exchange, holders of Finance Preferred would receive EBM Preferred having terms identical to the terms of the Finance Preferred, with the following exceptions: (i) The EBM Preferred will not have an exchange feature, (ii) the EBM Preferred will be entitled to a liquidation preference, equal to the original issue price of the Finance Preferred plus all accrued dividends, upon the bankruptcy, liquidation, dissolution or winding-up of EBM, (iii) the quarterly dividends payable to certain holders on the EBM Preferred will be increased by the amount necessary to offset withholding taxes imposed on such dividends under Canadian tax laws, (iv) at the time of exchange, accrued and undeclared dividends on the Finance Preferred, if any, will automatically become accrued dividends on the EBM Preferred, and (v) the holders of EBM Preferred will be entitled to elect two persons to the EBM board of directors upon the failure by EBM to pay six quarterly dividends in accordance with the terms of the EBM Preferred.

6. EBM's obligation to issue EBM Preferred in exchange for Finance Preferred will be contained in a Guaranty and Exchange Agreement (the "Guaranty") executed by EBM in favor of the holders of Finance Preferred. The Guaranty also will give holders of the Finance Preferred direct recourse to EBM to enforce EBM's obligation to issue shares upon the occurrence of any Exchange Event, without having to proceed first against applicant. The holders of Finance Preferred will similarly have direct recourse to EBM to enforce the dividend guarantee.

Applicant's Legal Analysis

1. The activities of applicant as a finance subsidiary may cause it to fall within the definition of an "investment company" under section 3(a)(1) or 3(a)(3) of the Act. Rule 3a–5 under the Act was adopted to provide an exemption from the requirements of the Act for certain finance subsidiaries. According to its adopting release, the rationale underlying the rule is that a finance subsidiary of a non-investment company parent, though technically an investment company itself, is essentially a conduit for its parent. Therefore, if the parent can issue securities directly without registration under the Act, it is not necessary to impose the requirements of the Act on the subsidiary. Investment Company Act Release No. 14275 (December 14, 1984).

2. Applicant will comply with all of the provisions of rule 3a–5, except possibly for subparagraph (a)(2) of rule 3a–5, which requires that: "Any non-voting preferred stock of the finance subsidiary issued to or held by the public is unconditionally guaranteed by the parent company as to payment of dividends, payment of the liquidation preference in the event of liquidation, and payments to be made under a sinking fund, if a sinking fund is to be provided (except that the guarantee may be subordinated in right of payment to other debt of the parent company)."

3. EBM will guarantee the payment of dividends on the Finance Preferred. However, the terms of the Finance Preferred will not provide for a liquidation preference, and subparagraph (a)(2) may be interpreted as requiring the finance subsidiary's non-voting preferred stock to contain a liquidation preference and for the parent to provide an unconditional guarantee of this preference. Accordingly, to resolve uncertainties regarding its status as an investment company and eligibility for the rule 3a–5 exemption, applicant seeks an order under section 6(c) of the Act exempting it from the liquidation preference requirement.

4. Applicant submits that the proposed exchange ensures that purchasers of the Finance Preferred will view the Finance Preferred as an EBM security, and therefore the exchange meets the objectives of the liquidation preference requirement under subparagraph (a)(2) of rule 3a–5. Section 6(c) provides in part that, upon application, the SEC may conditionally exempt any transaction from the provisions of the Act to the extent the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant believes that the requested exemption meets the standards of section 6(c).

5. Applicant has been advised by Standard & Poor's that the Finance Preferred will be rated BB and that the EBM preferred, if issued concurrently, would receive the same rating. Applicant believes that the fact that the Finance Preferred will not receive an investment grade rating from a nationally recognized rating organization should not affect applicant's eligibility for an exemption. The SEC did not include a "high quality" rating requirement in rule 3a–5 because, among other reasons, the rating of an issued security should not impact the status of an issuer as an investment company. See Investment Company Act Release No. 16093 (Oct. 29, 1987).

Applicant's Conditions

Applicant agrees that the exemptive order requested herein will be subject to the following conditions:

1. Each share of Finance Preferred will be mandatorily exchanged in whole for one share of EBM Preferred upon the earliest to occur of the following events:

(a) Applicant shall fail to make a dividend payment on the Finance Preferred, whether or not declared by applicant,

(b) Applicant shall fail to make a redemption payment in respect of the redemption of Finance Preferred on the date specified for such payment in a notice of redemption,

(c) The consolidated common shareholders' equity of applicant shall at any time be less than $2,500,000,

(d) EBM shall fail to own directly or indirectly 100 percent of the capital stock of applicant other than the Finance Preferred, or

(e) The voluntary or involuntary, bankruptcy, liquidation, dissolution or winding-up of applicant or EBM.

2. In the event of any distribution of EBM's assets upon a liquidation, dissolution or winding-up of EBM, each holder of EBM Preferred shall be entitled to receive, before the holders of shares ranking junior to the EBM Preferred, an amount equal to the original issue price of the Financed Preferred together with an amount equal to all accrued but unpaid cumulative dividends thereon.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–15251 Filed 6–29–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation

Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from July 27 through July 30, 1992, from 8 a.m. to 4:30 p.m. each day.

ADDRESSES: The meeting will be held at the Bellevue Hilton, 100–112th Avenue, NE., Bellevue, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Theodore H. Davies, Executive Director, ATPAC, Air Traffic Rules and Procedures Service, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. 2), notice is hereby given of a meeting of the ATPAC to be held from July 27 through July 30, 1992, at the Bellevue Hilton, 100–112th Avenue, NE., Bellevue, Washington.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than July 24, 1992. The next quarterly meeting of the FAA ATPAC is planned to be held from October 19–22, 1992, in Washington, DC. Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on June 23, 1992.

Theodore H. Davies,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 92–15291 Filed 6–29–92; 8:45 am]

BILLING CODE 4910–13–M

Aviation System Capacity Advisory Committee (ASCAC)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Aviation System Capacity Advisory Committee to be held on Thursday, July 30, 1992. The meeting will take place at 9 a.m. in the McCracken Room, 10th Floor, FAA, 800 Independence Avenue, SW., Washington, DC 20591.

The agenda for this meeting is:

- Overview of the FAA's system operations organization.
- Relationship between the FAA's Operational Planning Team and the ASCAC.
- Operation of ASCAC working groups.

Attendance is open to the interested public, but limited to space available. With the approval of the committee chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact Mr. Leonard Bell, FAA, Office of System Capacity and Requirements, (202) 267–3310.

Any member of the public may present a written statement to the subcommittee at any time.

Issued in Washington, DC, on June 9, 1992.

E.T. Harris,

Director, Office of System Capacity and Requirements.

[FR Doc. 92–15290 Filed 6–29–92; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Nashville International Airport, Nashville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Nashville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 30, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2851 Directors Cove, suite 3, Memphis, Tennessee 38131–0301.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to General William G. Moore, Jr., President of the Metropolitan Nashville Airport Authority at the following address: One Terminal Drive, suite 501, Nashville, Tennessee 37214–4114.

Air carriers and foreign air carriers may submit copies or written comments previously provided to the Metropolitan Nashville Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Charles L. Harris, Planner, Memphis Airports District Office, 2851 Directors Cove, suite 3, Memphis, Tennessee 38131–0301, (901) 544–3495.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Nashville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 19, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Metropolitan Nashville Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 5, 1992.

The following is a brief overview of the application. Level of the proposed PFC: $3.00. Proposed charge effective date: October 5, 1992. Proposed charge expiration date: November 5, 2003. Total estimated PFC revenue: $148,431,000. Brief description of proposed project(s):

Impose and Use: 1. Relocate Runway 2C/20C 400 Feet West.

2. Federal Inspection Services (FIS) Facility and concourse connector.

3. Land Acquisition—Landside Expansion.

4. Extend Taxiway C.

5. Land Acquisition—ASR–9 Clear Area.

6. Runway 2C/20C Extension.

7. Runway 13/31 Extension (1800 feet).

Impose Only: 1. Connector Taxiway From Concourse D to Runway 2R/20L.

2. Extend Taxiways I and B.

3. Aircraft Rescue and Firefighting (ARFF) Training Facility

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 (Air Taxi) Operators.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**".

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Nashville Airport Authority.

Issued in Atlanta, Georgia on June 19, 1992.

Stephen A. Brill,

Manager, Airports Division, Southern Region.

[FR Doc. 92-15306 Filed 6-29-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Transit Administration

Announcement of Availability of Recommended Emergency Preparedness Guidelines

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration (FTA) is issuing this notice to announce the availability of and to provide a summary of its recommended emergency preparedness guidelines for urban, rural, and specialized transit systems and for rail transit systems. The two sets of guidelines are intended to assist individual transit systems in assessing needs and planning improvements to their emergency response capabilities.

FOR FURTHER INFORMATION CONTACT: Roy Field, U.S. Department of Transportation, Federal Transit Administration, Safety and Security Office, room 6432, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366-2896. Copies of the guidelines may be obtained upon written request to Mr. Field at the above address.

SUPPLEMENTARY INFORMATION:

Background

The record of transit safety has been very good and few major accidents have occurred. However, it cannot be assumed that serious emergency events will not take place in the future. A review of past experience reveals that many minor incidents could easily have developed into life-threatening events had they not been detected and dealt with in a timely and effective manner.

In order to respond effectively to such occurrences, transit systems must engage in careful advance planning. The level of a transit system's preparedness will directly influence the magnitude of the consequences of the emergency situation.

Recognizing this need, and in response to recommendations made by the National Transportation Safety Board's hearing concerning rail transit system safety, the FTA commenced development of recommended emergency preparedness guidelines, with the cooperation of the American Public Transit Association and representatives from various transit systems and emergency response organizations.

The FTA has published two sets of such guidelines. The first set of guidelines concerns rail systems, and consists of the "Recommended Emergency Preparedness Guidelines for Rail Transit Systems", UMTA-MA-06-0152-85-1, initially published in 1985 and the "Recommended Emergency Preparedness Guidelines for Elderly and Disabled Rail Transit Passengers", UMTA-MA-06-0186-89-1, initially published in 1989. The second set, "Recommended Emergency Preparedness Guidelines for Urban, Rural, and Specialized Transit Systems", UMTA-MA-06-0196-91-1, initially published in 1991, concerns bus transportation in urban and rural areas.

These guidelines are intended to help transit systems to assess, develop, document, and improve their site-specific capability for responding to emergency situations, and to coordinate these efforts with emergency response organizations in a manner which best protects the traveling public and transit system facilities and equipment. Copies of these two sets of guidelines may be obtained from the FTA as indicated in the "**FOR FURTHER INFORMATION CONTACT**" section, above.

Safety planning is composed of two basic phases: a preventive phase and a reactive phase. The preventive phase is concerned with preventing the occurrence of the incident or accident. The reactive phase is concerned with the response once an incident or accident has occurred, and with minimizing its effect. The recommended emergency preparedness guidelines address this reactive phase and as such are directed not at preventing the incident or accident itself but at assisting transit systems in preparing for and responding to its occurrence in a timely and effective manner.

Scope

The emergency preparedness guidelines address three common, primary elements of a transit system's preparedness: Emergency plan development, training, and vehicles. In addition, the rail transit guidelines address a fourth emergency preparedness issue concerning facilities and equipment. Developed from input obtained from discussions and workshops with transit system and emergency response organization personnel, and from literature sources such as industry design guidelines, codes, and standards, they are intended to reflect the best practices of the industry. These performance-oriented guidelines should serve to stimulate the improvements and innovations necessary to provide the public with safe and reliable transit operations.

The contents of the Emergency Plan Development and Training sections present minimum recommendations, procedures, and criteria which should be employed by all transit systems to evaluate and improve their respective emergency response capabilities. The contents of the Facilities and Equipment and Vehicles sections present minimum recommendations for the timely and effective evacuation of passengers as well as for the protection of equipment. It is intended that the guidelines in these two sections be used primarily for the planning of new systems, system extensions, and system rehabilitation. As such, they are not expected to have a major impact on existing rail transit system facilities and equipment or vehicles. A brief summary of these four elements follows:

Emergency Plan Development

This section outlines the general elements which should be included in emergency plans. These elements are policy, scope, agreements with emergency response organizations, rail transit system functions and responsibilities, emergency procedures general response capability criteria, and emergency preparedness supporting documentation.

Training

This section deals with the training of transit employees and emergency response organization personnel in the operational and emergency procedures of transit systems. Education of the riding public in regard to emergency procedures and equipment as well as required passenger emergency response is also included.

Vehicles

For the purposes of the rail guidelines, "vehicles" are considered to be of two general types: passenger rail vehicles and rail vehicles used for emergencies. The passenger rail vehicle section addresses transit vehicle construction,

lighting, access/egress, communications, ventilation, onboard support equipment, mechanical equipment, graphics, and emergency power. The section for rail transit vehicles used in emergencies concerns vehicles used to respond to emergencies which occur within the confined trainway environment.

For the purposes of the urban and rural guidelines, the recommendations for "vehicles" are directed at transit systems which use motor vehicles to provide urban, rural, and specialized transportation on streets, roads, and highways. Vehicles used to provide this service include, but are not limited to, full-size standard buses, medium-size body-on-chassis buses, small special-purpose-built buses, standard and modified vans, mini vans, and multipurpose passenger vehicles.

Facilities and Equipment

As noted above, the rail guidelines also contain a section on facilities and equipment. The major elements of a rail transit system's facilities and equipment are passenger stations, trainway, and Central Control. Components of these elements addressed in the guidelines include construction, lighting, access/egress, communications, ventilation, fire protection support equipment intrusion protection (i.e., flammable/combustible liquid/gas, flood, highway), traction power removal, graphics, and emergency power.

The FTA stresses that the above summaries provide only a general introduction to the important content in the two sets of emergency preparedness guidelines. The FTA urges all FTA recipients to become familiar with the material in these voluntary guidelines and to plan at the local level to ensure that responses to any transit emergency are anticipated, coordinated, and effectively executed.

Other Emergency Preparedness Documentation

In addition to the "Recommended Emergency Preparedness Guidelines for Rail Transit Systems," and the "Recommended Emergency Preparedness Guidelines for Elderly and Disabled Rail Transit Passengers", the following resource documents should be utilized by rail transit systems to assess the status of their emergency response capability and to plan needed improvements:

(1) Development of a Graphics Based Automated Emergency Response System (AERS) for Rail Transit Systems, U.S. Department of Transportation, UMTA-MA-06-0178-89-1, May 1989.

(2) Development of an Automated Emergency Response System (AERS) for Rail Transit Systems, U.S. Department of Transportation, UMTA-MA-06-0152-84-4, October 1984.

(3) Fire and Life Safety Training Needs of Rail Rapid Transit Systems and Fire Service Personnel, U.S. Department of Transportation, UMTA-MA-06-0098-83-1, January 1984.

(4) NFPA 130 Fixed Guideway Transit Systems, 1990 Edition, National Fire Protection Association.

(5) NFPA 101, Life Safety Code, National Fire Protection Association.

(6) Guidelines for Design of Rapid Transit Facilities, APTA, 1981.

(7) Moving People Safely, APTA, 1977. (Under revision.)

(8) "Light Rail Transit Car Specification Guide," UMTA, Final Report, December 1981, Report No. UMTA-MA-06-00250-81-4.

(9) "Transit Industry Technical Specifications for the Procurement of Rapid Railcars," UMTA, Final Report, July 1981, Report No. UMTA-IT-01775-81-3.

(10) Special Study: Railroad Emergency Procedures, NTSB, Report No. NTSB-RSS-80-1.

In addition to the "Recommended Emergency Preparedness Guidelines for Urban, Rural, and Specialized Transit Systems", the following resource documents should be utilized by urban, rural, and specialized transit systems to assess the status of their emergency response capability and to plan needed improvements:

(1) Evacuation and Rescue of Elderly and Disabled Passengers from Paratransit Vans and Buses, U.S. Department of Transportation, UMTA-MA-06-0152-84-3, October 1984.

(2) "Emergency and Accident Procedures Training Manual for the Flexible Corporation Urban transit Bus," Training Manual and Videotape, Ketron, Inc., March 1988.

(3) "Emergency and Accident Procedures Training Manual for the General Motors Corporation RTS Urban Transit Bus," Training Manual and Videotape, Ketron, Inc., March 1988.

(4) "Emergency and Accident Procedures Training Manual for the Neoplan USA Corporation Urban transit Bus," Training Manual and Videotape, Ketron, Inc., March 1988.

(5) "Evacuating Elderly and Disabled Passengers from Public Transportation Vehicle Emergencies," Videotape.

(6) "Safety Awareness Training Program for Transit Employees," Videotape, Booz-Allen.

Issued on: June 25, 1992.

Roland J. Mross,

Deputy Administrator.

[FR Doc. 92-15287 Filed 6-29-92; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

United States Mint

Determination as to U.S. Mint Procurement Relating to Coin Production

As required by section 3 of Public Law 100-274, notice is hereby given that on May 14, 1992, I determined it to be inconsistent with the public interest to decline to award a contract to Johnson Matthey, of Canada, for the fabrication of gold blanks for the U.S. Mint. Failure to do so could have been considered a violation of the Agreement on Government Procurement of the General Agreement on Tariffs and Trade, of which the United States is signatory. Additionally, it would not be in the national interest to reduce competition in this area or to ignore a significant cost savings available to the government.

John E. Robson,

Deputy Secretary of the Treasury.

[FR Doc. 92-15240 Filed 6-29-92; 8:45 am]

BILLING CODE 4810-37-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 126
Tuesday, June 30, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CIVIL RIGHTS COMMISSION

DATE AND TIME: Wednesday, July 1, 1992, 10:00 a.m.–1:00 p.m.

PLACE: U.S. Commission on Civil Rights, 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

STATUS: Emergency Telephonic Meeting; Open to the Public.

July 1, 1992

I. Update on Prospective Los Angeles Hearing

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376–8105, (TDD 202–376–8116), at least five (5) working days before the scheduled date of the meeting.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Dated: June 26, 1992.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 92–15493 Filed 6–26–92; 2:59 pm]

BILLING CODE 6335–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, July 6, 1992.

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. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 26, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–15495 Filed 6–26–92; 3:09 pm]

BILLING CODE 6210–01–M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: July 8, 1992 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Petitions and complaints.
5. Inv. 731–TA–571 (Preliminary) (Professional Electric Cutting and Sanding/Grinding Tools)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR ORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205–2000.

Dated: June 24, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–15404 Filed 6–26–92; 8:45 am]

BILLING CODE 7020–02–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting; Notice

TIME AND DATE: A meeting of the Board of Directors Audit and Appropriations Committee will be held on July 13, 1992. The meeting will commence at 12:00 p.m.

PLACE: Drake University Law School, The Neal and Bea Smith Law Center, 2400 University Avenue, The Law Library, Des Moines, Iowa 50311, (515) 271–3851.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes of May 18, 1992 Meeting.
3. Review of Budget and Expenses Through April 30, 1992.
4. Consideration of Proposed Policy and Resolution of the Investment of Corporation Funds.
5. Consideration of Report on the Leasing of the Corporation's Former Headquarters Office Space.
6. Consideration of Proposed Guidelines for the Corporation's Annual Audit.
7. Consideration of Report on Grantee Insurance Coverage.
8. Consideration of Status Report on Funding of the Micronesian Legal Services Corporation.
9. Consideration of Status of Management's Effort to Incorporate 1990 Census Data into Program Area Poverty Population Statistics for use by Congress and/or the Corporation in Making 1993 Grants, Including a Report from Management Concerning the Methods Used by Congress During the 1980's to Equalize Program Funding and the Impact on Programs (at Various 1993 Funding levels) of Instantly Equalizing Funding for 1993 Grants.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8896.

Date Issued: June 26, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–15483 Filed 6–26–92; 2:58 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Office of the Inspector General Oversight Committee Meeting; Notice

TIME AND DATE: A meeting of the Board of Directors Office of the Inspector General Oversight Committee will be held on July 13, 1992, commencing at 2:00 p.m.

PLACE: The Drake University, Drake University Law School, The Neal & Bea Smith Law Center, 2400 University Avenue, The Law Library, Des Moines, Iowa 50311, (515) 271–3851.

STATUS OF MEETING: *Open*, except that a portion of the meeting will be closed pursuant to a majority vote of the Board of Directors to be taken prior to the Committee meeting. During the closed session, the Committee will hear and consider reports by the Inspector General regarding the status of current investigations being handled by the Office of the Inspector General, as well as approving the minutes of the executive session held on May 17, 1992.[1] The closing will be authorized by the relevant section of the Government in the Sunshine Act [5 U.S.C. Section 552(b)(7)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(f)]. The closing will be certified by the Corporation's General Counsel as

[1] As to the Committee's consideration and approval of the draft minutes of the executive session held on May 17, 1992, the closing is authorized as noted in the *Federal Register* notice corresponding to that committee meeting.I10**MATTERS TO BE CONSIDERED:**

authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, NE., Washington, D.C. 20002, in its three reception areas, and will otherwise be available upon request.

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of May 17, 1992 Meeting
3. Consideration of the Office of the Inspector General's Proposed Guidelines for the Corporation Annual Financial Audit.
4. Consideration of the Office of the Inspector General's Investigative Reporting Process.

CLOSED SESSION:

5. Approval of Minutes of May 17, 1992 Executive Session.
6. Consideration of Report on Current Investigations of the Office of the Inspector General.

OPEN SESSION: (Resumed)

7. Consideration of Motion to Adjourn Meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8896.

Date Issued: June 26, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–15484 Filed 6–26–92; 2:58 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Operations and Regulations Committee Meeting; Notice

TIME AND DATE: A meeting of the Board of Directors Operations and Regulations Committee will be held on July 13, 1992. The meeting will commence at 3:00 p.m.

PLACE: Drake University, The Neal and Bea Smith Law Center, 2400 University Avenue, The Law Library, Des Moines, Iowa 50311, (515) 271–3851.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of May 18, 1992 Meeting.
3. Consideration of Report By Staff Regarding Competition Demonstration Projects.

CONTACT PERSON FOR INFORMATION: Patricia Batie, Executive Office, (202) 336–8896.

Date issued: June 26, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–15485 Filed 6–26–92; 2:58 pm]

BILLING CODE 7050–01–M

NATIONAL TRANSPORTATION SAFETY BOARD:

TIME AND DATE: 9:30 a.m., Wednesday, July 8, 1992.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5795—Aircraft Accident Summary Report: Controlled Flight Into Terrain, Bruno's, Inc., Beechjet, N25BR, Rome, Georgia, December 11, 1991

5788—Amendment to Memorandum of Agreement Between FAA and NTSB for Postaccident/Postincident Review of Airman and Air Traffic Controller Medical Records

NEWS MEDIA CONTACT: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty; (202) 382–6525.

Dated: June 26, 1992.

Ray Smith,

Alternate Federal Register Liaison Officer.

[FR Doc. 92–15472 Filed 6–26–92; 2:07 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 29, July 6, 13, and 20, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 29

Thursday, July 2

9:30 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Commission Response to Motion to Modify or Quash Subpoenas in the Matter of Houston Lighting and Power Company (South Texas, Units 1 and 2) (Tentative)

Week of July 6—Tentative

Wednesday, July 8

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 13—Tentative

Tuesday, July 14

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 20—Tentative

Monday, July 20

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: June 25, 1992.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 92–15476 Filed 6–26–92; 2:09 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 57, No. 126
Tuesday, June 30, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 10-92]

Foreign-Trade Zone 77-Memphis, TN; Application for Expansion for Subzone 77A Sharp Television, Microwave Oven and Computer Plant, Memphis, TN

Correction

In notice document 92-10107 appearing on page 18467 in the issue of Thursday, April 30, 1992, make the following corrections:

1. On page 18467, in the second column, in the fourth full paragraph, in the sixth line following "is" insert "June 30, 1992."; and in the eighth line following "15-day period" insert "July 8, 1992.

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Demonstration Projects for the Integration of Vocational and Academic Learning Program (Model Tech-Prep Education Projects)

Correction

In notice document 92-12144 beginning on page 22118, in the issue of Tuesday, May 26, make the following corrections:

1. On page 22122, in the second column, under **REQUIRED ACTIVITIES**, in the second line "may" should read "any".

2. On the same page, in the third column, in the fourth paragraph designated (d), in the first line "on" should read "no".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER92-618-000, et al.]

Interstate Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 92-14668 beginning on page 27966 in the issue of Tuesday, June 23, 1992 make the following corrections:

1. On page 27967, in the third column, under "**12. Florida Power & Light Co.**", the next line should read "[Docket No. ER92-635-000]".

2. On page 27968, in the first column, under "**15. Florida Power & Light Co.**", the next line should read "[Docket No. ER92-633-000]".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 5, 20, 100, 101, 105, and 130

[Docket No. 92N-0198]

Nutrition Labeling; Small Business Exemption Public Forums

Correction

In proposed rule document 92-10732 beginning on page 19410 in the issue of Wednesday, May 6, 1992 make the following corrections:

On page 19411, in the third column, in the last paragraph, in the third line, "request a" should read "request to" and in the sixth line, "Inspector" should read "Inspection".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. H-033-d]

Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite

Correction

In rule document 92-12903 beginning on page 24310 in the issue of Monday, June 8, 1992, make the following correction:

On page 24331, in the second column, in amendatory instruction 5e. to § 1926.58, in the second line from the bottom, "(m)(2)(ii)(B)" should read "(n)(2)(ii)(B)".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33-6932; 34-30577; IC-18651]

RIN 3235-AD54

Blank Check Offerings

Correction

In rule document 92-9605 beginning on page 18037 in the issue of Tuesday, April 28, 1992, make the following corrections:

1. On page 18038, in the third column, in the second paragraph, in the fifth line from the bottom, "as" should read "at'.'

2. On page 18040, in the second column, in heading designation 2., "and" should read "an".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934 Release No. 30609]

Order Temporarily Exempting Broker-Dealers From Section 15(g)(2) of the Securities Exchange Act of 1934

Correction

In notice document 92-9603 appearing on page 18050 in the issue of Tuesday, April 28, 1992, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORATION

Coast Guard

33 CFR Part 117

[CGD5-92-001]

Drawbridge Operation Regulations; Beaufort Channel, Beaufort, NC

Correction

In rule document 92-4368 beginning on page 6677 in the issue of Thursday, February 27, 1992, in the first column, under **EFFECTIVE DATES** "March 30, 1997." should read "March 30, 1992."

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 121, and 135

[Docket No. 26530, Amdt. Nos. 25-76, 121-228 and 135-43]

RIN 2120-AC46

Improved Access to Type III Exits

Correction

In rule document 92-10306 beginning on page 19220 in the issue of Monday, May 4, 1992, make the following corrections:

1. On page 19220:

a. In the first column, under **SUMMARY**, in the seventh line, "results" should read "result".

b. In the 3d column, in the 23d line, "different" was misspelled.

2. On page 19227, in the third column, in the second full paragraph, in the first line, before "configuration" insert "a".

3. On page 19231, in the first column, in the first paragraph, in the fourth line, "Type JII" should read "Type III".

4. On page 19237, in the second column, in the first full paragraph, in the second line, "researchers" was misspelled.

§ 25.813 [Corrected]

5. On page 19244:

a. In the second column, in § 25.813(a), beginning in the fifth line from the bottom, "two more more" should read "two or more".

b. In the same column, in § 25.813(c)(1), in the second line, after "nearest" insert "aisle".

c. In the third column, in § 25.813(c)(2)(i), in the fourth line, after "must" insert "not".

§ 121.310 [Corrected]

6. On page 19245:

a. In the first column, in § 121.310(f)(3)(ii), in the last line, "certified" should read "certificated".

b. In the same column, in § 121.310(f)(3)(iv), in the ninth line, "compliance" was misspelled.

c. In the same column, after the last line of § 121.310(f)(3)(v), there should be five stars.

§ 135.178 [Corrected]

d. In the second column, in § 135.178(b)(1), in the last line, "location" should read "locating".

e. In the third column, in § 135.178(c)(1), in the second line, "location" should read "locating".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-167-AD]

Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes

Correction

In proposed rule document 92-13503 beginning on page 24395 in the issue of Tuesday, June 9, 1992 make the following correction:

§ 39.13 [Corrected]

On page 24401, in the first column, in § 39.13(f)(2), in the first line, after "have" insert "not".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-274-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

Correction

In proposed rule document 92-6255 beginning on page 9392 in the issue of Wednesday, March 18, 1992, make the following corrections:

§ 39.13 [Corrected]

On page 9394:

a. In the first column, in § 39.13(g)(1), in the third line, after "must" insert "be" and in the same line, "inspect" should read "inspected".

b. In the same column, in the same paragraph, in the sixth line, after "replaced" insert "with protruding head solid fasteners with" and remove "until".

c. In the same column, in § 39.13(g)(2), in the second line, "but" should read "must". And in the third line, "fastnerships" should read "fasteners".

BILLING CODE 1505-01-D

federal register

Tuesday
June 30, 1992

Part II

Department of Labor

Employment and Training Administration

Unemployment Insurance Performance Measurement Project; Unemployment Insurance Program Letter No. 30–92; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Unemployment Insurance Performance Measurement Project; Unemployment Insurance Program Letter No. 30-92

This Unemployment Insurance Program Letter transmits to the States performance measures which the Unemployment Insurance Service proposes to field test in up to six State Employment Security Agencies. The intent of the revised measures is to strengthen the oversight of the Federal-State Unemployment Compensation program thereby promoting improved services.

Public comment is solicited with regard to the operational feasibility of implementing these measures as well as how the measures can be used for management improvement purposes. Comments should be sent to Mary Ann Wyrsch, Director, Unemployment Insurance Service, room S-4231, 200 Constitution Ave. NW., Washington, DC 20210. Comments will be accepted through August 15, 1992.

No decisions have been made at this time concerning the nation-wide implementation of the proposed performance measures. The Department will make these decisions after evaluating the results of the field test, and in consultation with stakeholders in the UI system.

For further information contact William Coyne or Sally Ehrle on (202) 535-0623.

Signed at Washington, DC, on June 18, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

Classification: UI/PMR Project
Correspondence Symbol: TEU.

Dated: June 11, 1992.

Directive: Unemployment Insurance Program Letter No. 30-92.
To: All State Employment Security Agencies.
From: Donald J. Kulick, Administrator for Regional Management.
Subject: Status of Unemployment Insurance (UI) Program Performance Measurement Review (PMR) Project.

Rescissions: None.

Expiration Date: September 30, 1993.

1. Purpose

a. To convey decisions reached by the UI system based on UI National Office, Regional and State participation on the PMR project, including performance measures to be field tested.

b. To obtain comments on the feasibility of obtaining data for the proposed measures and their potential use for encouraging program improvement.

c. To obtain from States expressions of interest in serving as a field test site.

2. References

Federal Register Notice No. 54 FR 2238; Unemployment Insurance Program Letter (UIPL) No. 10-89; UIPL No. 13-91.

3. Project Status

The PMR project began in the latter part of 1988. Its purpose is to examine, evaluate and improve the mechanisms for performance measurement in the UIS oversight of State Employment Security Agency (SESA) UI Programs.

From 1988-1991, work was directed to oversight system design. This phase involved: (1) Identifying legal responsibilities that could require performance measurement; (2) identifying alternative performance measures for basic UI service areas, including benefit payments, adjudications, appeals and benefit payment control; (3) selecting measures to be tested based on criticality, potential State agency management and Federal oversight use and cost, among other factors; (4) determining how data will be obtained and stored; and (5) preparing a preliminary field test design for revised measures. The next phase of the project is the field test of selected measures which is described below.

4. Field Test

The field test to be conducted in up to six States, will provide information about the operational feasibility of data collection as well as the need for and use of collected data. In preparation for the test, measures will be refined and a final field test design prepared.

The measures selected for field testing build on and strengthen the Quality Appraisal process. The attachment to this UIPL provides further background on the project, the current status, and the performance measures selected for the field test.

Information on the field test and the application process for serving as a field test State will be provided to each Regional Office which will in turn share this information with States. Selection criteria will be applied by a National Office panel to SESA applications received through the Regional offices. The selection criteria are as follows:

a. Geographic representation;

b. Claims workload (we expect to select States with various workload levels);

c. States selected should have a level of automation adequate to support the additional requirements of the field test including the availability of staff to program and retrieve needed information; and

d. Commitment by SESA management.

5. Action Required

SESA Administrators are invited to:

a. Provide copies of this UIPL and Attachments to appropriate staff for comment on: (1) the feasibility of obtaining data for the proposed measures, and (2) the potential use of the measures for program improvement purposes;

b. Forward comments to the appropriate Regional Office by August 15, 1992. Comments will be taken into consideration in field test planning; and

c. Inform the appropriate Regional Office of potential interest in serving as a field test State. Additional information on the field test will be available shortly, including information on funding, ADP assumptions for the field test and field test processes and time schedules.

6. Inquiries

Direct any questions to the appropriate Regional Office.

7. Attachment

Performance Measurement Review Phase I, Project Design.

[Attachment to UIPL No. 30-92]

Performance Measurement Review (PMR) Phase I, Project Design

I. Background

The PMR project was initiated in 1988 to examine, evaluate, and improve the mechanisms for performance measurement in UIS oversight of State Unemployment Insurance (UI) programs. The project envisioned three stages. The first stage, a design stage, defined performance measures to be field tested. Subsequent stages are field testing of the proposed performance measures to determine value and operational feasibility and finally, nationwide implementation of measures.

A. Project Objectives

The specific objectives of the PMR project are to:

1. Review the Secretary of Labor's legal responsibilities for the UI program and to ensure they are identified and monitored;

2. Identify gaps and overlaps which now exist in assessing SESA performance and recommend solutions;

3. Identify and justify alternative methods of evaluating SESAs' UI performance;

4. Examine and establish new methods of measuring performance and

determine, where appropriate, what constitutes a minimum level of performance;

5. Examine linkages between components of the UI oversight program; and

6. Develop and recommend a comprehensive oversight system integrating findings and results of the components of the overall UI program.

B. Project Criteria

The following criteria have been used during the process of decisionmaking in order to come up with measures that are directed toward improved performance of the system:

1. Criticality—Fulfilling the Secretary's essential legal oversight responsibilities.

2. Management-Oriented—Capable of providing timely detection of performance problems that can serve as the basis for management action. The measures should, therefore, relate to operations and be useful to managers to improve performance. This criterion relates closely to the criterion of continuous improvement espoused by Total Quality Management.

3. Operationally Feasible—Capable of operating within cost and resource constraints and can be obtained as a byproduct of operations in the SESAs.

4. Customer-Oriented—Defining and measuring quality service to claimants and employers.

5. Outcome Focused—Failing to achieve a desired level of performance, such as timely payments, should trigger a more thorough analysis of detailed data and/or review of the administrative processes employed by a SESA.

6. Quantitatively Based—Measures are objective and free from discretionary judgment as much as possible.

7. Statistically Valid—Employing sampling methods which provide confidence in the results.

C. Development of Measures

Following the initial performance period of the PMR project (see UIPL No. 13–91), Macro International, Inc., was selected to provide contractor support to the PMR project in the fall of 1990. As technical advisors to the contractor, twenty-one SESA representatives served as State Experts or Service Area Specialists in the area of benefits, adjudications, appeals and benefit payment control. In addition, a Federal Steering Committee was established composed of a representative from each of the 10 Federal Regions as well as National Office experts in the areas of Federal legislation, Regional Office operations, Benefit Quality Control, appeals, nonmonetary determinations and benefit payment control. Subsequently, several meetings of the PMR Steering Committee, the State Expert Panel and State Service Area Specialists were held. These meetings involved the review and development of performance measures including reaction to contractor-developed materials and proposals. In addition, discussion sessions were held across the country in order to obtain Regional and State perspectives on changes needed in the Quality Appraisal system.

The process which resulted in the selection of measures for the field test began with a review of statutory requirements in order to determine gaps in the measurement process. The process then involved soliciting State suggestions on needed changes, brainstorming and refining alternatives and finally selecting the final measures for testing.

D. State Participation

The State Employment Security Agencies (SESAs) have contributed significantly to the results of this process during Phase I, the design stage. Recommendations received from SESAs in response to UIPL No. 10–89, dated January 4, 1989, were considered as the work progressed. SESA representatives, from most States, attended meetings in the fall of 1990 on ways the current Quality Appraisal (an existing performance measurement system) could be modified. Finally, twenty-one SESA experts and service area specialists served on a contractor panel at UIS' request to provide and react to proposals.

E. Accomplishments

Work to meet the objectives of the PMR project is well underway. The legal responsibilities of the Secretary for the UI program have been identified. Several gaps (and some overlaps) have been identified regarding SESA performance and solutions to these gaps are proposed in the measures. Alternative methods of evaluating SESA's UI performance have been developed and examined, particularly in the service areas of benefits, adjudication and lower authority appeals. Also, the examination of the linkages between components of the UI oversight program has begun.

The following contractor reports have been submitted by the contractor and accepted by the Department of Labor: (1) A Recommended Alternatives Report (June 1991) and (2) a Selected Alternatives Report (November 1991).

II. Status

A. The Design Stage

• The development of measures to be field tested—is largely complete. This stage will be followed by a field test of selected alternative measures.

• The measures listed in this UIPL are still subject to comment. Comments received from within the Federal-State UI partnership on the proposed measures will be considered to identify changes, if any, needed in the measures to be tested.

B. Field Test

• The field test will include up to six States and will run for 15 months to secure 12 months of performance data concerned with timeliness and selected quality data. The data collected during the first 3 months will be used to ensure that the procedures are in place. The schedule will allow data collection over a full 12-month cycle.

In addition to the collection of performance data, field test States will collect information on costs and potential uses of the data for State management purposes.

One of the participating States will also serve as host State. The host State will secure an evaluation contract with an independent research contractor who will design, monitor and evaluate the field test and provide specified logistical support.

• The objectives of the field test are to: (1) Evaluate the usefulness of the revised measures in evaluating State performance; (2) determine that the needed information can be obtained in an efficient manner; (3) determine changes in the revised measures, if needed; (4) devise a method for data validation; and (5) provide a basis for establishing an approach to the development of benchmarks of minimum performance, if deemed appropriate.

• Plans call for Cooperative Agreements to be signed with the States selected to field test by September 30, 1992.

• As stated in the objectives above, data gathered during the field test will be used to determine if changes are needed in the measures before the final performance measures are agreed upon and implementation begins.

C. Implementation

Finally, there will be a phased-in period for implementation of revised performance measures (dates yet to be determined).

III. UIS Executive Decisions, Phase I, the Design Stage

Decisions reached (see Section IV) can be described as incremental change within a modified Quality Appraisal system. That is, certain changes in the system will be tested to determine the improvements that might be achieved through use of these measures.

The selected alternative measures will achieve one or more of the following objectives: (a) Overcome a gap in the oversight system; (b) provide timely information to Federal and State management which can foster continuous improvement; (c) strengthen the statistical validity of the performance data; (d) direct the UIsystem toward better customer service by a focus on outcomes while retaining some process information to identify the source of problems; and (e) strengthen or change existing scoring instruments (review guides) based on current experience.

A. General Direction

A goal of the Department of Labor and the Unemployment Insurance Service is the establishment of an integrated, rationalized and comprehensive oversight system, that will not only serve the Secretary's responsibilities for oversight, but will also assist States to continuously improve the way they operate.

This system will integrate the current Benefits Quality Control and Quality Appraisal systems, as well as the planned Revenue Quality Control program. Optimally, this integrated system will also result in revised report requirements, which eliminate duplication, and also contain reports validation features, which assure the quality of data used for oversight and for decisions on continuous improvement.

Resource constraints and the magnitude of the tasks involved prevent the UIS from implementing such a system in a single step. Instead, UIS will utilize a building block approach, which will address a particular aspect of change or modifications required in the oversight system. The changes proposed for certain Quality Appraisal measures represent one of these changes. Other components of the oversight system, which will be addressed in the next year or two are:

1. Benefits Quality Control will be examined to determine if any modification in design is warranted. The review will weigh experience to date, the need for assessing the accuracy of other claims (e.g., denials), and resource constraints;

2. Revenue Quality Control, currently not part of the PMR process, will produce a set of measures to evaluate State UI tax operations—thus, PMR has concentrated on the benefit payment process, rather than on the tax collection process;

3. Cash Management will establish minimum satisfactory levels of performance to be subsequently incorporated;

4. Higher Authority appeals quality measures will be addressed in subsequent timeframes due to several considerations including effective administration of selected measures. Field testing will be delayed until a method is developed to effectively administer them;

5. Benefit Payment Control and Program Reviews (UCX, UCFE, EB, DUA, TRA, Interstate) will be examined in the future and incorporated, when ready; and

6. The Workload Validation process will be evaluated in conjunction with reports validation concepts arising from reviews of required reports and from the Revenue Quality Control effort. A revised workload/reports validation system to support all UIS oversight systems will be developed.

B. Selected Measures

This section lists timeliness and quality measures recommended for field test. Additional field test information is listed in Appendices 1–3.

1. *Timeliness measures.* Timeliness measurement is important to the UI System to ensure that the "payment when due" provision (section 303(a)(1) of the Social Security Act is met.

The measures selected fill in gaps in the current system. Transactions which are currently excluded from performance measurement will be included. For example, in the area of first payments, all first payments will be measured rather than only those first payments for a week of total unemployment. In adjudication the measurement goes beyond the four issues currently defined for workload purposes to include all adjudications. Other measures will examine certain aspects of the program not currently covered, such as continued claim payments, redeterminations, and implementation of adjudications and appeals decisions.

All timeliness measures will be based on universe data rather than on samples. The results will therefore be more accurate, more comprehensive in scope, and, by the use of automation, more cost effective. The distribution for each timeliness measure (except for decision implementation) will be drawn from automated records and reported monthly by the States. The timely availability of data for analysis is expected to facilitate oversight and the goal of continuous improvement. Finally, where applicable, the universe of cases measured for timeliness is the frame for the selection of a sample used to measure the adjudication; lower authority appeals; and CWC transfer, billing and reimbursement quality. The following defines the timeliness measures selected by the UI service for field testing. (See Appendix 1.)

a. First Payment Timeliness (Initial Claims). The length of time from the end of the first (earliest) compensable week in the benefit year to the date the payment is issued is measured. This includes all payments, e.g., total, part-total and partial. Currently, the measurement is restricted to the first payment issued for a week of total unemployment.

b. Continued Claim Payment Timeliness. The length of time from the end of each week paid (whether total or partial) to the date the check was issued. This measure includes all weeks paid subsequent to the first week compensated in the benefit year. This is a new measure.

c. Adjudication Timeliness. The length of time to adjudicate all statutory issues which have the potential to adversely affect claimant benefit rights. Currently, the performance is measured by a sample of 125 additional claims and weeks claimed issues which excludes new claims issues. This definition is expanded to include all claims issues.

d. Adjudication Implementation Timeliness. The length of time between the date that the adjudication decision is issued and the date the outcome is applied to the claim record. This is a new measure to determine the length of time it takes to implement the determination outcome to the claim record and to ensure the obligation under the *Java* decision to pay benefits as soon as administratively feasible following the determination that eligibility is met. This information will be collected in the field test from the sample of decisions measured for quality.

e. Adjudication Redetermination Timeliness. Two measures are being tested: (1) Time lapse between the end of the week affected by the redetermination and the date that the redetermination was issued; and (2) time lapse between the date the redetermination was requested and the date the redetermination is issued. These are new measures which gather

universe information on the impact of redeterminations on time lapse.

f. Lower Authority Appeals Timeliness. The length of time between the date that the request for hearing is filed and the date the decision is issued. No change from the current measure.

g. Lower Authority Decision Implementation Timeliness. The length of time between the date that the decision is issued and the date the outcome is applied to the claim record. This is a new measure to determine compliance with the obligation to implement an administrative decision promptly. This information will be collected during the field test from the sample measured for quality.

h. Higher Authority Appeals Timeliness. The length of time between the date the request for a Higher Authority appeal is filed and the date that the decision is issued. No change from the current measure.

i. Combined Wage Claims—Wage Transfer Timeliness. The length of time between the date that the transfer request is received and the date that the data which completes the transfer are sent to the paying State. No change from the current measure.

j. Combined Wage Claims—Billing Timeliness. The length of time from the end of the calendar quarter to the date that reimbursement requests (billings) were mailed to the transferring States. Universe data obtained from the paying State's CWC records will be measured rather than a sample as is currently done.

k. Combined Wage Claims—Reimbursement Timeliness. The length of time from the date that the transferring State receives the reimbursement request to the date that payment is mailed to the paying State. Universe data will be used rather than a sample as is currently done.

2. Quality measures. The quality measures proposed for field testing are: (1) Adjudications Quality, (2) Lower Authority Appeals Quality and (3) Combined Wage Claim Quality. A measure of the quality of Higher Appeals was considered, but not selected for field testing due to the need to do further work on the measure itself, as well as on the implementation of the measure.

a. Adjudication quality. The measure for adjudication would build on and improve the current Quality Performance Index (QPI) measurement system. The definition of adjudication quality is the assessment of the likelihood that a State is adequately adjudicating a preset percentage of all issues.

The proposed adjudications measurement review system is intended to improve the current system, as follows: First, it broadens the range of adjudication decisions reviewed beyond the 4 categories currently reviewed to the universe of decisions measured for time lapse. Sixty cases per State would be selected at random from all decisions issued during the immediately preceding quarter. Second, the scoring system would continue to provide information for each of the key factors of quality but would move from a numeric system to an easier to understand pass/fail system. Further, all evaluation criteria would be given equal weight which increases the importance of the adequacy of the written determination. A revised adjudication format is provided in Appendix 2.

b. Lower Authority Appeals Quality. The measure for Lower Authority Appeals Quality also builds on the current Quality Appraisal measure while making certain improvements.

Lower Authority Appeals Quality is defined as: (1) The numerical assessment of the quality of the hearing, and (2) whether due process was provided. Both measures will be field tested. A concern with the current scoring system is that it is possible for a case that does not provide due process to obtain a passing score.

The proposed Lower Authority appeals measurement would provide two measures of performance. First, a case cannot be rated as adequate (providing a fair and impartial hearing) unless all of the due process elements pass. Second, changes have been made to improve the current appeals quality assessment instrument. These changes, recommended by SESA Appeals staff in Region X and reviewed by the contractor's State Expert Panel and Service Area Experts, have been accepted by UIS. The instrument will be scored: (1) Numerically to measure the quality of the hearing and (2) pass/fail for measuring "due process". The revised instrument and scoring sheet is located in Appendix 3.

A random sample of twenty appeals decisions will be selected and analyzed each quarter. The sample frame will include both single and two-party appeals. Withdrawals, dismissals and no-shows (where one party does not appear) will be excluded from the sample frame.

c. Combined Wage Claim (CWC) Quality. This performance indicator also builds on the current Quality Appraisal experience. The measures of CWC will assess the accuracy of wages transferred, billing of charges, and reimbursement by participating States. We anticipate that quality will be assessed during the field test based on a randomly selected quarterly sample of twenty for each type of transaction.

3. Scoring consistency/Rereview. The PMR recommendations significantly strengthen the existing Quality Appraisal quality measurement process by ensuring consistency in scoring between SESAs within a Region and between Regions. In the area of adjudications, the Regional Office will review a subsample of the individual cases as scored by the SESAs to ensure consistency in scoring between SESAs within the Region. In turn, the National Office will review a subsample of the individual cases scored by each Regional Office to ensure scoring consistency between the Regional Offices.

For Lower Authority appeals quality, consistency is improved through: (1) Statistically valid random sampling at the SESA level, and (2) an annual review by UIS of a randomly selected subsample of SESA scored cases.

The Appendix material which follows contains measures to be tested and scoring information for adjudication and Lower Authority appeals. This information is included in the "Selected Alternatives Report" submitted to the Unemployment Insurance Service by Macro International Inc. on November 22, 1992.

Appendix 1. Selected Measures for Field Test
Appendix 2. Adjudication Scoring Format
Appendix 3. Lower Authority Appeals Evaluation Instrument and Scoring Sheet

Appendix 1—Selected Measures for Field Test

Measure: First Payment Timeliness (Initial Claims).

Definition: The length of time from the end of the first (earliest) compensable week in the benefit year to the date the payment is issued.

Includes all payments whether partial or total.

Excludes retroactive payment for compensable waiting period.

Data Source: Universe of first payments.

Computation: Start date: End of first compensable week.

End date: Date check was issued.

Reporting Intervals: 7, 14, 21, 28, 35, 42, 49, 56, 63, 70, 70+ Days.

Reporting Categories: Report separately for:

—Intrastate UI, UCFE, UCX, CWC.
—Interstate UI, UCFE, UCX, CWC.

Reporting Frequency: Monthly.

Measure: Continued Weeks Payment Timeliness.

Definition: The length of time from the end of the continued week claimed (whether total or partial) to the date the check is issued.

Applies to weeks paid subsequent to the first week compensated in the benefit year.

Data Source: Universe of continued weeks paid.

Computation: Start date: End of last week for which claim was filed.

End date: Date check was issued.

Reporting Intervals: 7, 14, 21, 28, 35, 42, 49, 56, 63, 70, 70+ Days.

Reporting Categories: Report separately for:

—Intrastate UI, UCFE, UCX, CWC.
—Interstate UI, UCFE, UCX, CWC.

Reporting Frequency: Monthly.

Measure: Adjudications Timeliness.

Definition: The length of time to adjudicate all statutory issues which have the potential to adversely affect claimant benefit rights.

Data Source: Universe of Adjudications.

Computation: Start date: Week ending date of first claimed week of unemployment affected by decision.

End date: Date determination decision is issued.

Reporting Intervals: 7, 14, 21, 28, 35, 42, 49, 56, 63, 70, 70+ Days.

Reporting Categories: Report separately for:

—Intrastate UI, UCFE, UCX, CWC—Seps & Nonseps.
—Interstate UI, UCFE, UCX, CWC—Seps & Nonseps.
—Multi-Claimant Labor Dispute.
—Multi-Claimant "Other".

Reporting Frequency: Monthly.

Notes: Applies to all adjudications.

Measure: Adjudication Implementation Timeliness.

Definition: The length of time from the date of determination to the date the outcome is applied to the claim record.

Data Source: Adjudication Quality sample.

Computation: Start date: Date determination issued.

End date: Date outcome applied to claim record.

Reporting Intervals: 0, 1, 2, 3, 4, 4+ Days.

Reporting Categories: Report separately for:

—Intrastate UI, UCFE, UCX, CWC—Seps & Nonseps.
—Interstate UI, UCFE, UCX, CWC—Seps & Nonseps.
—Multi-Claimant Labor Dispute.
—Multi-Claimant "Other".

Reporting Frequency: Quarterly.

Notes: Provides measurement to assess how prompt SESA is in updating claim record to either authorize or stop payment based on determination issued.

Measure: Adjudication Redetermination Timeliness.

Definition: The length of time to issue a redetermination of the initial adjudication.

Data Source: Universe of Redeterminations.

Computation: Start date: Date redetermination is requested.

Start date: Week ending date of first week affected by the redetermination.

End date: Date redetermination is issued.

Reporting Intervals: 7, 14, 21, 28, 35, 42, 49, 56, 63, 70, 70+ Days.

Reporting Categories: Report separately for:

—Intrastate UI, UCFE, UCX, CWC—Seps & Nonseps.
—Interstate UI, UCFE, UCX, CWC—Seps & Nonseps.
—Multi-Claimant Labor Dispute.
—Multi-Claimant "Other".

Reporting Frequency: Monthly.

Notes: Applies to all adjudications.

Two start dates employed: (1) Date redetermination requested, and (2) week ending date of first week affected by the redetermination.

Measure: Lower Authority Appeals Timeliness.

Definition: The length of time from the date the request for hearing is filed to the date the decision is issued.

Data Source: Universe of Lower Authority Appeals Decisions.

Computation: Start date: Date the appeal is filed.

End date: Date notice of final decision is issued.

Reporting Intervals: 30, 45, 60, 75, 90, 120, 120+ Days.

Reporting Categories: Report separately for:

—Intrastate UI, UCFE, UCX, CWC—Seps & Nonseps.
—Interstate UI, UCFE, UCX, CWC—Seps & Nonseps.
—Multi-Claimant Labor Dispute.
—Multi-Claimant "Other".

Reporting Frequency: Monthly.

Notes: Include remanded and reopened cases.

If a case is remanded from Higher Authority Appeals for a new hearing and decision by the Lower Authority, the clock starts on the date the case is remanded from the Higher Authority.

Measure: Lower Authority Decision Implementation Timeliness.

Definition: The length of time from the date the decision is issued to the date the outcome is applied to the claim record.

Data Source: Lower Authority Appeals Quality Sample.

Computation: Start date: Date decision is issued.

End date: Date outcome applied to claim record.

Reporting Intervals: 0, 1, 2, 3, 4, 4+ Days.

Reporting Categories: Report separately for:

—Intrastate UI, UCFE, UCX, CWC—Seps & Nonseps.
—Interstate UI, UCFE, UCX, CWC—Seps & Nonseps.
—Multi-Claimant Labor Dispute.
—Multi-Claimant "Other".

Reporting Frequency: Quarterly.

Notes: Provides measurement to assess how prompt SESA is in updating claim record to either authorize or stop payment based on decision issued.

Measure: Higher Authority Appeals Timeliness.

Definition: The length of time from the date the request for a Higher Authority appeal is filed to the date the decision is issued.

Data Source: Universe of Higher Authority Appeals Decisions.

Computation: Start date: Date the appeal is filed.

End date: Date notice of final decision is issued.

Reporting Intervals: 45, 60, 75, 90, 120, 150, 180, 210, 240, 270, 300, 330, 360, 360+ Days.

Reporting Categories: Report separately for:

—Intrastate UI, UCFE, UCX, CWC—Seps & Nonseps.
—Interstate UI, UCFE, UCX, CWC—Seps & Nonseps.
—Multi-Claimant Labor Dispute Separations.
—Multi-Claimant Nonseparations.

Reporting Frequency: Monthly.

Notes: Include remanded and reopened cases.

If a case is remanded to the Lower Authority for additional evidence and then case returned, the Higher Authority clock keeps running.

If a case is remanded to the Lower Authority for a new hearing and decision, the clock stops.

Measure: Combined Wage Claims—Wage Transfer Timeliness.

Definition: The length of time from the date that the transfer request is received to the date that the data which completes the transfer is sent to the paying State.

Data Source: Universe of transfers completed during the quarter from the transferring State's files.

Computation: Start date: Date the transfer request is received.

End date: Date that the data which completes the transfer is sent to the paying State.

Reporting Intervals: 3, 6, 10, 14, 21, 28, 35, 42, 49, 56, 63, 70, 70+ days.

Reporting Categories: Not Applicable (N/A).

Reporting Frequency: Quarterly.

Notes: Only change from existing measure, as reported on ETA 586, is an increase in the number of intervals.

Measure: Combined Wage Claims—Billing Timeliness.

Definition: The length of time from the end of the calendar quarter to the date that reimbursement requests (billings) were mailed to the transferring States.

Data Source: Universe of billings by the paying State for benefits paid during a given quarter.

Computation: Start date—End of calendar quarter.

End date—Date that reimbursement requests were mailed to transferring States.

Reporting Intervals: 14, 28, 42, 56, 56+ days.

Reporting Categories: N/A.

Reporting Frequency: Quarterly.

Measure: Combined Wage Claims—Reimbursement Timeliness.

Definition: The length of time from the date that the transferring State receives the reimbursement request to the date that payment is mailed to the paying State.

Data Source: Universe of reimbursements made by the transferring State.

Computation: Start date—Date the transferring State receives the reimbursement request.

End date—Date payment is mailed to the paying State.

Reporting Intervals: 14, 28, 42, 56, 56+ days.

Reporting Categories: N/A.

Reporting Frequency: Quarterly.

Measure: Adjudication Quality.

Definition: The assessment of the adequacy of adjudications.

Data Source: Sample from the adjudications timeliness universe.

Computation: Each case scored as Pass/Fail. Failure of one element causes case to fail.

Reporting Intervals: N/A.

Reporting Categories: Report separately for:

—Intrastate UI, UCFE, UCX, CWC—Separations and Nonseparations.
—Interstate UI, UCFE, UCX, CWC—Separations and Nonseparations.
—Multi-claimant Labor Dispute.
—Multi-claimant "Other".

Reporting Frequency: Quarterly.

Measure: Percent of cases scored Pass/Fail using the Lower Authority Appeals quality assessment instrument.

Definition: Assessment of the quality of the hearing and whether or not due process was provided.

Data Source: Sample of appeal decisions (single and two party) issued in a quarter. Excludes withdrawals and dismissals.

Computation: Scored pass/fail re: 8 due process elements. Numeric scoring of all elements.

Reporting Intervals: N/A.

Reporting Categories: Report separately for:

—Intrastate UC, UCFE, UCX, CWC—Seps & Nonseps.
—Intrastate UC, UCFE, VCX, CWC—Seps & Nonseps.
—Multi-claimant Labor Dispute.
—Multi-claimant "Other".

Reporting Frequency: Quarterly.

Measure: Combined Wage Claims—Quality of Wage Transfers.

Definition: Assessment of the propriety of the wages transferred by the transferring State.

Data Source: Sample of universe of wage transfers.

Computation: Percentage of transfers properly completed.

Reporting Intervals: N/A.

Reporting Frequency: Quarterly.

Notes: Propriety as defined by 20 CFR 616.9 (a) & (b).

Measure: Combined Wage Claims—Billing Quality.

Definition: Assessment of the propriety of the billing of charges by the paying State.

Data Source: Sample of universe of charges billed.

Computation: Percentage of charges properly billed.

Reporting Intervals: N/A.

Reporting Frequency: Quarterly.

Notes: Propriety as defined by 20 CFR 616.8(f).

Measure: Combined Wage Claims—Reimbursement Quality.

Definition: Assessment of the propriety of reimbursements by the transferring State.

Data Source: Sample of universe of reimbursements made by the transferring State.

Computation: Percentage of reimbursements properly made.

Reporting Intervals: N/A.

Reporting Frequency: Quarterly.

Notes: Propriety as defined by 20 CFR 616.9(c).

Appendix 2—Adjudications Quality

Note: This is a prototype of what an adjudications summary report might look like. Scoring instructions and a user guide must be developed before any review for adjudication quality can be undertaken.

BILLING CODE 4510-30-M

ADJUDICATION QUALITY -- **UIS PERFORMANCE MEASUREMENT**

STATE _____Report code_____

Report Period: Calendar Year_____Quarter ending_____

Case no	01	02	03	04	05	06	07	08	09	10
Local Office										
Decision Date										
Adjudicator										
Issue										
Reviewer										
WRITTEN DOCUMENTATION of FACTFINDING [pass of fail]										
claimant information										
employer information										
other information										
required rebuttals										
CLAIM DETERMINATION [pass or fail]										
clearly written and understandable.....										
Eligibility outcome correctly stated....										
Key eligibility facts are supported.....										
Decision reflects State policy.....										
Adequate appeal information.....										

Decision Implementation

Accurate? yes/no										
Time lapse? days										

Scoring Key for FACTFINDING & DETERMINATION :::P = Pass F = Fail
Scoring Key for Components::: NR = Element not required
IS = inadequate - unacceptable - insufficient - incomplete
IM = Missing - no attempt to obtain data was documented

BILLING CODE 4510-30-C

Appendix 3—Lower Authority Appeals Quality

Appeals Quality Package Criteria and Guidelines—Lower Authority—Hearing

1. Notice of Hearing (2)

Does the notice of hearing clearly identify the parties, the date, time and place of hearing and the issues to be addressed or was there an informed waiver?

Good (6)

The hearing notice clearly lists all parties to whom the hearing notice was mailed. It need not list the agency as a party. The date and time are clear and the place of hearing is adequately described. In case of a telephone hearing, the method of appearance is clearly explained, e.g., "Parties should call the toll free number above at least 15 minutes before the hearing to notify the Hearing Officer of the number to be called for hearing." No deduction will be made if the place of hearing is listed as "Employment Security Office, 1100 W 10, Jasper, MA." A room number or reference to hearings room is not necessary.

The issues must be sufficiently clear so as to allow the parties to adequately prepare for hearing, e.g., "Should claimant be disqualified from benefits because of his separation from work."

Fair (3)

The notice does not clearly identify parties or does not clearly state the issue, e.g., "Should the September 25, 19____ examiner's decision be affirmed?"

Unsatisfactory (0)

The notice of hearing does not identify the parties or does not state the issue so that the parties can understand it.

Reference Notes—Question 1

The intent of this question is to ensure that the parties have adequate notice of the hearing and opportunity to prepare for the hearing. The notice should state the other parties that have been given notice of the hearing and in case of a telephone hearing information should be given on how to appear.

A "Good" is given if the hearing notice covers all of the required information and does so in a way that can be understood by the parties.

A "Fair" rating is given if the notice gives the general date, time and place information but does either not list what parties have been given notice or does not clearly state the issue. Reference back to the decision appealed is not sufficient to meet the notice requirement.

This criterion will not be scored down in those situations where notice was given and there was subsequent waiver of notice and the hearing was held on issues other than those set forth on the notice. The same is true where, in emergency situations, a hearing may be held without written notice.

2. Pre-hearing/Pre-testimony Explanation (2)

At the start of the hearing, did the Hearing Officer clearly explain the procedures to be followed?

Good (6)

Before testimony was taken, the hearing office explained: (a) the purpose of the hearing, (b) the order of testimony, (c) the right to question witnesses, and (d) asked if any of the parties had any questions before proceeding with the hearing.

Fair (3)

The Hearing Officer explained two or more of the above.

Unsatisfactory (0)

The Hearing Officer did not explain two or more of the above.

Reference Notes—Question 2

This explanation and opportunity for questions may be included in the opening statement (Question 3).

The intent of this question is to ensure that the parties understand how the hearing will be conducted and the rights and opportunities they will have to participate in the hearing.

A "Good" score will be given if the Hearing Officer covers all of the elements set forth above. The elements shall be covered in the taped prehearing explanation or in a taped opening statement. The explanation must be clearly stated and delivered in an understandable manner. The "Fair" score will be given if the Hearing Officer covered two or more of the elements.

An "Unsatisfactory" score will be given if the Hearing Officer does not cover two or more of the elements or if the explanation is not tape recorded.

Rapid or "machine gun" opening statements should be scored down to fair or unsatisfactory based on its understandability or ability of the parties to assimilate the information being provided.

A concurrence that the explanation was done off the tape recorded portion of the hearing would result in an unsatisfactory score.

3. Opening Statement (2)

Did the opening statement set forth the identity of the parties and participants at the hearing, the date, the place of hearing, the Hearing Officer, the decision appealed, and the issues to be considered at the hearing?

Good (6)

Before taking testimony the Hearing Officer: (a) identified him or herself, (b) identified the persons present at the hearing, (c) stated the date and place of hearing (or that it was a telephone hearing), (d) identified the decision appealed and the issues that would be considered.

Fair (3)

The Hearing Officer did not do one of the above elements.

Unsatisfactory (0)

The Hearing Officer did not do two or more of the above elements.

Reference Notes—Question 3

The intent of this question is to ensure that the Hearing Officer clearly sets forth the administrative details and/or case history at the beginning of the hearing. An explanation of issues must be more than just a statement of the decision appealed, i.e., a brief explanation of the elements of the law, such as "to establish that the claimant was discharged for misconduct, the employer has to show * * *".

4. Exhibits (2)

Did the Hearing Officer handle exhibits correctly?

Good (6)

The Hearing Officer correctly handled exhibits in that s/he:

(a) Described and marked all exhibits.

(b) Allowed parties to review the exhibits and offer objections. When a party appears by telephone and a document is read into the record as a proposed exhibit, the party was allowed to offer objections to the document.

(c) Authenticated offered exhibits (to the extent possible) where questionable or challenged. Documents which are not "part of the agency file" may need proper foundation.

(d) Received all competent, relevant and reasonably available exhibits.

(e) Gave an explanation if s/he denied admission of any of the proposed exhibits.

(f) Ruled on the admissibility of any documents read into the record as proposed exhibits.

Fair (3)

The Hearing Officer received all competent, relevant and reasonably available exhibits and showed them to

the parties, but did not fully describe them or correctly mark them. The Hearing Officer provided the parties with an opportunity for questions and rebuttal as to their contents.

Unsatisfactory (0)

The Hearing Officer (a) denied the introduction of exhibits without giving an appropriate reason(s) for such denial, or (b) did not show exhibits received to the other parties, or (c) failed to enter agency exhibits which were referred to in hearing or decision and which were competent, relevant and material.

Did not occur (6)

There were no exhibits tendered, marked or introduced, or no documents made reference to in statements or testimony that should have been marked or introduced.

Reference Notes—Question 4

The intent of this question is to ensure that the Hearing Officer builds as complete a record as possible including the utilization of all competent, relevant, and material exhibits that are available; that the exhibits are properly described, authenticated, marked and entered into the record, and that the parties are made aware of their contents and provided with the opportunity to object, explain or rebut. The requirements are the same for in-person and telephone hearings. Telephone hearing exhibits will be sent to each of the parties prior to the hearing and, if a party does not have all of the documents marked as exhibits, the matter may be continued to allow opportunity to review and object. (See Question 18)

In either an in-person or telephone hearing the parties should be offered the opportunity to see and review the documents or to be mailed the documents and offer post-hearing objections if provided for in the appeals process.

The exhibit should be described sufficiently to identify it for the record. It should be authenticated (to the extent possible) if it is suspect or challenged. It is not necessary to authenticate agency documents created or obtained in the claim processing, such as fact finding or separation reports. The hearings officer shall determine the weight given challenged agency documents.

The record should reflect that the parties had an opportunity to review the exhibits prior to their being received into evidence. The Hearing Officer may state "I have allowed the parties to read and review the documents that I have marked as exhibits" or ask the question of the parties, "Mr. Claimant, have you had the opportunity to read the letter I marked as Exhibit 1?" The record must affirmatively show that the parties were given the opportunity to examine the document.

The exhibit should be clearly marked with the exhibit number or identification. It should be received if competent and relevant if there are no objections, or after the objections have been ruled on.

The Hearing Officer should assume the responsibility to introduce on his/her own motion exhibits that are competent, relevant, and material to the issue but are not introduced by the parties. Common among these would be documents that are in agency files. It is important to realize that the Hearing Officer cannot consider in his/her decision-making process any document that was not properly entered.

Jurisdictional documents, such as the decision appealed, the request for hearing and the notice of hearing, need not be entered as exhibits because they are not really considered in the decision-making process. The score will not be reduced if the Hearing Officer marks or fails to mark them. If the jurisdictional documents are material to the disposition of the case, they must be entered as exhibits, such as the request for hearing when the issue is whether the request for hearing was timely filed.

5. Witnesses (2)

Were witnesses called, sworn and the evidence developed in logical order?

Good (6)

The order was reasonable and flexible depending on the circumstance of each case. Unless a fixed order was necessary, generally the party with the most knowledge proceeded first. For example: in voluntary quit issues, the claimant proceeded first; in misconduct issues, the employer proceeded first.

The Hearing Officer also generally avoided jumping back and forth between witnesses and issues. A brief question of the party not testifying to clarify an issue or to determine whether further foundation or explanation was necessary will not result in deduction.

Fair (3)

The Hearing Officer permitted the introduction of some testimony in illogical sequence, but did not substantially jeopardize the organization of the hearing and the presentation of evidence.

Unsatisfactory (0)

The Hearing Officer did not call witnesses or did not swear in witnesses or did not take evidence in logical order.

Did Not Occur (6)

The evidence was submitted without witnesses or sworn testimony.

Reference Notes—Question 5

The intent of this question is to move the hearing to a conclusion in a logical and orderly manner. Therefore, as a general rule, the party with the most information should be called to testify first. However, the Hearing Officer should be allowed to exercise reasonable discretion in directing the order which must be flexible and dependent upon the particular circumstances of each case.

If a State has a court ruling or some other authority which dictates the order of proof, then that ruling takes precedence and must be applied. The rating should be "Good" where it has been applied.

Witnesses must testify under oath or affirmation. In distinguishing between the "Good" and the "Fair" rating, the evaluator must decide whether the Hearing Officer exercised reasonable discretion in determining the order of proof. That decision generally should be based on who is most knowledgeable about the case. The order should produce an easy flow of information and fact finding without the Hearing Officer resorting to aimless jumping back and forth between witnesses.

The "Fair" rating should be scored where the Hearing Officer failed to meet the "Good" criteria in some instances, but in a manner which did not seriously affect the fact-finding process. However, for the most part the Hearing Officer adhered to a logical sequence of testimony.

For the "Unsatisfactory" rating, the Hearing Officer lacked sound judgment in the order of proof, thereby prolonging the hearing unnecessarily, failed to swear in a witness(s), or jumped back and forth between witnesses and/or issues.

6. Order of Testimony from Each Witness (3)

Was evidence from each witness developed in a logical order?

Good (3)

As each witness testified, the evidence was developed in a logical and orderly manner, although the Hearing Officer was flexible as required by the circumstances.

Fair (1)

The Hearing Officer permitted the introduction of some evidence in illogical sequence, but did not substantially jeopardize the

organization of the hearing and the presentation of evidence. The Hearing Officer generally completed one line of inquiry before moving on.

Unsatisfactory (0)

The Hearing Officer did not take the evidence in logical order and sequence.

Reference Notes—Question 6

The intent of this question is to move the testimony of each witness to a conclusion in a logical and orderly manner.

Witnesses must testify under oath or affirmation. In distinguishing between the "Good" and the "Fair" rating, the evaluator must decide whether the Hearing Officer exercised reasonable discretion in determining the order and sequence of the testimony. The order should produce an easy flow of information and fact finding without the Hearing Officer or the witness resorting to aimless jumping back and forth between areas of the testimony.

The "Fair" rating should be scored where the Hearing Officer failed to meet the "Good" criteria in some instances, but in a manner which did not seriously affect the fact-finding process.

For the "Unsatisfactory" rating, the Hearing Officer lacked sound judgment in allowing or directing the testimony, thereby prolonging the hearing unnecessarily, failed to swear in a witness(s), or jumped back and forth between elements of testimony with the witness.

7. Questions of own Witness (1 With Mid Range Score)

Did the Hearing Officer provide parties and representatives with a timely opportunity to question their *own* witnesses?

Good (9)

Where necessary, the Hearing Officer informed the parties that they or their representatives could question witnesses in the party's own behalf. Where necessary, he or she assisted such party or representatives in framing questions and cautioned them not to make statements or arguments.

Fair (3)

Although the Hearing Officer advised parties who were not represented by counsel that they could question their own witnesses, s/he failed to assist when appropriate, or they were not allowed to question their own witnesses in a timely manner.

Unsatisfactory (0): F

The Hearing Officer failed to provide parties the opportunity to question their own witnesses.

Did Not Occur (9)

The parties did not have witnesses to question or it was not necessary to inform them of this right, e.g., a party was represented by counsel or an experienced representative.

Reference Notes—Question 7

The intent of this question is to ensure that the Hearing Officer has provided the parties or their representatives the right to question their own witnesses in a timely manner as some parties may be unaware of this right.

It is also the responsibility of the Hearing Officer to provide the parties with whatever assistance they need to question witnesses in a timely and proper manner.

8. Clear Language (2)

Throughout the hearing, did the Hearing Officer use language that was clear and understandable, avoiding unnecessary legal phrases and technical language?

Good (6)

The Hearing Officer's language was clear and understandable in all but inconsequential instances. There was no unnecessary use of legal phrases or technical language.

Fair (3)

There were minor instances when the Hearing Officer's language was not clear and understandable or legal phrases or technical language was used. "Minor instances" would be confined to those that would not have a significant bearing on the outcome of the case.

Unsatisfactory (0)

The Hearing Officer's language was not clear and understandable in significant and critical areas or unnecessary legal phrases and technical language was used.

Reference Notes—Question 8

The intent of this question is to ensure that all language to participants is clear and understandable and not misinterpreted and that they are not confused by or not able to understand legal phrases or technical language.

References to form numbers and agency jargon should be avoided.

9. Single Point Questions (2)

Did each question of the Hearing Officer express only one point?

Good (6)

The Hearing Officer's questions expressed only one point and, if more than one point was expressed, it was corrected.

Fair (3)

Occasionally, the Hearing Officer asked a question with more than one point, but it did not interfere with the development of the testimony.

Unsatisfactory (0)

The Hearing Officer repeatedly asked questions containing two or more points and confused the witnesses.

Reference Notes—Question 9

Questions should express one point only so that neither the question nor the answer will be misunderstood. For example, a compound question such as "Was John Doe your supervisor and did he discharge you?" would be unlikely to produce a clear answer. Hearing officers should avoid compound questions and carefully tailor the questions to express one point only.

10. Clarification of Conclusionary Statements (2)

Did the Hearing Officer attempt to clarify conclusionary statements, opinions and ambiguous or unclear testimony?

Good (6)

When the witness responded with an opinion or conclusion, the Hearing Officer made a reasonable effort to develop the factual basis for the opinion or conclusion. When the testimony was not entirely clear or was ambiguous, the Hearing Officer questioned the witness(es) in a conscientious attempt to get specific, clear responses.

Fair (3)

The Hearing Officer asked some questions of witnesses, but did not make a reasonable effort to clear up relevant opinions, conclusions, ambiguities or unclear testimony.

Unsatisfactory (0)

The Hearing Officer's questioning of witnesses disregarded conclusionary statements, ambiguities or unclear testimony that was relevant, or dealt with them in an obviously inadequate manner.

Did Not Occur (6)

There were no conclusionary statements or opinions and the testimony was clear and unambiguous and did not need clarification.

Reference Notes—Question 10

The intent of this question is to ensure that the Hearing Officer fulfills his/her obligation to require lay witnesses to testify to evidentiary facts, as distinguished from conclusions. For example, if the witness says that the claimant was discharged for excessive absenteeism, this would be a conclusionary statement. The Hearing Officer would be responsible for getting the witness' testimony reflecting the factual basis for this conclusion.

All opinions expressed by lay witnesses should be subjected to thorough questioning to establish the facts used as a basis for the opinions whenever the statements are germane to the decision. Opinion evidence by expert witnesses is admissible to meet the necessity of providing to the Hearing Officer the aid of those especially qualified by education, background, experience, training and study to express an opinion on questions of facts relating to their particular skills, an example being a qualified employment service representative who testifies on labor market conditions.

However, it is important that the Hearing Officer establish, on the record, what the expert witness's background is and that they qualify as an expert.

The difference between "Good" and "Fair" is that the latter score is applied when the Hearing Officer occasionally overlooks clearing up ambiguities, conclusionary testimony, etc. An "Unsatisfactory" mark is given if the Hearing Officer accepted opinions or conclusions of the witnesses without asking the factual basis.

11. Confrontation (1)

Was there opportunity for confrontation of all opposing witnesses?

Good (9)

Each party had the opportunity to be present during the giving of all testimony affecting him/her and to confront all opposing witnesses (use of telephone hearings where all parties have the opportunity to participate and hear the witness(es) satisfies the confrontation requirement).

Fair (X)

Not applicable.

Unsatisfactory (0) F

The Hearing Officer denied the opportunity for confrontation.

Did Not Occur (9)

There were no opposing witnesses.

Reference Notes—Question 11

The intent of this question is to ensure fulfillment of the due process right to an opportunity to know all of the evidence presented by opposing parties.

Excluding witnesses does not conflict with the requirements of this question unless the witness happens to be an "interested party" (claimant or employer).

12. Cross-examination (1 With Mid Range Score)

Did the Hearing Officer afford a timely (before testimony from another witness) opportunity to cross-examine, properly control cross-examination, and provide appropriate assistance where necessary?

Good (9)

The Hearing Officer provided the parties their right to timely cross-examination of the opposing witnesses, provided assistance in framing questions as necessary, and limited it to permissible bounds. When the parties made statements instead of asking questions, the Hearing Officer assisted the party in forming the statement into a question unless it was very clear that the party had no questions but wanted to testify.

Fair (3)

The Hearing Officer informed the parties of their right to cross-examination, but either did not control it or did not provide assistance that was needed in framing questions or s/he stated in one sentence, "Do you want to ask questions or make a statement?" The Hearing Officer cut people off who were clearly making a statement without helping them form the statement into a question, provided it is clear the party wanted or needed to get additional information from the witness.

Unsatisfactory (0) F

The Hearing Officer failed to afford the parties their right to timely cross-examination or it is obvious the party did not know how to form questions and gave up out of frustration.

Did Not Occur (9)

There were no opposing witnesses.

Reference Notes—Question 12

The intent of this question is to ensure that all parties are afforded the right to cross-examine opposing witnesses.

Cross-examination is a fundamental right, and not a mere privilege. It is not diminished by reason of the fact that the parties are unrepresented by counsel. If an unrepresented party appears to be unable to comprehend the term, it is necessary to provide them with that right anyway, but it should be expressed in lay language, such as, "Do you want to ask Mr. Jones any questions about any of the testimony he just gave?" If an unrepresented party is incapable of cross-examining properly (for example, instead of asking questions s/he makes statements and seems unable to change), the Hearing Officer must assist by framing questions for the party.

The right to cross-examine should be offered immediately after the witness testifies, and it should not be delayed until all the witnesses for one side have concluded their direct testimony.

However, the right to cross-examination may be restricted, as for example, when it becomes unduly repetitious. Moreover, the cross-examiner should not be permitted to unduly harass, argue with or badger the witness.

The distinction between "Good" and "Fair" is that the latter score is given if the cross-examiner is permitted to harass the witness to a limited extent, or if the cross-examination is allowed to continue excessively, or if the Hearing Officer fails to provide meaningful assistance to lay persons.

An "Unsatisfactory" score is given if the Hearing Officer fails to provide cross-examination rights, *or* fails to provide them immediately after direct examination, *or* fails completely to keep the questioner from unduly and excessively badgering the witness, *or* the Hearing Officer lets a lay person flounder without giving assistance that is clearly needed.

13. Repetitive testimony (3)

Did the Hearing Officer control the undue extension or repetition of testimony so as to keep the hearing moving expeditiously?

Good (3)

The Hearing Officer diplomatically informed the witnesses that repetitious and prolonged testimony was not necessary and added nothing to the hearing. The Hearing Officer did not question witnesses excessively or permit undue repetition or extension of testimony by witnesses or duplication of witnesses, and testimony was limited to the issues.

Fair (1)

The Hearing Officer indulged in or allowed testimony that was repetitious, prolonged or irrelevant, but it did not burden the record and did not affect the final decision.

Unsatisfactory (0)

The Hearing Officer permitted persistent repetition of testimony, prolonged testimony, or permitted irrelevant testimony; the Hearing Officer repeatedly asked repetitious questions of the witness.

Reference Notes—Question 13

This criteria is intended to keep hearings moving along expeditiously. The Hearing Officer is bound not to belabor the witnesses with repetitious questions or remarks and to keep the witnesses from indulging in irrelevant, immaterial, and/or unduly repetitious testimony.

The score is based upon the extent that this type of testimony is permitted.

14. Leading Questions (2)

Did the Hearing Officer indulge in or permit improper leading questions on material issues on direct examination?

Good (6)

The Hearing Officer did not ask improper leading questions on material issues, nor did the Hearing Officer allow the parties to do so.

Fair (3)

The Hearing Officer asked or allowed improper leading questions, but they did not inhibit the fair presentation of the evidence.

Unsatisfactory (0)

The Hearing Officer and/or the parties asked improper leading questions which were material to the issues in the case.

Reference Notes—Question 14

The intent of this question is to ensure that the Hearing Officer did not ask or permit the asking of improper leading questions. A leading question is one which suggests the answer. There are exceptions to this principle. On direct examination, parties or their representatives should not ask leading questions unless it relates to matters such as the party's or witness's name, social security number, address, etc. This is all background information and, in order to expedite the hearing, leading questions are permissible. The Hearing Officer may ask leading questions on direct examination if necessary to develop the evidence so long as the questions do not inhibit the fair presentation of the facts. On direct examination, if leading questions are asked by others, the Hearing Officer should curtail them and/or tell the questioner that answers to such questions will be entitled to less weight in his consideration for the decision.

Another exception is that leading questions are permissible where the witness is hostile, biased, or unwilling to cooperate. In this situation, the Hearing Officer must decide if any one of these conditions exists and proceed accordingly.

Further, if it occurs that a witness cannot recall dates, names, places, times, etc., leading questions may be asked in order to jog his/her memory.

15. Control of Interruptions (2)

Did the Hearing Officer, in as tactful a manner as possible, effectively control interruption of testimony and/or disruptive individuals at the hearing and refrain from inappropriate interruptions himself/herself?

Good (6)

The Hearing Officer, in as tactful a manner as possible, effectively handled interruptions at the hearing and/or disruptive individuals and did not interrupt unnecessarily.

Fair (3)

The Hearing Officer allowed some interruptions that did not disrupt the hearing.

Unsatisfactory (0)

The Hearing Officer's interruptions were inappropriate or s/he did not effectively control disruptions or interruptions.

Did Not Occur (6)

There were no interruptions or disruptive individuals.

Reference Notes—Question 15

This question is intended to ensure that the Hearing Officer fulfills his/her obligation to prevent undue or improper interruptions in the testimony of the witnesses and/or control of disruptive individuals.

If possible, the Hearing Officer should have first made tactful attempts to prevent improper interruptions and to control disruptive individuals before resorting to more forceful means.

The scoring is based upon the degree or the extent that this is permitted to happen without correction by the Hearing Officer.

16. Off the Record (2)

Did the Hearing Officer effectively control "going off the record" and handle correctly on the record matters that occurred or were discussed off the record?

Good (6)

The Hearing Officer went off the record or granted an application to do so for good and sufficient purposes. The Hearing Officer allowed no one else to go off the record but himself/herself. On resuming the record, the Hearing Officer summarized the essentials of what took place and obtained the concurrence of the parties. On turning over the tape or putting in a new tape, the Hearing Officer stated s/he was going off the record to change tape and when returning to the record, stated that the tape had been replaced and that nothing relating to the hearing had transpired in the process (concurrence is necessary). If the tape ran out unexpectedly creating a gap in the record, the Hearing Officer repeated or asked the last speaker to repeat the missing portion of the statement. In these instances, concurrence of the witness and parties is required.

Fair (3)

The Hearing Officer allowed parties to go off the record without establishing good and sufficient cause, but the Hearing Officer did summarize for the record the off-the-record discussion.

Unsatisfactory (0)

The Hearing Officer went off the record and failed to summarize on the record what happened off the record or failed to repeat questions or testimony when the tape unexpectedly ran out or failed to get concurrence from the parties.

Did Not Occur (6)

The Hearing Officer did not go off the record for any reason.

Reference Notes—Question 16

The intent of this question is to build a record that is totally complete and without unexplained interruptions. Any interruption or break in the record must be covered by the Hearing Officer. The Hearing Officer may hear and grant a motion to go off the record from either of the parties.

A "Good" score is warranted when the Hearing Officer: (a) Goes off the record or grants an application to do so only for good and sufficient reasons; (b) allows no one to go off the record without his/her permission except when beyond his control, such as with machine failure; and (c) summarizes the off-the-record discussion and events and obtains the concurrence of the parties to the summary upon resuming the record.

A "Fair" score should be given if the Hearing Officer allows parties to go off the record without establishing good and sufficient reason for doing so.

An "Unsatisfactory" score should be given if the Hearing Officer went off the

record and failed to summarize on the record what happened while off the record or failed to get a concurrence of the parties if the record was summarized.

17. Interpreters (2)

Did the Hearing Officer utilize interpreters correctly?

Good (6)

When necessary, the Hearing Officer gave clear instructions to the interpreter as to how to interpret and administered a special interpreter's oath. When necessary, the Hearing Officer established on the record that the interpreter was fluent in both languages. The Hearing Officer must require that the interpretation be word for word to the extent possible as it was spoken in the foreign language.

Fair (3)

The Hearing Officer did not give clear instructions to the interpreter as necessary, but corrected the interpreter on errors committed.

Unsatisfactory (0)

The Hearing Officer (a) did not give an interpreter's oath, or (b) failed to take reasonable steps to ensure that the translation accurately reflected the testimony.

Did Not Occur (6)

An interpreter was not used.

Reference Notes—Question 17

The intent of this question is to ensure that the testimony is accurately interpreted. The interpretation should be word for word to the extent possible as it was spoken in the foreign language.

For example, if the interpreter says, "He said that * * *," the interpreter is not translating word for word; the interpreter should translate in the first person as the witness testifies.

A "Good" score is warranted if the Hearing Officer gave clear instructions to the interpreter as to how to interpret. A "Good" score should also be given for those hearings wherein a "qualified" interpreter was used and no instructions were necessary and in those States that give the instructions before going on the record. In addition to giving clear instructions when necessary, a special interpreter's oath is to be administered in order to receive a "Good" score.

A "Fair" score should be given if the Hearing Officer administered the special interpreter's oath but failed to give instructions to the interpreter when necessary; however, the Hearing Officer did correct the interpreter on errors committed thereby ensuring an accurate translation.

An "Unsatisfactory" score should be given if the Hearing Officer failed to administer the special interpreter's oath or failed to take reasonable steps to ensure that the translation accurately reflected the testimony.

18. Continuances (3)

After the hearing had begun did the Hearing Officer use good judgment as to continuances?

Good (3)

The Hearing Officer granted a necessary continuance when requested by either party or upon his/her own motion.

Fair (1)

The Hearing Officer granted a continuance where the need for such action was doubtful and not fully supported by the record.

Unsatisfactory (0)

The Hearing Officer granted a continuance for insufficient reasons or failed to order a continuance when necessary.

Did Not Occur (3)

A continuance was not requested or appropriate.

Reference Notes—Question 18

The intent of this question is to curtail unwarranted continuances that unreasonably delay the disposition of cases and to ensure that those necessary are granted. If new material matters develop in the course of a hearing, which a party is unprepared to meet and the element of surprise is present, it is necessary to order a continuance to afford an opportunity for preparation (unless the right to a further hearing is waived). If parties to a telephone hearing are not furnished copies of exhibits, a continuance may be necessary to allow opportunity to review and object to the documents. (See Question 4)

A "Good" score is warranted when the Hearing Officer granted a continuance only for good and sufficient reasons that were fully supported by the record.

A "Fair" score should be given if the Hearing Officer granted a continuance and the need for such action was doubtful.

An "Unsatisfactory" score should be given when the Hearing Officer granted a continuance for reasons that were insufficient and not supported by the record; or the Hearing Officer did not order a continuance when one was needed.

19. Closing Hearing (2)

Did the Hearing Officer properly conclude the hearing by ascertaining whether the parties had anything to add?

Good (6)

The Hearing Officer asked the parties at the end of the hearing if they had anything further to say.

Fair (3)

The Hearing Officer made a statement that the hearing was closed unless the parties stated that they had something further to say.

Unsatisfactory (0)

The Hearing Officer failed to ask this question at the conclusion of the hearing.

Reference Notes—Question 19

The intent of this question is to ensure that the parties have a full and ample opportunity to present all of the information pertinent to their case.

This question is important especially in those cases where the parties are not represented by counsel. Affording the parties an opportunity to state anything additional at the conclusion of the hearing aids all subsequent reviewers of a case in their consideration of allegations contending that a party to a case was not allowed to state everything they wanted to present. Any wording which the Hearing Officer chooses to use to accomplish this result is permissible. The question will not be scored down for curtailing repetitive or irrelevant statements.

The difference between the "Good" rating and the "Fair" rating is that by using the type of wording in the "Fair" category, the Hearing Officer may appear to be adopting a negative approach, and may possibly defeat the purpose and intent of the question by inviting a "no" response.

An "Unsatisfactory" score should be given when the Hearing Officer ends the hearing abruptly without affording the parties a final opportunity to make additional statements.

20. Hearing Within Scope of Issues (1)

Did the Hearing Officer conduct the hearing within the scope of the issues raised by the notice of hearing, and within the issues as finally developed at the hearing, giving proper notice of new issues?

Good (9)

The Hearing Officer conducted the hearing within the scope of the issues specifically raised by the notice of hearing and explained other issues that arose, as well as the right to a continuance to meet any new issues. If the Hearing Officer took up new issues, a knowledgeable waiver of notice was obtained before going to the merits. No deduction will be made for inquiry intended to assist in issue identification, in determining relevance, for impeachment or for credibility assessment.

Fair (X)

Not applicable—Do not use.

Unsatisfactory (0): F

The Hearing Officer did not conduct the hearing within the scope of the issues raised. The Hearing Officer did not identify new issues which arose and which were explored or, having identified and explored such issues, failed to explain the right to a continuance to meet them, or the necessity to waive notice in order to proceed with the new issue(s).

Reference Notes—Question 20

The intent of this question is to limit the hearing to the issue or issues set forth in the hearing notice or to obtain an informed waiver of notice before considering a new issue. The question will not be scored down if a party testifies or tries to testify about an issue not before the Hearing Officer. This is not a control of hearing question. If a new issue arises during the hearing, the Hearing Officer must inform the parties that there is a new issue which could affect entitlement to benefits and that it needs to be covered (State law will determine whether the Hearing Officer has jurisdiction or must remand). The parties must be advised of how resolving the issue would affect them, that they can proceed with the case or request a continuance to prepare for hearing on the new issue. If they elect to proceed, with no continuance, then their election to waive notice must be on the record.

21. Attitude (2)

Did the Hearing Officer create an atmosphere that allowed all parties and representatives to speak freely in an orderly manner as to the issues in the case and not interfere with the development of the case by gratuitous comments or observations.

Good (6)

The Hearing Officer made a reasonable effort to make the parties feel at ease in making statements and in developing their case and made no inappropriate comments.

Fair (3)

The Hearing Officer did not consistently make reasonable efforts to make all parties feel at ease in making statements and in developing their case and made some inappropriate comments, but this did not affect the outcome.

Unsatisfactory (0)

The Hearing Officer's attitude was antagonistic or indifferent (bored, uninterested) or s/he made gratuitous comments or observations.

Reference Notes—Question 21

The intent of this question is to ensure that the Hearing Officer makes an effort to place the parties at ease to the extent possible. It is important that parties feel that they had a fair hearing, as well as one be provided. The Hearing Officer must leave them with the impression that a fair decision will be reached.

The principal difference between the "Good" and the "Fair" score is the consistency and care of the Hearing Officer in endeavoring to make the parties feel at ease, and in providing assistance as needed. If the Hearing Officer's attitude was consistently antagonistic or indifferent, the question should be scored "Unsatisfactory."

22. Bias and Prejudice (1)

Did the Hearing Officer conduct the hearing in an impartial manner?

Good (9)

The Hearing Officer did not appear to demonstrate bias or prejudice toward any participant in the hearing. The intensity of questioning, type of questions asked, or the treatment of the participants, did not indicate bias or prejudice.

Fair (X)

Not applicable—Do not use.

Unsatisfactory (0): F

The Hearing Officer appeared to demonstrate bias or prejudice toward a participant, or the Hearing Officer's actions were reasonably perceived as doing so.

Reference Notes—Question 22

The intent of this question is to ensure that the Hearing Officer conducted the hearing in a fair and impartial manner. When it appears that the Hearing Officer treated a participant in a negative or demeaning manner because of the participant's career field, status, beliefs, appearance, age, sex, religious beliefs, or other protected civil rights, the question shall be scored unsatisfactory.

The Hearing Officer must control the hearing and ask hard questions and be persistent in clarifying or determining the truth of a statement. At times one party may require more assistance than the other. Maintaining control and asking questions does not excuse tyrannizing the party or witness. By the same token, offering assistance in a way that clearly is demeaning and disparaging would result in an unsatisfactory score.

23. Obtain Reasonably Available Evidence (1 With Mid Range Score)

Did the Hearing Officer attempt to obtain the reasonably available, competent evidence necessary to resolve the issues in the case?

Good (9)

The Hearing Officer obtained competent evidence, reasonably available and necessary to resolve the issues in the case.

Fair (3)

The Hearing Officer obtained most of the evidence necessary to resolve the issues of the case and the omissions were not prejudicial to the outcome of the case.

Unsatisfactory (0) F

The Hearing Officer did not make a sufficient record to render a decision, because s/he did not obtain sufficient, competent, available evidence to resolve the issues in the case.

Reference Notes—Question 23

The intent of this question is to ensure that the Hearing Officer functions as a fact-finder.

It is the responsibility of the Hearing Officer to develop all the evidence that is reasonably available and to make a decision according to the dictates of the State law. "Reasonably available" means that evidence or testimony which is available at hearing and which is critical to the issues to be decided.

In applying this criterion, consideration must be given to the adequacy of the Hearing Officer's development of the evidence on each issue: Was it sufficient to secure evidence that was necessary and reasonably available?

Decision

24. Issues Clearly Stated (3)

Were the statutory issues involved clearly and simply stated in the decision?

Good (3)

Early in the decision, a full statement was made, in simple language, of all the statutory issues in the case.

Fair (X)

Not applicable—Do not use.

Unsatisfactory (0)

The Hearing Officer either omitted to state all the issues, or did so in an involved way, or in a manner making them incomprehensible.

Reference Notes—Question 24

The intent of this question is to ensure that there is a clear understanding of what the decision concerns. The Hearing Officer should communicate the issues clearly and effectively to the interested parties and other readers. A further objective is to make sure that the reader knows early in the decision just what is being decided, and to establish the boundaries of the decision beyond which the Hearing Officer should not go without explanation and valid reason.

At the beginning of the decision, under the first heading of "issues," or included in the history of the case, or in the first paragraph, the issue or issues to be decided should be stated in simple terms for clear understanding and should include all the elements of the applicable provision(s). Such statement need not be in the precise language of the statute. For example, the decision may say, "The issue in this case is voluntarily leaving the most recent employment without good cause." Include the words "suitable," "most recent," or "good cause," or whatever is pertinent to the provision.

25. Findings Supported by Substantial Evidence (1)

Accepting the Hearing Officer's judgment of credibility, unless it is manifestly without basis, were the findings of fact supported by substantial evidence in the hearing record?

Good (9)

The findings of fact which were made were supported by substantial evidence.

Fair (X)

Not applicable—Do not use.

Unsatisfactory (0) F

The findings of fact which were made were not supported by substantial evidence.

Reference Notes—Question 25

The intent of this question is to ensure that the findings of fact are supported by evidence in the record and it is of sufficient quality (substantial evidence) and quantity (more than a mere scintilla) to support the findings.

In answering this question, it is not decided whether all the necessary findings of fact were made, but whether the findings of fact made by the Hearing Officer are supported by substantial evidence in the hearing record. See Question 26 for findings of fact.

Only evidence that is properly entered into the record and that which is officially/administratively noticed can be considered as a basis for the findings of fact.

The weight the Hearing Officer gives to the evidence, and, in the case of contradictory evidence or testimony, the Hearing Officer's judgment of credibility should be accepted unless it is entirely without basis or is clearly unreasonable.

There is no "Fair" score. Either the findings of fact which were made are supported by the evidence, or they are not. The distinction between "Good" and "Unsatisfactory" is whether or not the findings of fact are supported by substantial evidence. Substantial evidence has been defined as "such evidence, or such relevant or competent evidence, as a reasonable mind might accept as adequate to support a conclusion."

26. Findings of Fact (1 With Mid Range Score)

Did the Hearing Officer make findings of fact necessary to resolve the issues and support the conclusions of law in the case?

Good (9)

The decision contained all the necessary findings of fact. The form in which the findings were stated leaves no doubt that they were facts found by the Hearing Officer. The decision omitted recitation of the testimony in support of the findings of fact.

Fair (3)

The decision contained all the necessary findings of fact. However, there was some recitation of testimony.

Unsatisfactory (0) F

The decision did not contain the necessary findings of fact.

Reference Notes—Question 26

Findings of fact are sometimes referred to as evidentiary findings or primary facts. The intent of this question is to ensure that the findings of fact are complete and also expressed in the decision as findings. They should cover everything in issue and support the legal conclusion of the Hearing Officer, and they should be worded to show clearly that they are the findings of the Hearing Officer. If the finding is based on the taking of official or administrative notice, it should be so stated.

Findings of fact are the basis for the legal conclusions (ultimate facts) which are required by the statute that is being applied, and which are arrived at by a process of reasoning from the findings of fact. For example, if "quit" is the issue, the decision should contain findings of fact that the claimant left (and was not discharged), concerning the circumstances (to see whether the leaving was voluntary or involuntary), and as to the reason(s) for leaving (to determine the question of good cause). The conclusions that the claimant left his work and did so voluntarily and without good cause are the conclusions of law.

From a study of all the evidence, the Hearing Officer must determine what s/he concludes are the facts concerning what happened. This story of what happened should be told in logical (usually chronological) order and in positive terms which leave no doubt in the reader's mind what the Hearing Officer's findings of fact are.

The findings of fact must refer to all the elements of the issue. The findings must be expressed as findings; evidence should not be summarized; and the testimony should not be stated or quoted, except when testimony may be a finding of fact.

The Hearing Officer's findings of fact must be relevant, accurate, and complete since they are final (in most States) if supported by sufficient, competent evidence in the record. Under the circumstances, the review court must rely upon the decision for these findings. Therefore, they must be clearly stated in the decision as findings of the Hearing Officer (as distinguished from a summary of evidence).

A "Good" score is warranted if the decision contains all necessary findings of fact and does not cite testimony, and a "Fair" score is warranted when the decision cites some testimony although the findings of the Hearing Officer are apparent. "Unsatisfactory" is scored when the decision fails to contain all the necessary findings needed to resolve the issues.

27. Official Notice/Administrative Notice (2)

If the decision contained findings of fact which were the subject of official/administrative notice, were they clearly

and accurately identified and were the parties allowed to object?

Good (6)

The Hearing Officer clearly identified officially/administratively noted facts, and they were facts which could be officially noted.

Fair (X)

Not applicable—Do not use.

Unsatisfactory (0)

The Hearing Officer officially/administratively noted facts not subject to official notice or failed to state they were noted facts.

Did Not Occur (6)

No facts were officially/administratively noted.

Reference Notes—Question 27

The intent of this question is to ensure that if the Hearing Officer took official/administrative notice of a fact, it was a fact that could be officially/administratively noted, that it was clearly identified at hearing or in the decision as an officially/administratively-noted fact, and the parties had opportunity to object to the fact so noticed at hearing or before the decision became final.

Official/administrative notice may extend beyond those "judicially cognizable facts" to include "general, technical or scientific facts within the Hearing Officer's specialized knowledge" and may include "documents, records and forms retained within the agency files." Where officially/administratively-noted facts form a basis for the decision, they need to be identified and the parties given the opportunity to challenge them. A statement in the decision "objections to officially-noted facts must be made in writing within 10 days of the mailing date of this decision" is sufficient to meet this requirement.

28. Required Conclusions (2)

Did the decision contain the conclusions of law required to resolve the issue(s) in the case?

Good (6)

The decision did contain the necessary conclusions.

Fair (X)

Not applicable—Do not use.

Unsatisfactory (0)

The decision did not contain the necessary conclusions.

Reference Notes—Question 28

The intent of this question is to ensure that the Hearing Officer has indicated his/her final conclusion on each and all issues involved.

The conclusions of law (ultimate findings) refer to the final legal result of the case which grants or denies or modifies the relief requested by the appeal. Following the language of the statute, it tells the parties what will happen. The conclusion should be stated in clear, understandable terms, which are, nonetheless indicative of a firm, unwavering decision.

For example, in a simple absence misconduct issue, the specific provision in the law should be referred to by quoting it or by explaining it in simple terms with, when necessary, an explanation of a term such as "misconduct." The conclusion of law might be, "The claimant is disqualified since absence without notice constitutes misconduct connected with the work." This statement resolves the issue and should be supported by the Hearing Officer's findings that the claimant had been absent and had not given notice to his employer, with further appropriate details. The opinion would then continue with the rationale for the conclusion.

29. Logical Reasons (2)

Did the decision state reasons and rationale that were logical?

Good (6)

The reasons and rationale that were stated in the decision logically followed from the findings of fact to the conclusions of law. Extensive rationale was avoided which was not relevant to the specific case. Deduction will not be made for addressing specific legal or factual contentions raised by the parties and not given credence or weight.

Fair (3)

The reasoning was either not fully stated or was excessive, but understandable.

Unsatisfactory (0)

The reasoning and rationale used either were not stated or did not logically follow from the findings of fact to the conclusions of law.

Reference Notes—Question 29

The intent of this question is to ensure that the explanation of the decision is reasonably drawn from the findings of fact, is understandable, and adequately covers only the factors in the provision of the law relating to the issue.

The reasoning serves to bridge the gap between the findings of fact and the conclusions of law. It should explain why the facts led to the conclusions which were reached.

The facts should not be repeated as reasoning, nor should new facts be entered. The reasoning should be stated in concise, understandable terms without unnecessary elaboration, and without including reasoning for immaterial considerations. Even if the facts seem to be self-evident—seem to show obviously what the reasoning will be—the reason must be stated. This is the place to explain to the parties why their contentions were either accepted or rejected.

The Supreme Court has said in what is called "a simple but fundamental rule" that "the orderly functioning of the process of review requires that the grounds upon which the Administrative Agency acted be clearly disclosed and adequately sustained."

A "Fair" score requires that most of the reasoning be understandable, even though the language used may be redundant, and/or the reasoning is slightly incomplete. "Unsatisfactory" is where there is no attempt to provide reasons, or illogical reasons are used not connected or associated with the facts. For example, if the Hearing Officer merely states, "It is the opinion of the Hearing Officer that the claimant is unavailable."

30. Form and Style Organization (3)

Was the decision well organized as to form and style (not content)?

Good (3)

The decision was organized so that the issues in the case, the findings of fact, the rationale, the conclusions of law and the ruling were clearly set forth and could be easily understood by the parties.

Fair (1)

Although the various portions of the decision merged with one another, it was clear which statements were findings of fact and which were conclusions of law.

Unsatisfactory (0)

The decision was not organized and it was difficult to understand.

Reference Notes—Question 30

The intent of this question is to ensure that each segment of the decision is stated distinctly for the purposes of clarity, correct administrative adjudication procedures, and compliance with legal requirements. The decision also serves as a source of

information both within the agency and for the public.

This question refers to the outline or form of the decision and not to its content, which is covered in other questions.

The written decision is of the utmost importance. It is the culmination of the hearing process, and must be adequate for judicial review. The decision should consist of:

1. A statement of what the issue is.
2. The findings of fact or evidentiary findings.
3. The opinion, rationale, or reasons—based upon the facts as found and the statute involved.
4. The conclusion of law—based upon the findings of fact and reasons, and showing the final judgment of the Hearing Officer on the issue.
5. The ruling (final decision) or the action to be taken by the agency in accord with the decision.

Although some of these sections may be merged together by format, each should be distinguishable by its wording.

31. Decision States Legal Effect (3)

Did the "decision" portion contain a clear and correct statement of the legal effect of each issue covered?

Good (3)

Each issue in the proceeding was covered, treated as affirmed, reversed, or modified, and when there was a modification, the modification was stated. The Hearing Officer indicated clearly the administrative action to be taken.

Fair (1)

Each issue in the proceeding was covered, treated as affirmed, reversed, or modified and, when there was a modification, the modification was stated. However, the decision did not clearly show the administrative action to be taken.

Unsatisfactory (0)

The decision did not adequately cover the disposition of the issues.

Reference Notes—Question 31

The intent of this question is to ensure a decision style and fomat that informs the reader in a clear and effective manner the ruling of the Hearing Officer on all issues involved in the appeal.

A "Good" is scored when the decision shows the Hearing Officer's action on all issues involved, i.e., "affirmed," "reversed," or "modified" (as appropriate). If modified, it must clearly show the modification. Additionally, the decision taken as a whole shows the administrative action taken—for example, "benefits are denied from the week of (date) and the 7 weeks immediately following ending (date.)" (Or any wording chosen by the Hearing Officer that would clearly show the administrative action.)

A "Fair" rating is scored if the decision meets all of the requirements for "good" except that it fails to show clearly the administrative action taken if such be necessary.

A decision is "Unsatisfactory" if it fails to show the disposition of issues involved in the appeal.

33. Find Date and Further Appeal (3)

Did the decision clearly and understandably state the date that the decision would become final and the rights of further review or appeal?

Good (3)

The decision clearly states when the decision is final and that the party adversely affected may appeal. "This decision becomes final 20 days from the date of mailing" is sufficient if the date of mailing is clearly identified. "See the attached brochure for further appeal rights" is adequate to advise the parties that further appeal rights are available.

Fair (X)

Not applicable—Do not use.

Unsatisfactory (0)

The decision does not clearly set out when the decision becomes final or does not indicate that further appeal rights are available.

Reference Notes—Question 33

The intent of this question is to ensure that the parties understand when the decision becomes final and that the adversely affected party may appeal.

APPEALS QUALITY PACKAGE CRITERIA AND GUIDELINES—SUMMARY

New No.	Old No.	Old score	New score
		G-F-U-N	G-F-U-N
(1) Notice of hearing	( )	__-__-__-__	6-3-0-X
(2) Pre-hearing explanation	( )	__-__-__-__	6-3-0-X
(3) Opening statement	(1)	6-X-0-X	6-3-0-X
(4) Exhibits	(14)	6-3-0-6	6-3-0-6
(5) Witnesses (logical order)	(2)	6-4-0-6	6-3-0-6
(6) Witnesses (orderly inquiry)	( )	__-__-__-__	3-1-0-X
(7) Questions of own witnesses	(3)	6-4-0-6	9-3-0-9 __F
(8) Clear language	(4)	6-4-0-X	6-3-0-X
(9) Single point questions	(5)	4-2-0-X	6-3-0-X
(10) Clarify conclusions	(6)	9-6-0-9	6-3-0-6
(11) Confrontation	(7)	9-X-0-9	9-X-0-9 __F
(12) Cross-examination	(8)	6-4-0-6	9-3-0-9 __F
(13) Repetitive testimony	(9)	4-2-0-4	3-1-0-X
(14) Leading questions	(10)	6-4-0-6	6-3-0-X
(15) Control of interruptions	(12)	4-2-0-4	6-3-0-6
(16) Off the record	(13)	6-4-0-6	6-3-0-6
(17) Interpreters	(15)	6-4-0-6	6-3-0-6
(18) Continuances	(16)	4-2-0-4	3-1-0-3
(19) Closing hearing	(17)	4-2-0-X	6-3-0-X
(20) Hearing within scope acronyms at critical points	(18)	9-X-0-X	9-X-0-X __F

33. Final Date and Further Appeal (3)

Did the decision clearly and understandably state the date that the decision would become final and the rights of further review or appeal?

Good (3)

The decision clearly states when the decision is final and that the party adversely affected may appeal. "This

decision becomes final 20 days from the date of mailing" is sufficient if the date of mailing is clearly identified. "See the attached brochure for further appeal rights" is adequate to advise the parties that further appeal rights are available.

Fair (X)

Not applicable—Do not use.

Unsatisfactory (0)

The decision does not clearly set out when the decision becomes final or does not indicate that further appeal rights are available.

Reference Notes—Question 33

The intent of this question is to ensure that the parties understand when the decision becomes final and that the adversely affected party may appeal.

APPEALS QUALITY PACKAGE CRITERIA AND GUIDELINES—SUMMARY

New No.	Old No.	Old Score	New Score
		G-F-U-N	G-F-U-N
(1) Notice of hearing	( )	__-__-__-__	6-3-0-X
(2) Pre-hearing explanation	( )	__-__-__-__	6-3-0-X
(3) Opening statement	(1)	6-X-0-X	6-3-0-X
(4) Exhibits	(14)	6-3-0-6	6-3-0-6
(5) Witnesses (logical order)	(2)	6-4-0-6	6-3-0-6
(6) Witnesses (orderly inquiry)	( )	__-__-__-__	3-1-0-X
(7) Questions of own witnesses	(3)	6-4-0-6	9-3-0-9__F
(8) Clear language	(4)	6-4-0-X	6-3-0-X
(9) Single point questions	(5)	4-2-0-X	6-3-0-X
(10) Clarify conclusions	(6)	9-6-0-9	6-3-0-6
(11) Confrontation	(7)	9-X-0-9	9-3-0-9__F
(12) Cross-examination	(8)	6-4-0-6	9-3-0-9__F
(13) Repetitive testimony	(9)	4-2-0-4	3-1-0-X
(14) Leading questions	(10)	6-4-0-6	6-3-0-X
(15) Control of interruptions	(12)	4-2-0-4	6-3-0-6
(16) Off the record	(13)	6-4-0-6	6-3-0-6
(17) Interpreters	(15)	6-4-0-6	6-3-0-6
(18) Continuances	(16)	4-2-0-4	3-1-0-3
(19) Closing hearing	(17)	4-2-0-X	6-3-0-X
(20) Hearing within scope	(18)	9-X-0-X	9-X-0-X__F
		G-F-U-N	G-F-U-N
(21) Attitude	(11)	5-2-0-X	6-3-0-X
	(20)		
(22) Bias and prejudice	( )	__-__-__-__	9-X-0-X__F
(23) Obtain evidence	(21)	9-X-0-X	9-3-0-X__F
(24) Issues clear	(22)	4-X-0-X	3-X-0-X
(25) Substantial evidence for facts	(24)	9-X-0-X	9-X-0-X__F
(26) Findings of fact	(23)	9-6-0-X	9-3-0-X__F
(27) Official notice	( )	- - - -	6-X-0-6
		- - - -	
(28) Conclusions	(25)	6-X-0-X	6-X-0-X
(29) Reasons and rationale	(26)	6-3-0-X	6-3-0-X
(30) Decision organized	(27)	4-2-0-X	3-1-0-X
(31) Decision legal effect	(28)	4-2-0-X	3-1-0-X
(32) Decision understandable	(29)	6-4-0-X	6-3-0-X
(33) Finality and appeal	( )	__-__-__-__	3-X-0-X

[FR Doc. 92-15149 Filed 6-29-92; 8:45 am]

BILLING CODE 4510-30-M

federal register

Tuesday
June 30, 1992

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 400, et al.

Medicaid Program; Home and Community-Based Services Waivers for Individuals Age 65 or Older; Interim Final Rule With Comment Period

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 435, 436, 440, and 441

RIN 0938-AD55

[MB-019-IFC]

Medicaid Program; Home and Community-Based Services Waivers for Individuals Age 65 or Older

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

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule amends current Medicaid regulations to permit States to offer, under a Secretarial waiver, a wide array of home and community-based services to individuals age 65 or older who are determined, but for the provision of these services, to be likely to require the level of care furnished in a skilled nursing facility (SNF) or intermediate care facility (ICF) (nursing facility (NF) effective October 1, 1990). The rule allows Federal payment for these and other long term care services, up to an amount specified in section 1915(d)(5)(B) of the Social Security Act, subject to HCFA's approval of the States' requests for waivers and certain assurances made by the States. Once granted, waivers are in effect for 3 years, unless terminated by the State with notice to the Secretary, and are renewable for periods of 5 years. Periodic evaluation, assessment, and review of the care furnished under the waivers is required. This rule implements section 4102 of the Omnibus Budget Reconciliation Act of 1987, as modified by section 411(k) of the Medicare Catastrophic Coverage Act of 1988, section 8432 of the Technical and Miscellaneous Revenue Act of 1988, and section 4741(b) of the Omnibus Budget Reconciliation Act of 1990.

This rule is being issued in final and, for the most part, without a delay in the effective date for the reasons explained in section IV, "Waiver of Proposed Rulemaking and Delay in the Effective Date."

DATES: *Effective Date:* This interim final rule is effective on June 30, 1992 except for the following sections. Sections 441.351 through 441.353, 441.356, and 441.365 will be made effective only after review and approval by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act; notice of the effective date will be published in the **Federal Register.** Section 441.365 will be effective 90 days after OMB approval is announced in the **Federal Register.**

Applicability Date: For States with section 1915(d) waivers currently in effect, the aggregate projected expenditure limit (APEL), computed and applied in accordance with § 441.354, for the waiver year that coincides with Federal fiscal year (FFY) 1990, and each succeeding waiver year will be determined as if the regulations had been published on October 1, 1989.

Comment Date: Written comments will be considered if we receive them at the appropriate address, as provided below, by 5 p.m. on August 31, 1992.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB-019-IFC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

In commenting, please refer to file code MB-019-IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 245-7890). If comments concern information collection or recordkeeping requirements, please address a copy of comments to: Laura Oliven, HCFA Desk Officer, Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503.

Copies: To order copies of the **Federal Register** containing this document, send your request to: Superintendent of Documents, U.S. Government Printing Office, ATTN: New Order, P.O. Box 371954, Pittsburgh, PA 15250-7954.

Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783-3238 or by faxing to (202) 512-2250. The cost for each copy is $1.50. In addition, you may view and photocopy the **Federal Register** document at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register.** The order desk operator will be able to tell you the location of the U.S. Government Depositories.

FOR FURTHER INFORMATION CONTACT:

Ingrid Osborne (301) 966-4461—Post eligibility treatment of income.

Robert Wardwell (301) 966-5659—All other issues.

SUPPLEMENTARY INFORMATION:

I. Background

Until the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) was enacted on August 13, 1981, the Medicaid program (title XIX of the Social Security Act (the Act)) provided little coverage for long term care services in a noninstitutional setting. Many elderly, disabled, and chronically ill persons were living in institutions not for medical reasons, but because of the scarcity of health and social services available to them in their homes and communities. Further, even when the necessary services were available outside the institution, individuals were sometimes unable to pay for them, and the services were not covered by Medicaid.

Public Law 97-35 added section 1915 to the Act, which authorized the Secretary to waive Medicaid statutory requirements in order to establish two specific types of waiver programs: freedom of choice waivers under section 1915(b) of the Act; and home and community-based services waivers under section 1915(c) of the Act. This latter type of waiver allows State Medicaid agencies to furnish services not otherwise available under Medicaid to individuals who, absent these services, would otherwise be institutionalized in a hospital, nursing facility (NF), or intermediate care facility for the mentally retarded (ICF/MR).

II. Legislation

Section 4102 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203, enacted on December 22, 1987) amended section 1915 of the Act by redesignating section 1915(d) of the Act as section 1915(h) and by adding a new category of waiver under section 1915(d). Entitled "Home and Community-Based Services for the Elderly," this section establishes an

entirely new waiver program, separate and distinct from the other types of waivers available under section 1915 of the Act. Under section 1915(d) of the Act, State Medicaid agencies may request the authority to furnish home and community-based services to individuals age 65 or older who are determined to be likely to require the level of care furnished in a NF if the home and community-based services are not available. The Secretary may waive Medicaid comparability and Statewideness requirements and certain financial eligibility requirements (relating to income and resources) applicable in the community to enable State Medicaid programs to provide for these home and community-based services. The law specifies the services that may be furnished under the waiver.

In return for this waiver, the State must limit its expenditures for home and community-based waiver services, along with NF, home health, personal care and private duty nursing services for individuals in this age category, within an amount determined by principles specified in the statute. The Secretary is required to promulgate indices for projecting increases in institutional and noninstitutional long term care cost, as well as State-specific projections of increases in the number of residents over age 65. Upon promulgation, the maximum amount for which Federal financial participation (FFP) would be available under these waivers would be determined based on State expenditures in a base year, modified by the greater of (1) The sum of the percentages yielded by these indices, or (2) 7 percent computed annually.

Public Law 100–203 mandated promulgation of a method for projecting increases in the number of residents over age 75. Section 411(k)(3)(A)(i) of Public Law 100–360 replaced the first reference to the number "75" in section 1915(d)(5)(B)(iii)(III) of the Act with "65", but left "75" in the sentence following the correction. We believe that the failure to correct the second reference to "75" was merely an oversight, and that Congress intended to correct it in the second instance as well, since the 1915(d) waiver program is designed for individuals age 65 or older. However, as required by the statute, we have developed a method for determining both indices. We will use the same method described below to project both the number of individuals who have attained the age of 65 and those who have attained the age of 75 for each year of a State's waiver program.

A waiver granted under the authority of section 1915(d) of the Act will be in effect for a period of 3 years (unless terminated by the State with notice to the Secretary). At the request of the State, a waiver may be renewed for additional periods of 5 years, if certain assurances, specified in the statute, have been met by the State. The State must assure that adequate safeguards (including adequate standards for provider participation) are taken to protect the health and welfare of individuals served under the waiver and that financial accountability is provided for funds expended for the services.

Section 1915(d)(5) of the Act, as established by section 4102(a)(1)(B) of Public Law 100–203, was modified by section 411(k)(3)(A)(i) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360, enacted on July 1, 1988); by section 8432 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647, enacted on November 10, 1988); and by section 4741(b) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 100–508, enacted on November 6, 1990). These three laws made minor technical and editorial changes.

Section 4211 of Public Law 100–203 eliminated the distinction between skilled nursing facilities (SNFs) and intermediate care facilities (ICFs) under Medicaid, combining the two levels into a single category of NF. However, conforming changes were not made to section 4102 of Public Law 100–203, which added the section 1915(d) waiver program. Therefore, we believe that the omission of the conforming changes was merely an oversight. Consistent with this statutory change, we have referred to NFs throughout this preamble and regulations text except when citing the statute.

III. Provisions of this Interim Final Rule

We are making the following revisions to the home and community-based services regulations in 42 CFR parts 400, 435, 436 and 440, and adding a new subpart H in 42 CFR part 441, Home and Community-Based Services Waivers for Individuals Age 65 or Older. We believe these changes will make our regulations consistent with section 1915(d) of the Act, as added by Public Law 100–203 and modified by Public Law 100–360, Public Law 100–647, and Public Law 101–508.

A. Definition of "Nursing Facility"

In § 400.203, which defines terms specific to Medicaid, we are adding the definition for "nursing facility" (NF), which, effective October 1, 1990, means an SNF or an ICF participating in Medicaid.

B. Recipient Eligibility for Waiver Services, and Post-Eligibility Treatment of Income

Section 4102 of Public Law 100–203 makes those portions dealing with recipient eligibility for waiver services under the section 1915(d) waiver program conform to similar waiver provisions under section 1915(c) of the Act. Therefore, we are modifying those regulations currently applicable to waivers under section 1915(c) of the Act to apply them to waivers under section 1915(d) of the Act as well, with respect to (1) individuals only eligible for Medicaid when receiving care in an institutional setting (due to spousal income and resource "deeming" requirements), (2) individuals eligible under a special income limit (up to 300 percent of SSI), and (3) individuals receiving waiver services and governed by rules for post-eligibility treatment of income.

The enactment of section 1915(d) of the Act did not alter a State's option to apply for or administer waivers under section 1915(c) of the Act. We will continue to apply existing rules to the 1915(c) waiver program. States with a section 1915(d) waiver may continue to request waivers under section 1915(c) of the Act for individuals who have attained the age of 65. However, when a State has a section 1915(d) waiver concurrently in effect, the State's expenditures for services furnished to individuals age 65 or older under a section 1915(c) waiver must be included in the application of the expenditure limit under section 1915(d)(5)(B) of the Act. This is described more fully below.

We are amending the following regulations to include section 1915(d) of the Act, which sets forth coverage requirements for home and community-based services for individuals age 65 or older, among those sections of the Act that mandate requirements and standards for the Medicaid program:

- Section 435.3, which sets forth sections of the Act and public laws that mandate Medicaid eligibility requirements and standards for the United States, District of Columbia, the Northern Mariana Islands, and American Samoa.
- Section 436.2, which sets forth sections of the Act and public laws that mandate eligibility requirements and standards for Guam, Puerto Rico, and the Virgin Islands.
- Section 440.1, which specifies the statutory basis and describes the

services included in the term "medical assistance."

We are revising § 435.217, which states the eligibility requirements for those individuals receiving home and community-based services under Medicaid in the United States, District of Columbia, the Northern Mariana Islands, and American Samoa. We are also revising § 436.217, which states the eligibility requirements for those receiving home and community-based services under Medicaid in Guam, Puerto Rico, and the Virgin Islands. These regulations will extend Medicaid eligibility for home and community-based services to individuals age 65 or older, as specified in section 1915(d) of the Act.

We are revising §§ 435.726 and 435.735 regarding post-eligibility treatment of income and resources of individuals receiving home and community-based services furnished under a waiver to apply to individuals age 65 or older. Section 1915(d)(3) of the Act provides that the maximum amount of any individual's income which may be disregarded for any month is equal to the amount that may be allowed for that purpose under a section 1915(c) home and community-based services waiver. Therefore, we are incorporating all policies and procedures relative to post-eligibility determinations of the amount by which a Medicaid agency must reduce its payment for the cost of care, currently under section 1915(c) waivers, into waivers under section 1915(d) of the Act.

C. Services and Their Definitions

We are adding § 440.181 to include those home and community-based services specified in section 1915(d)(4) of the Act. Section 1915(d)(4) of the Act lists seven categories of home and community-based services that a State may provide: Case management services, homemaker services, home health aide services, personal care services, adult day health services, respite care, and other medical and social services that can contribute to the health and well-being of individuals and their ability to reside in a community-based care setting.

For purposes of waivers granted under section 1915(d) of the Act, we are suggesting the following service definitions. States are free to choose and define those services that they will provide under a waiver unless the services are otherwise defined by the Medicaid statute. However, each service (and service definition) must be approved by HCFA in order to be eligible for FFP.

1. Case Management Services

Section 1915(g)(1) of the Act gives States the authority to provide case management services to specific groups of individuals. Case management services are defined in section 1915(g)(2) of the Act as follows: "* * * services which will assist individuals eligible under the plan in gaining access to needed medical, social, educational and other services." A State may adopt this definition of case management services and apply relevant policies pertaining to case management under the State plan to home and community-based waivers for individuals age 65 or older under section 1915(d) of the Act.

2. Homemaker Services

Homemaker services are not defined in the Medicaid statute. However, in the preamble to the interim final rule, published October 1, 1981 (46 FR 48532), which expanded Medicaid coverage to include home and community-based services under section 1915(d) of the Act, homemaker services were described as consisting of general household activities (for example, meal preparation and routine household care) furnished by a trained homemaker when the individual regularly responsible for these activities is temporarily absent or unable to manage the home and care for himself or herself in the home. We believe this definition is also applicable to homemaker services furnished to individuals age 65 or older under section 1915(d) waivers as well.

3. Home Health Aide Services

We also believe that the definition of home health aide services that was incorporated in the preamble to the October 1, 1981 interim final rule, governing the home and community-based waiver program under section 1915(c) of the Act, is appropriate to the section 1915(d) waiver program. This definition describes home health aide services as the performance of simple procedures such as the extension of therapy services, personal care, ambulation and exercise, household services essential to health care at home, assistance with administering medications that are ordinarily self-administered, reporting changes in the patient's condition and needs, and completing appropriate records.

4. Personal Care Services

Personal care services are defined in § 440.170(f) as those services in a recipient's home that are prescribed by a physician in accordance with a plan of treatment and are furnished by an individual who is: (1) qualified to furnish the services; (2) supervised by a registered nurse; and (3) not a member of the recipient's family.

Under a section 1915(d) waiver, States may elect to allow personal care services to be furnished to an eligible individual by a member of the recipient's family other than a spouse. Under no circumstances may Medicaid payment be made for any services (including personal care) that are furnished to a recipient by his or her spouse. A State opting to make payment for personal care services furnished by the recipient's immediate family other than a spouse must identify this option in its waiver request, and set forth the conditions under which it will do so. Accordingly, a State must have in place a mechanism to ensure that Medicaid does not make payment for services for which there is otherwise no obligation to pay, or for services that would be furnished regardless of whether payments are made.

We will also require an assurance that family members other than a spouse who furnish personal care services under the waiver must meet standards that are comparable to those required of providers who furnish these services and who are unrelated to the recipient.

Personal care services furnished under a section 1915(d) waiver need not be limited to services provided in the home. States have the flexibility to provide these services in other non-institutional settings when the need for personal care is specified in a recipient's written plan of care.

5. Adult Day Health Services

Adult day health services may be defined as services furnished for 4 or more hours per day on a regularly scheduled basis, for 1 or more days per week, in an outpatient setting, encompassing both health and social services needed to ensure the optimal functioning of the recipient. The health component of adult day health services may include physical, occupational, and speech therapies included in the recipient's written plan of care, as well as nursing oversight and necessary personal care. The service also provides an opportunity for socialization and recreational activities appropriate to the functional levels of the recipient with adaptations to compensate for any physical or mental impairments. Activities that are merely diversional in nature and unrelated to specific goals in the written plan of care will not be covered. Consistent with our policy under section 1915(c) waivers, a full nutritional regimen (three meals per day) is not covered.

6. Respite Care Services

Respite care services are generally defined as services furnished to an individual who is unable to care for himself or herself, on a temporary or short-term basis, and necessitated by the absence or need for relief of the customary caretaker. These services may take place in the home or in an out-of-home setting. Consistent with our definition of respite care services provided for under section 1915(c) waivers, FFP will be available for respite care room and board only when these services occur in a facility, approved by the State, which is not a private residence.

Although Public Law 101–508 precludes Federally mandated service limits for respite care, we are concerned that an excessive duration of respite care services furnished to an individual may indicate deficiencies in the written plan of care and reflect insufficient amounts of other forms of care necessary to maintain the health and welfare of the recipient. Therefore, we encourage States to monitor the provision of this service to maintain the noninstitutional focus of the program.

7. Other Medical and Social Services

States may also request the authority to provide other medical and social services that can contribute to the health and well-being of individuals and their ability to reside in a community-based setting. States wishing to provide for other services must identify and define each service, and describe how it will contribute to the individual's health and well-being, as well as to his or her ability to reside in the community.

States may also request the authority to provide services already available through their State plans, but in expanded amount, duration, or scope. In so doing, the State must identify any new service limits applicable to these services that are available to waiver-eligible individuals. The State also must reference the qualifications of providers of the services in both the State plan and the waiver. Any services furnished in excess of the limits provided for in the State plan are considered waiver services. They must be attributed to the waiver by including their costs in the aggregate projected expenditure limit (APEL).

Section 1915(d)(5)(C)(iii) of the Act excludes ICF/MR services from this waiver program. In addition, the types of waiver services that the statute allows do not include habilitation or the "active treatment" type of services that are required at the ICF/MR level of care. Thus, the range of services available under a section 1915(d) waiver is not sufficient to meet the health and welfare needs of this group. States wishing to provide for home and community-based services to individuals who would otherwise be institutionalized in an ICF/MR, regardless of the age of the recipients, must necessarily apply for waivers under section 1915(c) of the Act.

The clear intent of section 1915(d) of the Act is to enable States to provide for sufficient services to individuals in a home or community-based setting that prevent them from placement in an institutional-type setting. However, when these community-based services are furnished in a large institutional environment (for example, a 200-bed personal care home), which is not certified as a NF, we question whether the services are in conformance with one of the intents of the statute which is to provide service in a noninstitutional setting. We, therefore, request public comment on whether to define "home and community-based services" to exclude services provided by residential and institutional entities that furnish care and services to more than a specified number of individuals.

D. Waiver of Comparability

We are revising § 440.250(k), which sets forth the limits on comparability of services, to specify that home and community-based services waivers granted under section 1915(d) of the Act must be limited to individuals age 65 or older, and that the home and community-based services provided under § 440.181 need not be comparable for all individuals within a group.

E. Waiver Requirements

We are adding a new subpart H to part 441, which states the requirements and limits applicable to specific services under the Medicaid program. Subpart H sets forth the requirements for the State Medicaid agency to obtain a Secretarial waiver to provide for a wide array of home and community-based services to individuals age 65 or older who are determined, but for the provision of these services, to be likely to require the level of care furnished in a NF.

1. Basis and Purpose

We are adding a new § 441.350 to set forth the basis and purpose of the subpart. This section explains that the subpart will set forth the waiver of statutory requirements that permits States to offer home and community-based services not otherwise available under Medicaid to individuals age 65 or older in exchange for a limit on expenditures for certain services furnished to individuals in this age category.

2. Contents of a Waiver Request

We are adding a new § 441.351 to describe the requirements for the contents of a waiver request.

a. *Required signatures.* Each request for a waiver under section 1915(d) of the Act must be signed by the Governor, the Director of the Medicaid agency or the Director of the larger State agency of which the Medicaid agency is a component, or an official of the single State Medicaid agency to whom the authority has been delegated. Because this type of waiver deals only with the Medicaid program, a request from any other agency of State government, such as an Agency on Aging, will not be accepted. We expect that the request will include the title of the individual who has requested the waiver, and will indicate the name, address and telephone number of an individual within the Medicaid agency to whom any questions about the request may be posed. Because inclusion of the title of the individual requesting the waiver and the name of the contact person in the Medicaid agency is not statutorily mandated, we are not including them as requirements in the regulations text. However, in the interest of convenience and in expediting the review process, we suggest that this information be made available to HCFA.

b. *Assurances and Supporting Documentation.* The request must contain the assurances required by § 441.352, and the supporting documentation required by § 441.353, described below. A complete description of the State's procedures to ensure recipient health and welfare must be included with each waiver request.

c. *Statement for sections of the Act.* Section 1915(d)(3) of the Act allows States to request waivers of three sections of the Medicaid law: Section 1902(a)(1) of the Act, regarding Statewide availability of services; section 1902(a)(10)(B) of the Act, relating to comparability of services; and section 1902(a)(10)(C)(i)(III) of the Act, pertaining to income and resource rules applicable in the community. We will require States to clearly indicate whether or not they are requesting a waiver of one or all of these sections. States may request a waiver of any one of the sections cited above.

Section 1902(a)(1) of the Act requires that services furnished under the State plan be available on a Statewide basis. However, under section 1915(d) waivers, the home and community-based services

made available in excess of those otherwise furnished under the State plan may be restricted to specific geographic areas within a State. If a State requests the authority to waive section 1902(a)(1) of the Act, the State must specify the geographic areas or political subdivisions in which the home and community-based services furnished under the waiver will be offered. Waivers of Statewideness may be used only in regard to the provision of home and community-based waiver services not otherwise available under the State plan. They may not be used to restrict the provision of services otherwise available under the State plan (for example, inpatient hospital services, physicians' services, home health services) so that these services would be available in lesser amount, duration, or scope to individuals age 65 or older than to individuals less than 65 years of age.

Section 1902(a)(10)(B) of the Act provides that the amount, duration, and scope of services made available to one individual within a group not be less than that made available to any other individual within that group, and that the medical assistance made available to the medically needy not be less than that made available to the categorically needy. However, section 1915(d) of the Act provides that a State may make home and community-based services available to certain individuals who are age 65 or older. Therefore, if a State wishes to provide for home and community-based services not otherwise available under the State plan under a section 1915(d) waiver, that State must request a waiver of section 1902(a)(10)(B) of the Act. This will allow the provision of these services to individuals age 65 or older who are otherwise likely to require the level of care furnished in a NF, without making these services available to the Medicaid population at large. Since the clear intent of the statute is to allow States to provide for services not otherwise available under the Medicaid State plan, waiver of section 1902(a)(10)(B) of the Act may not be used to furnish fewer services or services lesser in amount, duration, or scope to the target population than would be available to individuals less than 65 years of age or to individuals age 65 years or older who are not included in the group eligible for waiver services.

Section 1915(d)(3) of the Act also allows a State to request waiver of section 1902(a)(10)(C)(i)(III) of the Act to allow the application of institutional deeming rules, rather than community deeming rules, to medically needy individuals under the waiver. (The application of institutional deeming rules means that income and resources are generally not deemed to the recipient from the spouse, thus making an individual eligible for Medicaid who might not otherwise qualify, based on the income and resources of the spouse.) This in turn allows States to cover under the waiver, medically needy individuals who are not eligible for waiver services under the usual community deeming rules, but who are eligible under institutional rules. This waiver of deeming rules may be applied only to individuals who receive home and community-based waiver services. This waiver of deeming rules is not applicable to individuals age 65 or older who reside in a community-based setting, but do not require or receive waiver services to maintain community residence status.

d. *Identification of Services.* In requesting a waiver under this subsection, the State must identify all services available to individuals under the approved State plan. If there are any limitations on these services, these should be set forth as well. The State must identify and describe each service specified in § 440.181 to be furnished under the waiver, and any additional home and community-based service that it intends to furnish. If the State intends to provide for additional services not specified in the statute, the State must explain how each additional service will contribute to the health and well-being of the recipients and to their ability to reside in a community-based setting.

e. *Recipients Served.* In accordance with section 1915(d)(2)(B) of the Act, the request must indicate that home and community-based services will be made available only to those Medicaid recipients who are age 65 or older, and who are determined by the State to be likely to require the level of care in a NF, the cost for which will be borne by Medicaid. (The term NF does not include services furnished in an ICF for the mentally retarded.)

To prevent duplication of services, FFP will not be available for section 1915(d) waiver services furnished to individuals while they are inpatients of a hospital, NF, or ICF/MR. A State requesting a waiver under section 1915(d) of the Act must assure that FFP will not be claimed for services in these settings.

f. *Plan of Care.* Section 1915(d)(1) of the Act provides that waiver services be furnished under a written plan of care. We will require that a written plan of care based on an assessment of the individual's health and welfare needs be developed by a qualified individual for each recipient under the waiver. A plan of care must describe the services to be furnished, their frequency, and the type of provider who will furnish them. The qualifications of an individual responsible for the development of a plan of care, a description of the process by which a plan of care is developed, and a copy of the plan of care format must be included with each State's waiver application. FFP will not be available for services furnished before the development of a written plan of care.

To ensure that a plan of care is adequate to meet the needs of a recipient, as well as to ensure that the Medicaid agency is able to keep an ongoing account of projected expenditures, we will require that a written plan of care be approved by the Medicaid agency. In States in which an umbrella agency (that is, the larger State agency of which the Medicaid agency is a component) is designated as the Medicaid single State agency, plans of care must be approved by that subcomponent of the agency that actually administers the Medicaid program. This requirement ensures that approval is made by someone who has a working knowledge and a close involvement with the Medicaid program. We consider this requirement met, however, when an employee of the Medicaid agency prepares a plan of care and authorizes its implementation.

g. *Medicaid Agency Review.* The agency's request must contain an assurance that the agency will maintain and exercise its authority to review, at a minimum, a valid statistical sample of each month's plans of care. When the services in a plan do not comport with the stated disabilities and needs of the recipient, we will require that the agency implement immediate corrective action procedures to ensure that the needs of the recipient are adequately addressed.

h. *Groups Served.* The waiver request must include a description of the group or groups of individuals to whom the services will be offered.

i. *Assurance Regarding Amount Expended.* In accordance with section 1915(d)(5)(A) of the Act, the State must provide an assurance that the total amount expended by the State under the plan for individuals age 65 or older during a waiver year for medical assistance with regard to NF, home health, private duty nursing, personal care, and home and community-based services described in §§ 440.180 and 440.181 and furnished as an alternative to NF care will not exceed the APEL defined in § 441.354.

3. Required State Assurances

In order to comply with the requirements contained in section 1915(d)(2) of the Act, we are adding a new § 441.352 to require States to make the following assurances, as part of a waiver application.

a. *Health and Welfare.* Section 1915(d)(2)(A) of the Act requires States to assure that necessary safeguards have been taken to protect the health and welfare of the recipients of services. States must assure that—(i) adequate standards for all types of providers that furnish services under the waiver are met; (ii) the standards of any State licensure or certification requirements are met for services or for individuals furnishing services under the waiver; (iii) all facilities covered by section 1616(e) of the Act, in which home and community-based services are furnished, are in compliance with applicable State standards that meet the requirements of 45 CFR part 1397 for board and care facilities; and (iv) a physician will review the need for continuance of any psychotropic drugs prescribed for purposes of behavior control, at least every 30 days. (Note: This requirement is supported by the requirement set forth at section 1919(c)(1)(D) of the Act for nursing home reform.)

b. *Financial Accountability.* The State must assure financial accountability for funds expended for home and community-based services. The State must provide for an independent audit of its waiver program (except as HCFA may otherwise specify for particular waivers), and maintain and make available to HHS, the Comptroller General, or other designees, appropriate financial records documenting the cost of services furnished under the waiver, including reports of any independent audits conducted. The performance of a single financial audit in accordance with the Single Audit Act of 1984 (Pub. L. 98–502, enacted on October 19, 1984) is deemed to satisfy the requirement for an independent audit.

c. *Evaluation of Need.* Under section 1915(d) of the Act, waiver services are limited to individuals age 65 or older who have been determined, but for the provision of these services, to be likely to require the level of care furnished in a NF, the cost for which can be paid under the State plan. Therefore, when submitting a waiver request, the State must assure that it will provide for an evaluation (and periodic reevaluations) of the need for the level of care furnished in a NF, when there is a reasonable indication that individuals are likely to require these services in the near future, but for the availability of home and community-based services. We will require that States provide for an initial evaluation of level of care before the provision of home and community-based services under a waiver. To ensure the consistent application of level of care criteria, we also will require that the procedures and criteria used to assess level of care for potential waiver recipients be at least as stringent as any existing State procedures applicable to individuals entering a NF. We considered requiring States to include a health professional (that is, a physician or registered nurse) on the team which determines level of care. We considered this option because we anticipated that recipients under this program would have a level-of-care need that could only be properly evaluated by a health care professional. Instead, we are requesting public comment on this issue.

To ensure that an individual continues to meet one of the required levels of care specified in the statute, we further mandate a periodic reevaluation of the level of care. However, in no case can the period of reevaluation of level of care extend beyond 1 year.

d. *Expenditures.* The agency must assure that the total amount expended by the State for medical assistance with respect to NF, home health, private duty nursing, personal care services, home and community-based services furnished under a section 1915(c) waiver granted under subpart G of part 441 to individuals age 65 or older, and the home and community-based services approved and furnished under this section 1915(d) waiver for individuals age 65 or older during a waiver year will not exceed the APEL.

e. *Reporting.* Consistent with section 1915(d)(2)(C) of the Act, each State that requests a waiver under section 1915(d) of the Act must assure that it will furnish specific information to the Secretary annually, consistent with a reasonable data collection plan that will be developed by HCFA. This information must include data on the impact of the waiver on the type, amount, and cost of medical assistance provided for under the State plan, and on the health and welfare of the recipients. Reporting on the "cost" of medical assistance, although not statutorily required, is essential to determine whether the State may have exceeded the APEL on services for which FFP is available.

14. Supporting Documentation Required

We are adding a new § 441.353 to describe the supporting documentation required under the waiver.

a. *Health and Welfare.* As previously discussed, we are requiring the State to assure that adequate standards exist for each provider of services under the waiver, and that all provider standards will be met.

Section 441.353(a) requires that copies of provider qualifications or standards for each service to be offered under the waiver be included as part of the State's waiver request. These qualifications or standards must be reasonably related to the skills required for delivery of the waiver services. The State must also describe the administrative oversight mechanisms it will use to ensure quality of care. FFP will not be available for services furnished by providers or in facilities that do not meet the standards set forth in the waiver request.

b. *Financial Accountability.* In § 441.353(b), we are requiring the State to describe the records and information that will be maintained by the agency and by providers of services to support financial accountability, and to provide information regarding how the State will meet the requirement for financial accountability. We are also requiring an explanation of how the State will assure that there is an audit trail (that is, supporting records) for State and Federal funds expended for section 1915(d) home and community-based waiver services. In addition, States with an approved Medicaid Management Information System (MMIS) must use this system to process individual claims data and thus account for funds expended for services under the waiver. We are specifically requesting public comment on this provision, as well as any suggestions for alternative systems that would improve the accounting for funds expended for waiver services.

c. *Evaluation and Reevaluation of Recipients' Level of Care.* Under § 441.353(c), we are requiring the State agency to provide a description of the agency's plan for all evaluations and reevaluations of the level of care required by recipients under the waiver. This plan must include a description of the qualifications of the individuals who will make these evaluations and the criteria under which the evaluation will be judged. A copy of the written assessment instruments (forms and criteria that will be used in the level of care determinations) and the agency's procedure to assure the maintenance of written documentation on all evaluations and reevaluations and copies of the forms to be used must be included with the waiver request. In accordance with regulations at 45 CFR part 74, written documentation of all evaluations and reevaluations must be

maintained for a minimum period of 3 years. The request must also include an indication of when the initial evaluation will be performed, the frequency of reevaluations, and the procedures and criteria used for evaluation and reevaluation of waiver recipients, which must be the same or more stringent (at the State's option) than those used for individuals served in NFs.

d. Alternatives to Institutional Care. Section 1915(d)(2)(C) of the Act provides that individuals determined to be likely to require the level of care furnished in a NF be informed of feasible alternatives to institutional care if alternatives are available under a waiver and be allowed to choose among them. Therefore, we are requiring at § 441.353(d) that when a recipient is determined to meet the level of care criteria for NF care, the State must inform the recipient or his or her legal representative of any feasible alternatives under the waiver and be given the choice of either institutional or home and community-based services. A description of the agency's plan for informing eligible recipients of these alternative services must be submitted to HCFA. A State requesting a waiver must provide for HCFA review a copy of the forms that will be used to document recipient freedom of choice.

We are also requiring that the State must permit the recipient to choose among providers of both waiver and State plan services. An individual's election to receive home and community-based services under a waiver does not relieve the State from the requirements of section 1902(a)(23) of the Act, regarding free choice of providers. Therefore, a waiver recipient must be permitted free choice of all qualified providers of each service for which he or she is eligible (whether the service is provided under the State plan or the waiver), and the State must allow any person or entity, qualified to furnish a service (under the State plan or the waiver), who elects to furnish that service, to become a Medicaid provider of that service. The Medicaid agency must provide an opportunity for a fair hearing, under 42 CFR part 431, subpart E, to recipients who are not given the choice of home or community-based services as an alternative to institutional care in a NF or who are denied the service(s) or the provider(s) of their choice.

To provide individuals with the choice between institutional and home and community-based services, both types of care must actually be available in the State, or the "choice" becomes meaningless. The statute recognizes that home and community-based services of the type required by a particular individual may not be available. It therefore specifies that the State need only present this option "if available under the waiver." This exception is not made for the provision of institutional care. We have considered requiring a State requesting a waiver under section 1915(d) of the Act to provide evidence of sufficient capability of serving individuals in an institution (who may qualify for and elect institutional services). This evidence would include data pertaining to the number of individuals on waiting lists for institutional care, and the length of time between application and admission to NF care. We have decided against this requirement at the present time. However, we specifically request public comment on the issue of the necessity of the maintenance of adequate institutional capacity in the presence of a waiver to serve the number of individuals, including persons under age 65, who may reasonably be expected to qualify for and choose institutional care.

e. Post-Eligibility Treatment of Income. We are requiring at § 441.353(e) that the State must explain how the agency will apply the applicable provisions regarding the post-eligibility treatment of income and resources of those individuals receiving home and community-based services who are eligible under a special income level.

5. Aggregate Projected Expenditure Limit

We are adding a new § 441.354 to describe the aggregate projected expenditure limit (APEL). To ensure that FFP is properly claimed for waiver and other State plan services included in the statutory expenditure limit, we will require each State to include in its waiver request a description of the methodology to be used to maintain appropriate documentation of service expenditures. To receive payment for waiver services under section 1915(d) of the Act, we will require that claims be documented as they are for any other Medicaid service. This documentation will typically include the date of service; name of recipient; name and Medicaid identification number of the provider agency and person furnishing the service; nature, extent, or units of service furnished; and the place of service. The use of other documentation, such as time studies, random moment studies, or cost allocation plans, will not be considered sufficient as a basis for claiming FFP at the service match rate.

Section 1915(d)(5)(A) of the Act requires that if a State has a waiver approved under this subsection, the total amount expended for medical assistance with respect to NF services, and home and community-based services for individuals age 65 or older during a waiver year may not exceed an amount determined by a formula set forth in the statute. This amount is determined by inflating the State's expenditures for these services during a base year by a fixed percentage or by certain demographic and market basket indices. For States that have reported these expenditures on the basis of age, the statute sets the base year as "the most recent year (ending before the date of enactment of this subsection) for which actual final expenditures under this title have been reported to, and accepted by, the Secretary." Since Public Law 100–203 was enacted on December 22, 1987, the "most recent year" ending before enactment was Federal fiscal year (FFY) 1987 (that is, October 1, 1986 through September 30, 1987). States that did not report expenditures on the basis of age categories must use as their base year FFY 1989 (that is, October 1, 1988 through September 30, 1989).

To maintain consistency between base years and waiver reporting years, we will require all waivers under section 1915(d) of the Act to begin and end on the same dates as a FFY. In addition, to prevent the confusion that would inevitably arise if a waiver were to be approved with an effective date that has already passed, we will require that all waivers under this section be approved with prospective implementation dates.

For States with section 1915(d) waivers currently in effect, the APEL for the waiver year that coincides with FFY 1990, and each succeeding waiver year will be determined as if the regulations had been published on October 1, 1989. The decision to retroactively apply the maximum limit afforded by the computation of the APEL, rather than to make it effective upon issuance of the regulation, is discretionary. We do not believe it is equitable to financially disadvantage any State participating in this program because of a delay in publishing the regulation. We believe it is not in the best interest of the program to restrict States where an approved section 1915(d) waiver is in operation to annual funding increases of 7 percent instead of a higher limit that could be afforded under this regulation.

We will treat the effective dates for amendments to approved waivers under section 1915(d) of the Act differently from the effective dates for initial waivers. A State wishing to amend an approved waiver under section 1915(d)

of the Act may request that the waiver modifications be made effective retroactive to the first day of the waiver year in which the amendment is submitted, except when the amendment includes a substantive change in the program, for example, when additional services under the waiver are added, or changes are made in the qualifications of service providers. Approval of a retroactive effective date for amendments to approved waivers will remain discretionary with HCFA. Amendments that propose substantive changes, for example, those that change the target population eligible to receive waiver services, add additional services, or change the qualifications of the service providers, will only be given prospective effective dates; however, these dates need not coincide with the start of the next FFY. However, consideration will be given to a State's preference in this regard.

States are not required to furnish each service listed in section 1915(d)(5)(A) of the Act, unless the service is made available under the State plan to equivalent eligibility groups of individuals under age 65. Similarly, section 1915(c) waiver services furnished to individuals who would otherwise require care in an ICF/MR or hospital will not be included in the expenditure limit. However, section 1915(c) waiver services furnished to individuals age 65 or older who would otherwise require care in a NF (including a NF which qualifies as an IMD when the State plan provides for services to individuals age 65 or older who are in an IMD) must be included in the expenditure ceiling.

Section 1915(d)(5)(B) of the Act prescribes a methodology by which the aggregate expenditure limit is to be calculated. This limit is to be projected as the sum of:

(a) The aggregate amount of the State's medical assistance under title XIX for NF services furnished to individuals who have attained the age of 65 for the base year increased by a percentage which is equal to the lesser of 7 percent times the number of years (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year involved, or the sum of—

(i) The percentage increase (based on an appropriate market basket index representing the costs of elements of these services) between the beginning of the base year and the beginning of the waiver year involved, plus

(ii) The percentage increase in the number of residents in the State who have reached age 65, between the beginning of the base year and the beginning of the waiver year involved, plus

(iii) 2 percent for each year (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year.

(b) The aggregate amount of the State's medical assistance under title XIX for home and community based services for individuals who have reached age 65 for the base year increased by a percentage that is equal to the lesser of 7 percent times the number of years (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year involved or the sum of—

(i) The percentage increase (based on an appropriate market basket index representing the costs of elements of these services) between the beginning of the base year and the beginning of the waiver year involved, plus

(ii) The percentage increase in the number of residents in the State who have reached age 65, between the beginning of the base year and the beginning of the waiver year involved, plus

(iii) 2 percent for each year (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year.

On the date on which final regulations become effective, any reference to "the lesser of 7 percent" will be deemed to be a reference to "the greater of 7 percent," in accordance with section 1915(d)(5)(B) of the Act.

The statute requires that the expenditure limit be calculated using data from a base year. We believe that the best source of Medicaid expenditure data is Form HCFA 64. This is the form each State must use to claim FFP. The form identifies the major categories of Medicaid expenditures, but does not identify expenditures by age category. Therefore, we will adjust the appropriate categories of expenditures reported on Form HCFA 64 by a ratio of expenditures for that category of service as reported on Form HCFA 2082 for the same year. (Form HCFA 2082 is an annual statistical reporting form that captures cost and utilization data for Medicaid services, based on the date of payment for the services.) We will calculate this ratio as the total amount reported on Form HCFA 2082 that the State has expended for specific service categories for individuals age 65 or older, divided by the total expenditures reported by the State for that service for the entire Medicaid population. States will be able to calculate initial projections based on data they submit to HCFA. HCFA will calculate final projections after all final adjustments have been made for the fiscal (base) year.

To calculate the market basket index for NF services furnished to individuals age 65 or older, we will use the SNF Input Price Index used in the Medicare program. The index to be used is identified as the third quarter data available from HCFA's Office of National Cost Estimates in August preceding the start of the fiscal year. We believe this is in keeping with Congressional intent to meld the SNF and ICF levels of care into a single category of "nursing facility" as evidenced by section 4211 of Public Law 100–203, which became effective on October 1, 1990.

To calculate the percentage increase in the number of residents in the State who have reached the age of 65, we will use the number of aged Medicare beneficiaries in the State, equal to the Mid-Period Enrollment in the Hospital Insurance (HI) or Supplementary Medical Insurance (SMI) programs in that State for July 1 preceding the start of the fiscal year. We have chosen the July 1 date because it represents the latest date for which data would be available prior to the inception of a waiver year (which would start on October 1). Thus, for example, the number of aged Medicare beneficiaries for fiscal year 1991 would be determined as of July 1, 1990.

Section 1915(d)(5)(B)(iii) of the Act requires the Secretary to develop a method for projecting, on a State-specific basis, the percentage increase in the number of residents in each State who are over 75 years of age for any period. We will use the same HI and SMI data to calculate these increases as are used to calculate the number of individuals who have attained the age of 65. Readers should note, however, that although the number of individuals who are over age 75 will be calculated, these data will not be reflected in the computation of the APEL, because the statute specifies that only data pertaining to individuals age 65 or older be used in this computation.

We are unable to identify a common market basket for home health care, personal care services, private duty nursing services, and services furnished under a home and community-based services waiver. Since these types of services, when furnished to a similar population (that is, individuals age 65 or older), tend to include the same core elements and include services furnished by individuals with similar occupations, we will use as a market basket index the Home Health Agency Input Price Index used in the Medicare program and

published periodically in the **Federal Register.**

To establish the aggregate amount of the State's medical assistance under a State's Medicaid program for home and community-based services (defined by the statute to include home health care, personal care services, private duty nursing services, and services furnished under a home and community-based services waiver), furnished to individuals 65 years of age or older during the base year, we will adjust the amount reported by the State on Form HCFA 64 for the base year period for home health services by the ratio of expenditures for home health services for the aged to total expenditures for home health services, as reported on Form HCFA 2082 for the same period. On these forms, the category of "home health services" is intended to include expenditures for home health care, personal care, and home and community-based services. States may report expenditures for private duty nursing services either in the category of "home health" or in the generic category of "other" services. Therefore, States that report private duty nursing expenditures in the "other" category should notify us of this fact at the time the waiver is submitted, and include an estimate of the amount of Medicaid expenditures for this service to be included in the base year calculations of the expenditure limit projections.

We recognize that many of these data will not be available at the time of expenditure. Therefore, we expect States to make their best estimates based on available data, with a retrospective accounting and adjustment occurring when all the data become known.

To calculate the projected expenditure limit for each year of a State's waiver, we are incorporating the following formula into the regulations:

$APEL = P \times (1+Y) + V \times (1+Z)$, where

P = The aggregate amount of the State's medical assistance under title XIX for SNF and ICF (NF effective October 1, 1990) services furnished to individuals who have reached the age of 65, defined as the total medical assistance payments (Federal and State) reported on line 6 of Form HCFA 64 (as adjusted) for SNF services, ICF-other services, and mental health facility services for the base year, multiplied by the ratio of expenditures for SNF and ICF-other services for the aged to total expenditures for these services as reported on Form HCFA 2082 for the base year.

Q = The market basket index for SNF and ICF (NF effective October 1, 1990) services for the waiver year involved, defined as the total SNF Input Price Index used in the Medicare program, identified as the third quarter data available from HCFA's Office of National Cost Estimates in August preceding the start of the fiscal year.

R = The SNF Input Price Index for the base year.

S = The number of residents in the State in the waiver year involved who have reached age 65, defined as the number of aged Medicare beneficiaries in the State, equal to the Mid-Period Enrollment in HI or SMI in that State on July 1 preceding the start of the fiscal year.

T = The number of aged Medicare beneficiaries in the State who are enrolled in either the HI or SMI programs in the base year, as defined in S, above.

U = The number of years beginning after the base year and ending on the last day of the waiver year involved.

V = The aggregate amount of the State's medical assistance under title XIX in the base year for home and community-based services for individuals who have reached age 65, defined as the total medical assistance payments (Federal and State) reported on line 6 of Form HCFA 64 (as adjusted) for home health, personal care and home and community-based services waivers, which provide care as an alternative to SNF or ICF (NF effective October 1, 1990) services, increased by an estimate (acceptable to HCFA) of expenditures for private duty nursing services, multiplied by the ratio of expenditures for home health services for the aged to total expenditures for home health services, as reported on Form HCFA 2082, for the base year.

W = The market basket index for home and community-based services for the waiver year involved, defined as the Home Health Agency Input Price Index, used in the Medicare program, identified as the third quarter data available from HCFA's Office of National Cost Estimates in August preceding the start of the fiscal year.

X = The Home Health Agency Input Price Index for the base year.

Y = The greater of—
$(U \times .07)$, or $(Q/R) - 1 + (S/T) - 1 + (U \times .02)$.

Z = The greater of—
$(U \times .07)$, or $(W/X) - 1 + (S/T) - 1 + (U \times .02)$.

Under this methodology, the expenditure limitation will be the greater of the amount calculated under this formula, or 7 percent times the number of years beginning after the base year and ending at the end of the waiver year. A separate calculation will be made for each year of the waiver.

FFP is available in expenditures for NF, home health, personal care, private duty nursing services furnished to individuals age 65 or older, and home and community-based waiver services furnished to individuals age 65 or older under section 1915(d) and services furnished under a section 1915(c) waiver to individuals age 65 or older as an alternative to care in an NF up to the APEL, calculated in accordance with the formula above. Should a State exceed the APEL, it may no longer claim FFP for these services for this population for the remainder of the FFY. However, the State may not diminish or refuse to furnish services included in its Medicaid plan for these individuals, when FFP is no longer available, because the State has exceeded the APEL. The Budget Committee of the House of Representatives (H.R. Report No. 391, 100th Cong., 1st Sess., 573 (1987)) explained.

The Committee emphasizes that elderly Medicaid-eligible individuals receiving or applying for either nursing home or home and community-based services in a State with such a waiver continue to be likely to require services covered under the State plan, even if the State has exceeded its projected amount in a given waiver year and loses its claim to Federal matching payments for any additional costs incurred. The State's cost overrun would not extinguish the beneficiaries' entitlement. If a State's actual expenditures exceed its projected expenditures for a given waiver year, it will have to absorb the entire excess cost of providing the benefits to which elderly individuals eligible for Medicaid are entitled.

Section 411(k)(3) of Public Law 100–360 added a requirement that the Secretary develop (by not later than October 1, 1989) a method for projecting, on a State-specific basis, the percentage increase in the number of residents in each State who are over 65 years of age for any period. As with the State-specific calculation of the increase in the number of individuals who are age 65 or older, we propose to use data from the Medicare HI and SMI files, which are maintained in HCFA. Because these data are already on file for use in the Medicare program, there will be no additional burden on States to assist in the collection of these statistics.

We are implementing section 1915(d)(5)(B)(iv) of the Act by permitting States to amend their approved waivers to raise their APELs to account for increased costs (see § 441.354(d)). To be considered, these increased costs must be the result of implementation of legislative changes to the Medicaid laws enacted on or after December 22, 1987.

Costs attributable to laws enacted before December 22, 1987 will not be considered. Because the APEL for each year of the waiver is computed separately from the APEL for any other waiver year, a separate amendment must be submitted for each year in which the State chooses to request an increase in its APEL. Documentation

specific to the waiver year involved must be submitted.

6. Duration of a Waiver

We are adding a new § 441.355, which describes the duration of a waiver.

Because each APEL will be in effect for a 1-year period, we believe it is important to establish consistency between waiver years and FFYs. Therefore, we are establishing the effective date of a section 1915(d) waiver prospectively, to begin on the first day of the FFY following the date of approval. Subject to termination by the State and upon notice to the Secretary, the waiver will be in effect for 3 years, and, upon request, may be extended for an additional 5-year period, provided the assurances required by § 441.352 are met. Waivers may be extended for additional 5-year periods upon receipt of the State's request, and approval by HCFA.

The agency may request that the waiver modifications be made effective retroactive to the first day of the waiver year in which the amendment is submitted, except when the amendment would make substantive changes. Substantive changes may include but are not limited to addition of services under the waiver, a change in the qualifications of service providers, or a change in the eligible population. This type of amendment request will be given a prospective effective date, but this date need not coincide with the start of the next FFY.

HCFA will determine whether a request for an extension of a waiver is an extension request (applicable for a period of 5 years), or is actually a request for a new waiver that would be in effect for a period of 3 years. If the extension request proposes a substantive change in services furnished, eligible population, service area, statutory sections waived, or qualifications of service providers, it will be considered a new waiver request.

If HCFA denies a request for a waiver, or for an extension of a waiver, the statute provides that the determination may be reconsidered in accordance with § 441.357. In the case of a denial of a request for an extension (renewal) of an existing waiver, the waiver will remain in effect for at least 90 days after the date of the denial. If the State seeks reconsideration of the denial, the waiver will remain in effect for a period of at least 90 days after the date on which a final determination is made. HCFA will calculate an APEL for the period for which the waiver remains in effect, and will pro-rate the limit according to the number of days to which it applies.

7. Waiver Termination

We are adding a new § 441.356 that addresses waiver termination. Section 1915(d)(3) of the Act specifies that a State may terminate a waiver at any time, after notice to the Secretary. Section 441.305(a) requires the State agency to notify us in writing at least 30 days before a State's termination of a home and community-based services waiver under section 1915(c) of the Act. The provisions of § 441.305(b), which now apply to section 1915(c) waivers, will also be applicable to section 1915(d) waivers. In addition to requiring at least 30 days notice to recipients before terminating waiver services, the provisions of § 441.305(b) require that the notice follow the requirements concerning content specified in § 431.210 as well.

Although a State may terminate its waiver at any time after a 30-day prior written notification to HCFA and the waiver recipients, the termination will have the effect of eliminating the availability of home and community-based services furnished under the waiver. The State's termination of a waiver will not end the use of the APEL for the current FFY under which the State plan services included in the limit must be provided. When the State chooses to terminate its waiver program, the knowledge that the APEL will continue to be applied should deter the State from allowing its APEL to be reached, for example, within the first few months of the waiver year based on an expectation that unlimited FFP will follow.

In support of this provision, the Budget Committee of the House of Representatives (H. R. Report No. 391, 100th Cong., 1st Sess., 573, (1987)) states:

> to assure budget neutrality, the Committee amendment specifies that even if a State terminates its participation during the course of a waiver year, it would remain subject to the limit on Federal matching payments determined by the projected amount for that year.

Therefore, we will require a State that has terminated its waiver under section 1915(d) of the Act to continue to make all services in its approved State plan available to individuals age 65 or older in the same amount, duration, and scope as to similarly situated individuals who have not yet reached age 65.

HCFA will terminate a waiver when a State has violated the assurances made as a condition of waiver approval, as well as when the State is found to be operating the program in a fashion that jeopardizes the health and welfare of the recipients of the services, or the integrity of the Federal funds.

If we find that an agency is not meeting the terms of the waiver, we will notify the agency in writing of our findings and its right to a hearing. If, after the notice and hearing, we determine that the agency is not in compliance, HCFA may terminate the waiver.

Should we decide to terminate a waiver, we will apply the APEL in a pro-rated fashion, to expire concurrently with the termination of home and community-based services under the waiver. We believe it would be unfair to continue to apply the APEL to the State plan services that will continue to be provided, when it was not the choice of the State to terminate the waiver program. This is because the basis for the calculation of the APEL (that is, the availability of waiver services) would no longer apply to the State in question. When HCFA chooses to terminate a waiver program because a State has not operated its waiver program properly, continuance of the APEL would financially burden the State. This financial burden is based on the higher costs incurred for NF services in place of the costs incurred for home and community-based services.

If we terminate a waiver, the State must notify recipients of services under the waiver 30 days before terminating services. This requirement is based on § 441.30 (a) and (b), which is the implementing regulation for the 1915(c) waiver program designed to permit clients to prepare alternatives to waiver services.

8. Hearings Procedures

We are adding a new § 441.357 to cover hearings procedures for these waiver terminations. Section 1915(d)(6) of the Act provides that a determination by the Secretary to deny a request for a waiver or an extension of a waiver under section 1915(d) of the Act will be subject to review to the extent provided under section 1116(b) of the Act. Section 441.357 sets forth the procedures for administrative and judicial review of the Secretary's determination of a State plan's conformity to the requirements of the statute. Regulations for hearings and appeals under section 1116(b) of the Act are found at § 430.18. Section 441.357 will cross refer to the existing requirements at § 430.18. We will apply these regulations to denied requests for waivers under section 1915(d) of the Act, along with denied requests for amendment or renewal of these waivers.

Section 1915(d)(6)(B) of the Act provides that, if the Secretary denies a request for extension or renewal of a State's waiver, and the State appeals the

denial, FFP will continue to be available for the later of: 90 days after the date on which the Secretary denied the extension or renewal request, or if the State seeks review of the denial, the date on which the final determination is made based on that review. This provision does not apply to denial of initial waiver requests, or requests for amendment of existing waivers, nor does it apply in situations when the Secretary, after notice and opportunity for appeal, has terminated a waiver.

Section 1915(f) of the Act mandates that HCFA monitor the implementation of all section 1915 waivers to assure that the requirements for the waivers are being met. This section further mandates that the Secretary will, after notice and opportunity for a hearing, terminate a waiver when he finds noncompliance has occurred. Section 441.306 currently applies to hearings procedures for terminations of home and community-based services waivers granted under section 1915(c) of the Act. We are applying the provisions of § 441.306 to terminations of waivers under section 1915(d) of the Act as well. Therefore, the procedures for administrative review of action on State plan material specified at § 430.18 will apply to State requests for hearings on terminations of waivers granted under section 1915(d) of the Act.

9. Limits on Federal Financial Participation

We are adding a new § 441.360 to provide limits on FFP for home and community-based services listed in § 440.181. To assure that the State Medicaid agency meets the waiver's health and welfare standards described in § 441.352(a), we will provide that FFP is not available when the services are furnished in a facility during a period in which the facility is not in compliance with applicable State standards described in that section. In keeping with our policy governing waivers approved under section 1915(c) of the Act, we are providing that FFP is not available for the cost of room and board, except when furnished as part of respite care services in a facility, approved by the State, that is not a private residence. For purposes of the 1915(d) waiver program, "board" means three meals a day or any other full nutritional regimen and does not include meals furnished as part of adult day health services, which do not comprise a full nutritional regimen.

For those waivers that contain personal caregivers as a waiver service, we are specifying that States may include a portion of the room and board attributed to the unrelated personal caregiver who resides in the same household with the waiver recipient. The method of apportioning the costs of room and board will be determined by the State but will be subject to review and approval by HCFA. The methodology used must be explained fully to receive HCFA's approval. FFP for live-in caregivers is not available in situations in which the recipient lives in the caregiver's home or in a residence owned or leased by the provider of Medicaid services (the caregiver).

We are further prohibiting FFP for the following activities: Services not included in the approved State plan and not approved as waiver services by HCFA; services furnished to recipients who are ineligible under the terms of the approved waiver; services furnished by a provider when either the services or the provider fail to meet the standards set by the State and included in the approved waiver; and services furnished to a recipient by his or her spouse.

To prevent duplication of services and as discussed earlier, we are prohibiting FFP for waiver services furnished to individuals while they are inpatients of a hospital, NF, or ICF/MR (see § 441.351(e)(2)). We will require that a State requesting a waiver under section 1915(d) of the Act assure that FFP will not be claimed for these services.

10. Periodic Evaluation, Assessment, and Review

A major emphasis of the section 1915(d) waiver program is the concern for the health and welfare of the recipients of services. A waiver may not be granted unless the State has satisfied the Secretary that necessary safeguards have been taken to protect the health and welfare of the recipients, and should the Secretary determine that these assurances have not been met, he is prohibited from renewing the waiver. Because the APEL constitutes a limit on FFP, we are concerned that there may be an incentive to inappropriately ration necessary care to remain within budgetary restraints. Accordingly, we have made a strong commitment to quality care by proposing periodic evaluation, assessment, and review to counter any financial disincentives to furnish needed services.

To assure quality of services and access to care under this waiver program and to standardize the methodology by which it will be enforced, we will require that a mechanism be established that will evaluate and assess the quality, access, and adequacy of care for individuals under the waiver on an ongoing basis. We will require that the agency either directly, or (through interagency agreement) by other departments of State government (such as the Department of Health or the Agency on Aging), create an evaluation and assessment review team, which will have the responsibility of monitoring, on an ongoing basis, the quality, access, and adequacy of care furnished to Medicaid eligible individuals receiving care under the waiver.

We are adding § 441.365 to provide for periodic evaluation, assessment, and review of the care furnished to recipients of waiver services under part 441, subpart H. We believe these changes will conform the regulations to the health and welfare requirements included in section 1915(d) of the Act.

To ensure that high quality standards for health care are maintained, § 441.365(b) requires a review team to periodically evaluate and assess the care and services furnished to recipients under the waiver provisions of part 441, subpart H. We specify that each review team must consist of a physician or registered nurse, and at least one other individual with appropriate health and social service credentials. If there is no physician on the review team, the Medicaid agency must ensure that a physician is available for consultation. For waiver services furnished to individuals who have been determined to be likely to require the level of care furnished in a NF that is also an IMD, we will require each review team to have a psychiatrist or physician who is knowledgeable about geriatric mental illness and other appropriate mental health or social service personnel with knowledge in the same field.

At § 441.365(c), we specify restrictions on the financial interests and employment of review team members. We specify that no member of the review team may have a financial interest in, or be employed by, any entity that furnishes services to the recipients whose care is under review. We will further require that no member of a review team may evaluate or assess the care of a recipient for whom he or she is a provider. We will also prohibit any individual who serves as case manager, caseworker, benefit authorizer, or in any similar position, from serving as member of a review team that evaluates and assesses care furnished to a recipient with whom he or she has had a professional relationship.

Section 441.365(d) requires a sufficient number of review teams located within the State so that onsite inspections can be made at appropriate intervals at sites where waiver recipients receive care and services.

Section 441.365(e) requires the review team and the Medicaid agency to

conduct evaluations and assessments for each recipient under the waiver at least annually. The review team and the agency may choose to conduct evaluations and assessments more frequently than annually based on the quality of care and services being furnished under the waiver and the condition of patients receiving care and services under the waiver.

Section 441.365(f) prohibits notification to a provider in advance of a periodic evaluation, assessment, and review. However, when services are provided in the recipient's own home or the home of a relative, at least 48 hours advance notice must be provided, and the recipient must have the opportunity to decline the visit. This exception is to protect the privacy of the recipient and the recipient's family. If the recipient declines access to his or her own home or the home of a relative, the review is limited solely to the review of the provider's records. If the recipient is incompetent, the head of the household has the authority to decline access to the home.

Section 441.365(g) requires the review team's evaluation and assessment to include a review of each recipient's medical record, the evaluation and reevaluation required by § 441.353(c), and the plan of care under which the waiver and other services are furnished. If these records are inadequate or incomplete, the review team must complete its evaluation and assessment through personal contact and observation of the recipient. The review team may personally contact and observe any recipient of waiver services whose care the team evaluates and assesses. The review team may also consult with both formal and informal caregivers when the recipient's records are inadequate or incomplete and when any apparent discrepancy exists between services required by the recipient and services furnished under the waiver.

Section 441.365(h) requires the review team to determine whether the services included in the plan of care and furnished to the recipient, are adequate to meet the health and welfare needs of each recipient under the waiver. The review team must determine whether the services included in the plan of care have been furnished to the recipient as planned. The team must also determine if it is necessary and in the interest of the recipient to continue receiving services through the waiver program, and if it is feasible to meet the recipient's health and welfare needs through the waiver program.

Section 441.365(i) establishes the basis for a review team to determine the adequacy of services to ensure the protection of the health and welfare of waiver recipients. The review team may consider whether the medical record, the determination of level of care, and the plan of care are consistent, and whether all ordered services have been furnished and properly recorded. Additionally, the team must consider whether physician review of prescribed psychotropic medications, when prescribed for behavior control, has occurred at least every 30 days. Another consideration of the review team is whether tests or observations of each recipient indicated by his or her medical record are made at appropriate times and properly recorded.

Other information the review team may examine includes whether progress notes entered in the record by formal and informal caregivers are made as required and appear to be consistent with the observed condition of the recipient. The review team also determines whether reevaluations of the recipient's level of care have occurred at least as frequently as would be required if that individual were served in a NF.

When observation of the recipient is necessary (requirements for the necessity of observation are set forth in new § 441.365(g)(3)), the review team must, at a minimum, weigh the following factors in determining whether the recipient receives adequate care and services: cleanliness of the recipient; absence of bedsores; and absence of signs of malnutrition or dehydration.

Furthermore, the review team may examine whether the recipient needs any service that is not included in the plan of care, or if included, is not being furnished by formal or informal caregivers under the waiver or through arrangements with another public or private source of assistance. Finally, the review team may determine whether the recipient requires continued home and community-based services to avoid the likelihood of placement in a nursing facility.

Section 441.365(j) requires that the review team submit the results of its periodic evaluations, assessments and reviews to the Medicaid agency within a reasonable period of time, not to exceed one month, after the completion of its review of each recipient's care. This section also requires that the team immediately notify the agency when it discovers conditions that may constitute a threat to the life or health of a recipient.

Section 441.365(k) requires that the Medicaid agency establish and adhere to procedures for taking appropriate action in response to the findings reported by the review teams. These procedures must provide for immediate response to any team's finding that the life or health of a recipient may be jeopardized.

IV. Regulatory Impact Statement

A. Executive Order 12291

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

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Section 4102 of Public Law 100–203, effective January 1, 1988, as amended by section 411(k) of Public Law 100–360 and by section 8432 of Public Law 100–647, amended section 1915 of the Act. These changes redesignated section 1915(d) of the Act as section 1915(h) and added a new category of waiver under section 1915(d) entitled "Home and Community-Based Services for the Elderly."

Under section 1915(d) of the Act, State Medicaid agencies may request the authority to provide home and community-based services to individuals age 65 and older who are determined to be likely to require the level of care furnished in a NF if the home and community-based services are not provided. Section 440.181 of this rule, which implements section 1915(d)(4) of the Act, includes those home and community-based services that a State may provide under a section 1915(d) waiver.

In return for this waiver, States must limit expenditures for these services, along with NF, home health, personal care, and private duty nursing services as well as any services provided under a section 1915(c) waiver to individuals age 65 and older. A waiver under section 1915(c) of the Act allows State Medicaid agencies to provide for services not otherwise available under Medicaid to individuals who, absent these services, would otherwise be institutionalized in a hospital, NF, or ICF/MR.

To date, only one State has applied for and received a waiver under section 1915(d) of the Act. We do not have data that will assist in predicting the number

of States planning to request waivers in accordance with these rules. Because the waivers must contain costs within the APEL, this interim final rule does not meet the $100 million criterion nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this rule is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

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

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

We have determined, and the Secretary certifies that this interim final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant economic impact on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

V. Waiver of Notice of Proposed Rulemaking and Delay in the Effective Date

We ordinarily publish a general notice of proposed rulemaking in the **Federal Register**, and invite prior public comment on the proposed rule. The rule includes a reference to the legal authority under which it is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. However, this procedure can be waived when an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rule issued.

Public Law 100–203, enacted on December 22, 1987 (as modified by Public Law 100–360, enacted on July 1, 1988; and Public Law 100–647, enacted on November 10, 1988; and Public Law 101–508, enacted on November 6, 1990) amended the Act to add a waiver for the provision of home and community-based services for individuals age 65 or older. In order to have regulations in place as close as possible to the effective date of the law, we must publish these regulations in interim final form promptly. For this reason, and because we believe that the States and a substantial number of Medicaid recipients may benefit by these regulations, we believe that publication of a notice of proposed rulemaking and delay in the effective date would be contrary to the public interest. We therefore find good cause to waive notice of proposed rulemaking and our normal 30-day delay in the effective date. We will, however, consider any comments on this interim final rule that are mailed by the date specified above in the "**DATES**" section and make any further changes that may be necessary when the rule is published in final. At that time, we will also respond to the public comments received.

VI. Other Required Information

A. Paperwork Burden

Final interim regulations at §§ 441.351, 441.352, 441.353, 441.356, and 441.365 contain information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This regulation amends current Medicaid regulations to permit States to offer, under a Secretarial waiver, a wide array of home and community-based services to individuals age 65 or older who are determined, but for the provision of these services, to likely require the level of care furnished in a NF. The information collection requirements concern the preparation of the waiver request and report on the operation of the approved waiver program. The respondents who will provide the information include the State Medicaid agencies.

The overall public reporting burden for this collection of information is estimated to be 63,806 hours as shown in the following tables:

	Hours
Response and Reporting Burden (Annualized for Three States):	
Sections 441.351, 441.352, and 441.353 (Preparation of waiver request)	200
Sections 441.352 and 441.365 (Cost reporting)	60
Section 441.356 (Termination requests)	(1)
Total hours for response and reporting burden	260
Recordkeeping Burden (Annualized for Three States):	
Section 441.365 (Recording and managing recipient information)	63,546
Recordkeeping burden	63,546
Total burden	63,806

[1] Negligible.

A notice will be published in the **Federal Register** after approval is obtained. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "**ADDRESSES**" section of this preamble.

B. Public Comment Period

Because of the large number of items of correspondence we normally receive on a regulation, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "**DATES**" section of this preamble, and when we proceed with a subsequent final rule, we will respond to the comments in the preamble of that rule.

List of Subjects

42 CFR Part 400

Grant programs-health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 436

Aid to Families with Dependent Children, Grant programs-health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR Part 441

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as set forth below:

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

PART 400—INTRODUCTION; DEFINITIONS

A. Part 400 is amended as follows:

1. The authority citation for part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. chapter 35.

§ 400.203 [Amended]

2. In § 400.203, the definition for "nursing facility" (NF) is added in alphabetical order as follows:

* * * * *

Nursing facility (NF), effective October 1, 1990, means an SNF or an ICF participating in the Medicaid program.

* * * * *

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

B. Part 435 is amended as follows:

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart A—Introduction, Definitions, and General Provisions

2. In § 435.3(a), the introductory paragraph is revised and reference to section 1915(d) of the Act is added following the entry for section 1915(c) of the Act to read as follows:

§ 435.3 Basis.

(a) This part implements the following sections of the Act and public laws that mandate eligibility requirements and standards:

* * * * *

1915(d) Home or community-based services for individuals age 65 or older.

* * * * *

Subpart C—Options for Coverage as Categorically Needy

3. Section 435.217 is revised as follows:

§ 435.217 Individuals receiving home and community-based services.

The agency may provide Medicaid to any group or groups of individuals in the community who meet the following requirements:

(a) The group would be eligible for Medicaid if institutionalized.

(b) In the absence of home and community-based services under a waiver granted under part 441—

(1) Subpart G of this subchapter, the group would otherwise require the level of care furnished in a hospital, NF, or an ICF/MR; or

(2) Subpart H of this subchapter, the group would otherwise require the level of care furnished in an NF and are age 65 or older.

(c) The group receives the waivered services.

Subpart H—Financial Requirements for the Categorically Needy

4. In § 435.726, paragraph (b) is revised to read as follows:

§ 435.726 Post-eligibility treatment of income and resources of individuals receiving home and community-based services furnished under a waiver: Application of patient income to the cost of care.

* * * * *

(b) This section applies to individuals who are eligible for Medicaid under § 435.217 and are receiving home and community-based services furnished under a waiver of Medicaid requirements specified in part 441, subpart G or H of this subchapter.

* * * * *

5. In § 435.735, paragraph (b) is revised to read as follows:

§ 435.735 Post-eligibility treatment of income and resources of individuals receiving home and community-based services furnished under a waiver: Application of patient income to the cost of care.

* * * * *

(b) This section applies to individuals who are eligible for Medicaid under § 435.217, and are eligible for home and community-based services furnished under a waiver of State plan requirements specified in part 441, subpart G or H of this subchapter.

* * * * *

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

C. Part 436 is amended as follows:

1. The authority citation for part 436 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart A—General Provisions and Definitions

2. In § 436.2, the introductory paragraph is revised and reference to section 1915(d) of the Act is added following the entry for section 1915(c) of the Act to read as follows:

§ 436.2 Basis.

This part implements the following sections of the Act and public laws that mandate requirements and standards for eligibility:

* * * * *

1915(d) Home and community-based services for individuals age 65 or older.

* * * * *

3. Section 436.217 is revised to read as follows:

§ 436.217 Individuals receiving home and community-based services.

The agency may provide Medicaid to any group or groups of individuals in the community who meet the following requirements:

(a) The group would be eligible for Medicaid if institutionalized.

(b) In the absence of home and community-based services under a waiver granted under part 441—

(1) Subpart G of this subchapter, the group would otherwise require the level of care furnished in a hospital, NF, or an ICF/MR; or

(2) Subpart H of this subchapter, the group would otherwise require the level of care furnished in a NF and are age 65 or older.

(c) The group receives the waivered services.

PART 440—SERVICES: GENERAL PROVISIONS

D. Part 440 is amended as follows:

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 440.1 is revised to read as follows:

§ 440.1 Basis and purpose.

This subpart interprets and implements the following sections of the Act:

1902(a)(43) Laboratory services. (See also §§ 447.10 and 447.342 for related provisions on laboratory services.)

1905(a) Services included in the term "medical assistance."

1905 (c), (d), (f) through (i), (l), and (m) Definitions of institutions and services that are included in the term "medical assistance."

1913 "Swing-bed" services. (See §§ 447.280 and 482.66 of this chapter for related provisions on "swing-bed" services.)

1915(c) Home and community-based services listed as "medical assistance" and furnished under waivers under that section to individuals who would otherwise require the

level of care furnished in a hospital, NF, or ICF/MR.

1915(d) Home and community-based services listed as "medical assistance" and furnished under waivers under that section to individuals age 65 or older who would otherwise require the level of care furnished in a NF.

3. Section 440.181 is added to Subpart A to read as follows:

§ 440.181 Home and community-based services for individuals age 65 or older.

(a) *Description of services.*—Home and community-based services for individuals age 65 or older means services, not otherwise furnished under the State's Medicaid plan, or services already furnished under the State's Medicaid plan but in expanded amount, duration, or scope, which are furnished to individuals age 65 or older under a waiver granted under the provisions of part 441, subpart H of this subchapter. Except as provided in § 441.310, the services may consist of any of the services listed in paragraph (b) of this section that are requested by the State, approved by HCFA, and furnished to eligible recipients. Service definitions for each service in paragraph (b) of this section must be approved by HCFA.

(b) *Included services.* (1) Case management services.

(2) Homemaker services.

(3) Home health aide services.

(4) Personal care services.

(5) Adult day health services.

(6) Respite care services.

(7) Other medical and social services requested by the Medicaid agency and approved by HCFA, which will contribute to the health and well-being of individuals and their ability to reside in a community-based care setting.

4. In § 440.250, paragraph (k) is revised to read as follows:

§ 440.250 Limits on comparability of services.

* * * * *

(k) If the agency has been granted a waiver of the requirements of § 440.240 (Comparability of services) in order to provide for home or community-based services under §§ 440.180 or 440.181, the services provided under the waiver need not be comparable for all individuals within a group.

* * * * *

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

E. Part 441 is amended as follows:

1. The authority citation for part 441 continues to read as follows:

Authority: Secs. 1102 of the Social Security Act (42 U.S.C. 1302).

2. A new subpart H is added to read as follows:

Subpart H—Home and Community-Based Services Waivers for Individuals Age 65 or Older: Waiver Requirements

Secs.

441.350 Basis and purpose.
441.351 Contents of a request for a waiver.
441.352 State assurances.
441.353 Supporting documentation required.
441.354 Aggregate projected expenditure limit (APEL).
441.355 Duration, extension, and amendment of a waiver.
441.356 Waiver termination.
441.357 Hearings procedures for waiver denials.
441.360 Limits on Federal financial participation (FFP).
441.365 Periodic evaluation, assessment, and review.

Subpart H—Home and Community-Based Services Waivers for Individuals Age 65 or Older: Waiver Requirements

§ 441.350 Basis and purpose.

Section 1915(d) of the Act permits States to offer, under a waiver of statutory requirements, home and community-based services not otherwise available under Medicaid to individuals age 65 or older, in exchange for accepting an aggregate limit on the amount of expenditures for which they claim FFP for certain services furnished to these individuals. The home and community-based services that may be furnished are listed in § 440.181 of this subchapter. This subpart describes the procedures the Medicaid agency must follow to request a waiver.

§ 441.351 Contents of a request for a waiver.

A request for a waiver under this section must meet the following requirements:

(a) *Required signatures.* The request must be signed by the Governor, the Director of the Medicaid agency or the Director of the larger State agency of which the Medicaid agency is a component or any official of the Medicaid agency to whom this authority has been delegated. A request from any other agency of State government will not be accepted.

(b) *Assurances and supporting documentation.* The request must provide the assurances required by § 441.352 of this part and the supporting documentation required by § 441.353.

(c) *Statement for sections of the Act.* The request must provide a statement as to whether waiver of section 1902(a)(1), 1902(a)(10)(B), or 1902(a)(10)(C)(i)(III) of the Act is requested. If the State requests a waiver of section 1902(a)(1) of the Act, the waiver must clearly specify the geographic areas or political subdivisions in which the services will be offered. The State must indicate whether it is requesting a waiver of one or all of these sections. The State may request a waiver of any one of the sections cited above.

(d) *Identification of services.* The request must identify all services available under the approved State plan, which are also included in the APEL and which are identified under § 440.181, and any limitations that the State has imposed on the provision of any service. The request must also identify and describe each service specified in § 440.181 of this subchapter to be furnished under the waiver, and any additional services to be furnished under the authority of § 440.181(b)(7). Descriptions of additional services must explain how each additional service included under § 440.181(b)(7) will contribute to the health and well-being of the recipients and to their ability to reside in a community-based setting.

(e) *Recipients served.* The request must provide that the home and community-based services described in § 440.181 of this subchapter, are furnished only to individuals who—

(1) Are age 65 or older;

(2) Are not inpatients of a hospital, NF, or ICF/MR; and

(3) The agency determines would be likely to require the care furnished in a NF under Medicaid.

(f) *Plan of care.* The request must provide that the home and community-based services described in § 440.181 of this subchapter, are furnished under a written plan of care based on an assessment of the individual's health and welfare needs and developed by qualified individuals for each recipient under the waiver. The qualifications of the individual or individuals who will be responsible for developing the individual plan of care must be described. Each plan of care must contain, at a minimum, the medical and other services to be provided, their frequency, and the type of provider to furnish them. Plans of care must be subject to the approval of the Medicaid agency.

(g) *Medicaid agency review.* The request must assure that the State agency maintain and exercise its authority to review (at a minimum) a valid statistical sample of each month's plans of care. When the services in a plan do not comport with the stated disabilities and needs of the recipient, the agency must implement immediate corrective action procedures to ensure that the needs of the recipient are adequately addressed.

(h) *Groups served.* The request must describe the group or groups of individuals to whom the services will be offered.

(i) *Assurances regarding amount expended.* The request must assure that the total amount expended by the State under the plan for individuals age 65 or older during a waiver year for medical assistance with respect to NF, home health, private duty nursing, personal care, and home and community-based services described in §§ 440.180 and 440.181 of this subchapter and furnished as an alternative to NF care will not exceed the aggregate projected expenditure limit (APEL) defined in § 441.354.

§ 441.352 State assurances.

Unless the Medicaid agency provides the following satisfactory assurances to HCFA, HCFA will not grant a waiver under this subpart and may terminate a waiver already granted.

(a) *Health and welfare.* The agency must assure that necessary safeguards have been taken to protect the health and welfare of the recipients of services by assuring that the following conditions are met:

(1) Adequate standards for all types of providers that furnish services under the waiver are met. (These standards must be reasonably related to the requirements of the waiver service to be furnished.)

(2) The standards of any State licensure or certification requirements are met for services or for individuals furnishing services under the waiver.

(3) All facilities covered by section 1616(e) of the Act, in which home and community-based services are furnished, are in compliance with applicable State standards that meet the requirements of 45 CFR part 1397 for board and care facilities.

(4) Physician reviews of prescribed psychotropic drugs (when prescribed for purposes of behavior control of waiver recipients) occur at least every 30 days.

(b) *Financial accountability.* The agency must assure financial accountability for funds expended for home and community-based services. The State must provide for an independent audit of its waiver program. The performance of a single financial audit, in accordance with the Single Audit Act of 1984 (Pub. L. 98–502, enacted on October 19, 1984), is deemed to satisfy the requirement for an independent audit. The agency must maintain and make available to HHS, the Comptroller General, or other designees, appropriate financial records documenting the cost of services furnished to individuals age 65 or older under the waiver and the State plan, including reports of any independent audits conducted.

(c) *Evaluation of need.* The agency must provide for an initial evaluation (and periodic reevaluations) of the need for the level of care furnished in a NF when there is a reasonable indication that individuals age 65 or older might need those services in the near future, but for the availability of home and community-based services. The procedures used to assess level of care for a potential waiver recipient must be at least as stringent as any existing State procedures applicable to individuals entering a NF. The qualifications of individuals performing the waiver assessment must be as high as those of individuals assessing the need for NF care, and the assessment instrument itself must be the same as any assessment instrument used to establish level of care of prospective inpatients in NFs. A periodic reevaluation of the level of care must be performed. The period of reevaluation of level of care cannot extend beyond 1 year.

(d) *Expenditures.* The agency must assure that the total amount expended by the State for medical assistance with respect to NF, home health, private duty nursing, personal care services, home and community-based services furnished under a section 1915(c) waiver granted under Subpart G of this part to individuals age 65 or older, and the home and community-based services approved and furnished under a section 1915(d) waiver for individuals age 65 or older during a waiver year will not exceed the APEL, calculated in accordance with § 441.354.

(e) *Reporting.* The agency must assure that it will provide HCFA annually with information on the waiver's impact. The information must be consistent with a reasonable data collection plan designed by HCFA and must address the waiver's impact on—

(1) The type, amount, and cost of services furnished under the State plan; and

(2) The health and welfare of recipients of the services described in § 440.181 of this chapter.

§ 441.353 Supporting documentation required.

The agency must furnish HCFA with sufficient information to support the assurances required under § 441.352, in order to meet the requirement that the assurances are satisfactory. At a minimum, this information must consist of the following:

(a) *Safeguards.* A description of the safeguards necessary to protect the health and welfare of recipients.

This information must include:

(1) A copy of the standards established by the State for facilities (in which services will be furnished) that are covered by section 1616(e) of the Act.

(2) The minimum educational or professional qualifications of the providers of the services.

(3) A description of the administrative oversight mechanisms established by the State to ensure quality of care.

(b) *Records.* A description of the records and information that are maintained by the agency and by providers of services to support financial accountability, information regarding how the State meets the requirement for financial accountability, and an explanation of how the State assures that there is an audit trail for State and Federal funds expended for section 1915(d) home and community-based waiver services. If the State has an approved Medicaid Management Information System (MMIS), this system must be used to process individual claims data and account for funds expended for services furnished under the waiver.

(c) *Evaluation and reevaluation of recipients.* A description of the agency's plan for the evaluation and reevaluation of recipients' level of care, including the following:

(1) A description of who makes these evaluations and how they are made.

(2) A copy of the evaluation instrument.

(3) The agency's procedure to assure the maintenance of written documentation on all evaluations and reevaluations and copies of the forms. In accordance with regulations at 45 CFR part 74, written documentation of all evaluations and reevaluations must be maintained for a minimum period of 3 years.

(4) The agency's procedure to assure reevaluations of need at regular intervals.

(5) The intervals at which reevaluations occur, which may be no less frequent than for institutionalized individuals at comparable levels of care.

(6) The procedures and criteria used for evaluation and reevaluation of waiver recipients must be the same or more stringent than those used for individuals served in NFs.

(d) *Alternatives available.* A description of the agency's plan for informing eligible recipients of the feasible alternatives available under the waiver and allowing recipients to

choose either institutional or home and community-based services must be submitted to HCFA. A copy of the forms or documentation used by the agency to verify that this choice has been offered and that recipients of waiver services, or their legal representatives, have been given the free choice of the providers of both waiver and State plan services must also be available for HCFA review. The Medicaid agency must provide an opportunity for a fair hearing, under 42 CFR part 431, subpart E, to recipients who are not given the choice of home or community-based services as an alternative to institutional care in a NF or who are denied the service(s) or the providers of their choice.

(e) *Post-eligibility of income.* An explanation of how the agency applies the applicable provisions regarding the post-eligibility treatment of income and resources of those individuals receiving home and community-based services who are eligible under a special income level (included in § 435.217 of this subchapter).

§ 441.354 Aggregate projected expenditure limit (APEL).

(a) *Definitions.* For purposes of this section, the term "base year" means—

(1) Federal fiscal year (FFY) 1987 (that is, October 1, 1986 through September 30, 1987); or

(2) In the case of a State which did not report expenditures on the basis of age categories during FFY 1987, the base year means FFY 1989 (that is, October 1, 1988 through September 30, 1989).

(b) *General.* (1) The total amount expended by the State for medical assistance with respect to NF, home and community-based services under the waiver, home health services, personal care services, private duty nursing services, and services furnished under a waiver under subpart G of this part to individuals age 65 or older furnished as an alternative to care in an SNF or ICF (NF effective October 1, 1990), may not exceed the APEL calculated in accordance with paragraph (c) of this section.

(2) In applying for a waiver under this subpart, the agency must clearly identify the base year it intends to use.

(3) The State may make a preliminary calculation of the expenditure limit at the time of the waiver approval; however, HCFA makes final calculations of the aggregate limit after base data have been verified and accepted.

(4) All base year and waiver year data are subject to final cost settlement within 2 years from the end of the base or waiver year involved.

(c) *Formula for calculating APEL.* Except as provided in paragraph (d) of this section, the formula for calculating the APEL follows:

APEL=P × (1+Y) + V × (1+Z), where

P=The aggregate amount of the State's medical assistance under title XIX for SNF and ICF (NF effective October 1, 1990) services furnished to individuals who have reached age 65, defined as the total medical assistance payments (Federal and State) reported on line 6 of form HCFA 64 (as adjusted) for SNF services, ICF-other services, and mental health facility services for the base year, multiplied by the ratio of expenditures for SNF and ICF-other services for the aged to total expenditures for these services as reported on form HCFA 2082 for the base year.

Q=The market basket index for SNF and ICF (NF effective October 1, 1990) services for the waiver year involved, defined as the total SNF Input Price Index used in the Medicare program, identified as the third quarter data available from HCFA's Office of National Cost Estimates in August preceding the start of the fiscal year.

R=The SNF Input Price Index for the base year.

S=The number of residents in the State in the waiver year involved who have reached age 65, defined as the number of aged Medicare beneficiaries in the State, equal to the Mid-Period Enrollment in HI or SMI in that State on July 1 preceding the start of the fiscal year.

T=The number of aged Medicare beneficiaries in the State who are enrolled in either the HI or SMI programs in the base year, as defined in S, above.

U=The number of years beginning after the base year and ending on the last day of the waiver year involved.

V=The aggregate amount of the State's medical assistance under title XIX in the base year for home and community-based services for individuals who have reached age 65, defined as the total medical assistance payments (Federal and State) reported on line 6 of form HCFA 64 (as adjusted) for home health, personal care, and home and community-based services waivers, which provide services as an alternative to care in a SNF or ICF (NF effective October 1, 1990), increased by an estimate (acceptable to HCFA) of expenditures for private duty nursing services, multiplied by the ratio of expenditures for home health services for the aged to total expenditures for home health services, as reported on form HCFA 2082, for the base year.

W=The market basket index for home and community-based services for the waiver year involved, defined as the Home Agency Input Price Index, used in the Medicare program identified as the third quarter data available from HCFA's Office of National Cost Estimates in August preceding the start of the fiscal year.

X=The Home Health Agency Input Price Index for the base year.

Y=The greater of—
(U×.07), or (Q/R)-1+(S/T)-1+(U×.02).

Z=The greater of—
(U×.07), or (W/X)-1+(S/T)-1+(U×.02).

(d) *Amendment of the APEL.* The State may request amendment of its APEL to reflect an increase in the aggregate amount of medical assistance for NF services and for services included in the calculation of the APEL as required by paragraph (c) of this section when the increase is directly attributable to legislation enacted on or after December 22, 1987, which amends title XIX of the Act. Costs attributable to laws enacted before December 22, 1987 will not be considered. Because the APEL for each year of the waiver is computed separately from the APEL for any other waiver year, a separate amendment must be submitted for each year in which the State chooses to raise its APEL. Documentation specific to the waiver year involved must be submitted to HCFA.

§ 441.355 Duration, extension, and amendment of a waiver.

(a) *Effective dates and extension periods.* (1) The effective date for a waiver of Medicaid requirements to furnish home and community-based services to individuals age 65 or older under this subpart is established by HCFA prospectively on the first day of the FFY following the date on which the waiver is approved.

(2) The initial waiver is approved for a 3-year period from the effective date. Subsequent renewals are approved for 5-year periods.

(3) If the agency requests it, the waiver may be extended for an additional 5-year period if HCFA's review of the prior period shows that the assurances required by § 441.352 were met.

(4) The agency may request that waiver modifications be made effective retroactive to the first day of the waiver year in which the amendment is submitted, unless the amendment involves substantive change. Substantive changes may include, but are not limited to, addition of services under the waiver, a change in the qualifications of service providers, or a change in the eligible population.

(5) A request for an amendment that involves a substantive change is given a prospective effective date, but this date need not coincide with the start of the next FFY.

(b) *Extension or new waiver request.* HCFA determines whether a request for extension of an existing waiver is

actually an extension request, or a request for a new waiver. Generally, if a State's extension request proposes a substantive change in services furnished, eligible population, service area, statutory sections waived, or qualifications of service providers, HCFA considers it a new waiver request.

(c) *Reconsideration of denial.* A determination of HCFA to deny a request for a waiver (or for extension of a waiver) under this subpart may be reconsidered in accordance with § 441.357.

(d) *Existing waiver effectiveness after denial.* If HCFA denies a request for an extension of an existing waiver under this subpart:

(1) The existing waiver remains in effect for a period of not less than 90 days after the date on which HCFA denies the request, or, if the State seeks reconsideration in accordance with § 441.357, the date on which a final determination is made with respect to that review.

(2) HCFA calculates an APEL for the period for which the waiver remains in effect, and this calculation is used to pro-rate the limit according to the number of days to which it applies.

§ 441.356 Waiver termination.

(a) *Termination by the State.* If a State chooses to terminate its waiver before an approved program is due to expire, the following conditions apply:

(1) The State must notify HCFA in writing at least 30 days before terminating services to recipients.

(2) The State must notify recipients of services under the waiver at least 30 days before terminating services in accordance with § 431.210 of this chapter.

(3) HCFA continues to apply the APEL described in § 441.354 through the end of the waiver year, but this limit is not applied in subsequent years.

(4) The State may not decrease the services available under the approved State plan to individuals age 65 or older by an amount that violates the comparability of service requirements set forth in § 440.240 of this chapter.

(b) *Termination by HCFA.* (1) If HCFA finds, during an approved waiver period, that an agency is not meeting one or more of the requirements for a waiver contained in this subpart, HCFA notifies the agency in writing of its findings and grants an opportunity for a hearing in accordance with § 441.357. If HCFA determines that the agency is not in compliance with this subpart after the notice and any hearing, HCFA may terminate the waiver.

(2) If HCFA terminates the waiver, the following conditions apply:

(i) The State must notify recipients of services under the waiver at least 30 days before terminating services in accordance with § 431.210 of this chapter.

(ii) HCFA continues to apply the APEL in § 441.354 of this subpart, but the limit is prorated according to the number of days in the fiscal year during which waiver services were offered. The limit expires concurrently with the termination of home and community-based services under the waiver.

§ 441.357 Hearing procedures for waiver denials.

The procedures specified in § 430.18 of this subchapter apply to State requests for hearings on denials, renewals, or amendments of waivers for home and community-based services for individuals age 65 or older.

§ 441.360 Limits on Federal financial participation (FFP).

FFP for home and community-based services listed in § 440.181 of this subchapter is not available in expenditures for the following:

(a) Services furnished in a facility subject to the health and welfare requirements described in § 441.352(a) during any period in which the facility is found not to be in compliance with the applicable State requirements described in that section.

(b) The cost of room and board except when furnished as part of respite care services in a facility, approved by the State, that is not a private residence. For purposes of this subpart, "board" means three meals a day or any other full nutritional regimen. "Board" does not include meals, which do not comprise a full nutritional regimen, furnished as part of adult day health services.

(c) The portion of the cost of room and board attributed to unrelated, live-in personal caregivers when the waiver recipient lives in the caregiver's home or a residence owned or leased by the provider of the Medicaid services (the caregiver).

(d) Services that are not included in the approved State plan and not approved as waiver services by HCFA.

(e) Services furnished to recipients who are ineligible under the terms of the approved waiver.

(f) Services furnished by a provider when either the services or the provider do not meet the standards that are set by the State and included in the approved waiver.

(g) Services furnished to a recipient by his or her spouse.

§ 441.365 Periodic evaluation, assessment, and review.

(a) *Purpose.* This section prescribes requirements for periodic evaluation, assessment, and review of the care and services furnished to individuals receiving home and community-based waiver services under this subpart.

(b) *Evaluation and assessment review team.* (1) A review team, as described in paragraphs (b)(2) and (c) of this section, must periodically evaluate and assess the care and services furnished to recipients under this subpart. The review team must be created by the State agency directly, or (through interagency agreement) by other departments of State government (such as the Department of Health or the Agency on Aging).

(2) Each review team must consist of at least one physician or registered nurse, and at least one other individual with health and social service credentials who the State believes is qualified to properly evaluate and assess the care and services provided under the waiver. If there is no physician on the review team, the Medicaid agency must ensure that a physician is available to provide consultation to the review team.

(3) For waiver services furnished to individuals who have been found to be likely to require the level of care furnished in a NF that is also an IMD, each review team must have a psychiatrist or physician and other appropriate mental health or social service personnel who are knowledgeable about geriatric mental illness.

(c) *Financial interests and employment of review team members.* (1) No member of a review team may have a financial interest in or be employed by any entity that furnishes care and services under the waiver to a recipient whose care is under review.

(2) No physician member of a review team may evaluate or assess the care of a recipient for whom he or she is the attending physician.

(3) No individual who serves as case manager, caseworker, benefit authorizer, or any similar position, may serve as member of a review team that evaluates and assesses care furnished to a recipient with whom he or she has had a professional relationship.

(d) *Number and location of review teams.* A sufficient number of teams must be located within the State so that onsite inspections can be made at appropriate intervals at sites where waiver recipients receive care and services.

(e) *Frequency of periodic evaluations and assessments.* Periodic evaluations and assessments must be conducted at least annually for each recipient under the waiver. The review team and the agency have the option to determine the frequency of further periodic evaluations and assessments, based on the quality of services and access to care being furnished under the waiver and the condition of patients receiving care and services.

(f) *Notification before inspection.* No provider of care and services under the waiver may be notified in advance of a periodic evaluation, assessment, and review. However, when a recipient receives services in his own home or the home of a relative, notification must be provided to the residents of the household at least 48 hours in advance. The recipient must have an opportunity to decline access to the home. If the recipient declines access to his or her own home, or the home of a relative, the review is limited solely to the review of the provider's records. If the recipient is incompetent, the head of the household has the authority to decline access to the home.

(g) *Personal contact with and observation of recipients and review of records.* (1) For recipients of care and services under a waiver, the review team's evaluation and assessment must include—

(i) A review of each recipient's medical record, the evaluation and reevaluation required by § 441.353(c), and the plan of care under which the waiver and other services are furnished; and

(ii) If the records described in paragraph (g)(1)(i) of this section are inadequate or incomplete, personal contact and observation of each recipient.

(2) The review team may personally contact and observe any recipient whose care the team evaluates and assesses.

(3) The review team may consult with both formal and informal caregivers when the recipient's records are inadequate or incomplete and when any apparent discrepancy exists between services required by the recipient and services furnished under the waiver.

(h) *Determinations by the review team.* The review team must determine in its evaluation and assessment whether—

(1) The services included in the plan of care are adequate to meet the health and welfare needs of each recipient;

(2) The services included in the plan of care have been furnished to the recipient as planned;

(3) It is necessary and in the interest of the recipient to continue receiving services through the waiver program; and

(4) It is feasible to meet the recipient's health and welfare needs through the waiver program.

(i) *Other information considered by review team.* When making determinations, under paragraph (h) of this section, for each recipient, the review team must consider the following information and may consider other information as it deems necessary:

(1) Whether the medical record, the determination of level of care, and the plan of care are consistent, and whether all ordered services have been furnished and properly recorded.

(2) Whether physician review of prescribed psychotropic medications (when required for behavior control) has occurred at least every 30 days.

(3) Whether tests or observations of each recipient indicated by his or her medical record are made at appropriate times and properly recorded.

(4) Whether progress notes entered in the record by formal and informal caregivers are made as required and appear to be consistent with the observed condition of the recipient.

(5) Whether reevaluations of the recipient's level of care have occurred at least as frequently as would be required if that individual were served in a NF.

(6) Whether the recipient receives adequate care and services, based, at a minimum, on the following when observations are necessary (the requirements for the necessity of observations are set forth in new § 441.365(g)(3)):

(i) Cleanliness.

(ii) Absence of bedsores.

(iii) Absence of signs of malnutrition or dehydration.

(7) Whether the recipient needs any service that is not included in the plan of care, or if included, is not being furnished by formal or informal caregivers under the waiver or through arrangements with another public or private source of assistance.

(8) Determination as to whether continued home and community-based services are required by the recipient to avoid the likelihood of placement in a NF.

(j) *Submission of review team's results.* The review team must submit to the Medicaid agency the results of its periodic evaluation, assessment and review of the care of the recipient:

(1) Within 1 month of the completion of the review.

(2) Immediately upon its determination that conditions exist that may constitute a threat to the life or health of a recipient.

(k) *Agency's action.* The Medicaid agency must establish and adhere to procedures for taking appropriate action in response to the findings reported by the review team. These procedures must provide for immediate response to any finding that the life or health of a recipient may be jeopardized.

(Catalog of Federal Domestic Assistance Program No. 93.714, Medical Assistance Program)

Editorial Note: This document was received on June 12, 1992, for publication in the **Federal Register.**

Dated: July 19, 1991.

Gail R. Wilensky,

Administration, Health Care Financing Administration.

Approved: October 22, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-14211 Filed 6-29-92; 8:45 am]

BILLING CODE 4120-01-M

federal register

Tuesday
June 30, 1992

Part IV

Department of the Interior

Bureau of Indian Affairs

Plan for the Use of the Fort Peck Assiniboine and Sioux Indian Tribes Judgment Funds Awarded in Docket 31-88L Before the United States Claims Court; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use of the Fort Peck Assiniboine and Sioux Indian Tribes Judgment Funds Awarded in Docket 31–88L Before the United States Claims Court

June 15, 1992.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs for 209 DM 8.

EFFECTIVE DATE: This plan was effective on April 1, 1992.

FOR FURTHER INFORMATION CONTACT: Terry Lamb, Historian, Bureau of Indian Affairs, Branch of Acknowledgment and Research, MS 2612–MIB, 1849 C Street, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973 (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on December 11, 1990, in satisfaction of the award granted to the Fort Peck Assiniboine and Sioux Indian Tribes before the United States Claims Court in Docket 31–88L. The plan for the use of the funds was submitted to Congress with a letter dated December 6, 1991, and was received by the Senate on December 18, 1991, and by the House of Representatives on January 3, 1992. The plan became effective on April 1, 1992, as provided by the 1973 Act, as amended by Pub. L. 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

For the Use of Judgment Funds Awarded to the Fort Peck Assiniboine and Sioux Tribes in Docket 31–88L before the United States Claims Court.

The funds appropriated on December 11, 1990, in satisfaction of the award granted in Docket 31–88L to the Fort Peck Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as follows.

The principal, interest, and investment income accrued shall be available on a budgetary basis to the tribal governing body, subject to the approval of the Secretary, to be utilized for the Fort Peck Tribal Land Purchase Program. The Fort Peck Tribal Land Purchase Program furthers economic development of the reservation by consolidating allotted, develop such lands for the enhancement of the economic viability of the Fort Peck Tribes.

In accepting lands in trust purchased with the funds made available to the tribal governing body under the provisions of this Secretarial Plan, the Secretary shall exercise the authority provided him in Sec. 5 of the Act of June 18, 1934, 25 U.S.C. 465, and shall apply the standards set forth in part 151 of title 25, Code of Federal Regulations, as those standards now exist or as they may be amended in the future.

David J. Matheson,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 92–15243 Filed 6–29–92; 8:45 am]

BILLING CODE 4310–02–M

federal register

Tuesday
June 30, 1992

Part V

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved a Tribal-State Gaming Compact between the Barona Group of the Capitan Grande Band of Mission Indians and the State of California, executed on April 2, 1992.

DATE: This action is effective June 30, 1992.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ronal Eden, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7445.

Dated: June 23, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92–15267 Filed 6–29–92; 8:45 am]

BILLING CODE 4310–02–M

federal register

Tuesday
June 30, 1992

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Orally Administered Drug Products for the Treatment of Fever Blisters for Over-the-Counter Human Use; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 81N-0060]

RIN 0905-AA06

Orally Administered Drug Products for the Treatment of Fever Blisters for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any over-the-counter (OTC) orally administered drug product for the treatment of fever blisters is not generally recognized as safe and effective and is 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 orally administered drug products for the treatment of fever blisters that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: December 30, 1992.

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 January 5, 1982 (47 FR 502), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC orally administered drug products for the treatment of fever blisters, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by April 5, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by May 5, 1982.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC orally administered drug products for the treatment of fever blisters was published in the **Federal Register** of June 17, 1985 (50 FR 25156). Interested persons were invited to file by August 16, 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 October 15, 1985. New data could have been submitted until June 17, 1986, and comments on the new data until August 18, 1986. Final agency action occurs with the publication of this final rule on OTC orally administered drug products for the treatment of fever blisters.

In the proposed rule, the agency did not propose any active ingredient for oral administration to treat fever blisters as generally recognized as safe and effective and not misbranded. However, the agency did propose monograph labeling in the event that data were submitted that resulted in the upgrading of any ingredients to monograph status in the final rule. The agency stated that in the event that new data submitted to the agency during the allotted 12-month comment and new data period were not sufficient to establish "monograph conditions" for OTC orally administered drug products for the treatment of fever blisters, the final rule would declare these products to be new drugs (50 FR 25156 at 25157). In this final rule, no active ingredient has been determined to be generally recognized as safe and effective for use in OTC drug products intended for oral administration to treat fever blisters. Therefore, proposed 21 CFR part 357, subpart H for OTC orally administered drug products for the treatment of fever blisters is not being issued as a final regulation.

This final rule declares OTC drug products containing active ingredients for oral administration to treat fever blisters to be new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)), for which an application approved under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 is required for marketing. In the absence of an approved application, products containing these drugs for this use also would be misbranded under section 502 of the act (21 U.S.C. 352). In appropriate circumstances, a citizen petition to establish a monograph may be submitted under 21 CFR 10.30 in lieu of an application.

This final rule amends 21 CFR part 310 to include drug products containing active ingredients for oral administration to treat fever blisters by adding to subpart E new § 310.537 (21 CFR 310.537). The inclusion of OTC orally administered drug products for the treatment of fever blisters in part 310 is consistent with FDA's established policy for regulations in which there are no monograph conditions. (See, e.g., §§ 310.510, 310.519, 310.525, 310.526, 310.532, 310.533, and 310.534.) If, in the future, any ingredient is determined to be generally recognized as safe and effective for use in an OTC orally administered drug product for the treatment of fever blisters, the agency will promulgate an appropriate regulation at that time.

The OTC drug procedural regulations (21 CFR 330.10) now 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 rule for OTC orally administered drug products for the treatment of fever blisters (50 FR 25156), the agency advised that it would provide a period of 12 months after the date of publication of the final monograph in the **Federal Register** for relabeling and reformulation of orally administered drug products for the treatment of fever blisters to be in compliance with the monograph. Although data and information were submitted on lysine in response to the proposed rule, they were not sufficient to support monograph conditions, and no monograph is being established at this time. Therefore, orally administered drug products for the treatment of fever blisters that are subject to this rule are not generally recognized as safe and effective and are misbranded (nonmonograph conditions). In the advance notice of proposed rulemaking (47 FR 502 at 503), the agency advised that conditions for the drug products

subject to this monograph would be effective 6 months after the date of publication of a final monograph in the Federal Register. Because no OTC drug monograph is being established for this class of drug products, the agency is adopting this 6-month effective date for the nonmonograph conditions for these drug products. Therefore, on or after December 30, 1992, no OTC drug products that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved application.

In response to the proposed rule on OTC orally administered drug products for the treatment of fever blisters, five physicians, one manufacturer, and one nutritionist submitted comments. No requests for oral hearing before the Commissioner were received. Copies of the comments received are on public display in the Dockets Management Branch (address above). Additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comments

A. Comments on Lysine

1. Several comments supported the safety and effectiveness of L-lysine (hereinafter referred to as lysine) for the treatment of fever blisters. One comment submitted clinical data from published studies (Refs. 1 through 11), a 1986 unpublished study by Walsh et al. (Ref. 12), a summary of the data contained in references 1 through 12 (Ref. 13), a published letter (Ref. 14), a program for a symposium on lysine (Ref. 15), a summary of the symposium (Ref. 16), abstracts of presentations on lysine made at that symposium (Ref. 17), published data from in-vitro, animal, and human studies (Refs. 18 through 34), and patient information (Ref. 35). The comment subsequently provided the published results of the 1986 study by Walsh et al. (Ref. 36). Several other comments supported lysine's effectiveness for treating herpes simplex infections with anecdotal statements of treatment successes.

The agency has evaluated all of the data submitted but is discussing only references 1 through 12 and 36 specifically, because they are the only ones material to the in-vivo effectiveness of lysine. The agency does not consider these references as adequately demonstrating that lysine is generally recognized as safe and effective for OTC drug use in relieving the discomfort of fever blisters and cold sores.

Kagan (Ref. 1) stated that eight subjects with facial herpes and two with genital herpes were treated with 390 milligrams (mg) of lysine. This dosage, given at the first evidence of herpetic lesions, was continued for 5 days and the results were reported as "uniform, rapid resolution of lesions." No other specific information was given. This study was not a placebo-controlled study and contains insufficient data on which to base any conclusion.

Griffith, Norins, and Kagan (Ref. 2) reported results of an uncontrolled, open study on 45 volunteers, 11 male and 34 female, 4 to 60 years of age with a history of recurrent fever blisters. The daily dosage of lysine for subjects with active infections was 800 to 1,000 mg/day compared with a maintenance dose of 312 to 500 mg/day. Cereals, seeds, nuts, chocolate, and other foods which were noted to produce a high arginine-to-lysine ratio and to favor herpetic lesions were curtailed in the diet. Infections were described as mild in 6 subjects, moderate in 33 subjects, severe in 4 subjects, and incapacitating in 2 subjects. Two treatment failures were reported, both of which occurred in the mildly-infected subjects. Though three of the subjects were lost to followup, the followup period for the others was 2 months to 3 years. Pain was reported as disappearing overnight in virtually every instance and more rapidly than with past treatments. Recurrences were reported to show decreased frequency. However, the results were considered suppressive rather than curative because when lysine was discontinued after the subjects had been maintained on lysine infection-free for 2 months to 3 years, the lesions recurred in 1 to 4 weeks.

The study was not placebo-controlled; therefore, it does not meet agency requirements for evaluation. The agency has carefully evaluated all of the data in this study and concludes that lysine's effectiveness in relieving the discomfort of fever blisters was not adequately demonstrated.

Milman, Scheibel, and Jessen (Ref. 3) reported results of a randomized, double-blind, placebo-controlled study conducted for 48 weeks in 119 subjects, 103 of whom were females aged 16 to 60 years (median age of 36 years), with herpes infections. Enrollment was restricted to otherwise healthy people who had had at least three herpes simplex episodes in the preceding year. Only subjects with prolabial and perioral lesions were enrolled and diagnosis was based on a thorough history, though in some cases the lesions were seen on examination by the investigators.

The subjects were given either 11 lysine tablets (500 mg) or 11 placebo tablets on the initial visit and instructed to take two tablets at the onset of a lesion, followed by one tablet each subsequent morning and evening until the tablets were gone. The subjects were to return after each episode, at which time a questionnaire was filled out regarding symptoms and findings, and the residual tablets were to be returned. A new questionnaire and a new box of medication were given at that time. Treatment with followup was carried out for 251 episodes of recurrent herpes simplex (prolabial or perioral sites).

Analysis of results was made for only those episodes for which treatment was started on the day the first symptom(s) appeared. Sixty-one episodes were excluded (29 lysine and 32 placebo). Exclusion was based on the following criteria: (1) treatment was not started on the day the first symptoms appeared; (2) the subject returned more than two tablets; or (3) the data were inadequate.

Median recurrence-free intervals in lysine and placebo-treated groups were 57 (8 to 185) days and 53 (11 to 154) days, respectively. Subjects were assessed for rate of healing and the appearance of the lesion at its worst. The healing rate (median days) for initial treatment was 8 (1 to 24) days for lysine, and 7 (1 to 17) days for placebo. The healing rate for all treatments was 8 (1 to 31) days for lysine and 8 (1 to 17) days for placebo. According to these data, the healing rate for placebo seems better than the rate for lysine.

The results for this study were reported as showing no difference between placebo and lysine treatment for the rate of healing and the appearance of the lesion at its worst. "No effect" for lysine treatment (500 mg twice a day) was seen in recurrent herpes labialis. Accordingly, this study cannot be used to demonstrate lysine's effectiveness in relieving the discomfort of fever blisters.

The authors commented that the dose of lysine in this study may have been too low. They also note that because virus multiplication in the herpetic lesion begins in the prodromal stage, therapy must begin immediately when symptoms develop.

Saunders (Ref. 4) reported that 40 subjects with oral or genital herpes were treated with maintenance doses of lysine daily resulting in 34 subjects who showed either shorter duration of episodes, diminished frequency (from 50 percent to total remission), or both.

Concomitant iododeoxyuridine ointment was also used. The treatment was not placebo controlled, and no data were included. The agency considers the information provided as insufficient for evaluation.

Milman, Sheibel, and Jessen (Ref. 5) conducted a double-blind, placebo-controlled, crossover study to test the following hypothesis: In recurrent herpetic lesions, virus multiplication begins in the prodromal stage and is maximal during the following 24 hours with subsequent rapid decline. Thus, treatment must be initiated immediately at the onset of the first symptoms.

The study population consisted of healthy volunteers with at least three perioral and/or prolabial herpes simplex episodes in the preceding 12 months. On the first visit, subjects were given a questionnaire and tablets containing 500 mg lysine monohydrochloride or placebo. The subjects were instructed to take one tablet twice daily during the entire study and to record on their questionnaires the duration and course of their herpes simplex recurrences and to classify the lesion, when at its worst, according to the following scale: (1) itching, burning, tingling, or tenderness but no visible lesion; (2) erythema with induration (papule) and/or vesicles without exudation; (3) vesicles with exudation and/or crust, lesion 15 millimeters (mm) or less, measured along the largest diameter; (4) vesicles with exudation and/or crust, lesions greater than 15 mm. These questionnaires were to be mailed in, along with any remaining medication, at 4-week intervals; then new questionnaires and a fresh supply of tablets were issued. Crossover, without interruption in the study, was made at 12 weeks. Sixty-five subjects (52 females, 13 males), aged 16 to 73 years (median age 36 years), completed the study.

Subjects initially treated with lysine had 45 recurrences during lysine and 38 recurrences during placebo treatment. Subjects initially treated with placebo had 66 recurrences during placebo and 46 recurrences during lysine treatment. The total number of recurrences during lysine treatment was 91, and during placebo treatment 104. The agency has determined that none of these differences was statistically significant and that there are no significant differences between the lysine and placebo treatment series as regards the rate of healing and the appearance of the recorded herpes lesions at their worst.

The authors also reported that significantly more subjects were recurrence-free during lysine than during placebo treatment. While this finding might suggest an effect of lysine in some of the subjects, it does not establish effectiveness.

The agency also notes that subjects initially treated with placebo had 66 recurrences during placebo, whereas subjects initially treated with lysine had 38 recurrences during placebo treatment. The agency finds that this is a marked difference and might be interpreted as showing that lysine given initially was effective during the subsequent placebo period.

The authors concluded that lysine had no significant prophylactic effect, either on the duration or on the recurrence rate of herpes simplex labialis. However, the results suggest that certain people may benefit from such treatment, and further investigations are indicated to clarify this hypothesis.

Walsh, Griffith, and Behforooz (Ref. 6) tested the effect of lysine supplementation on herpes infection. Their study design was a retrospective questionnaire which constituted an "epidemiological survey." Over a 3-month period, at 300 randomly selected retail general nutrition stores, self-addressed reply post card questionnaires were distributed to purchasers of lysine. Individuals with herpes infection who wished to participate in a medical survey were asked to return the postcard. Eventually, 4,000 questionnaires were sent out, with 1,543 respondents (38 percent); 1,043 (67 percent) were female and 500 (33 percent) were male. Data gathered from the questionnaires described the survey population, types of herpes, frequency of attacks, effect of other forms of therapy tried, and the effect of lysine on herpes infection. Fifty-four percent of the survey population reported that they had been treated for herpes by a physician. Of these, 16 percent reported that cultures had been obtained with 72 percent of the cultures giving positive results. The most frequent diagnoses reported were: (1) cold sores (50 percent), (2) cold sores and canker sores (17 percent), (3) genital herpes (11 percent), (4) canker sores alone (11 percent), and (5) shingles and various combinations of herpes (less than 10 percent of the subjects). Frequency of infection in subjects with cold sores was reported as four or less times a year in 47 percent of the subjects, five to eight times per year in 37 percent, and more than eight times per year in 16 percent. Ten percent of the subjects showed healing in 5 days when they were untreated compared to 73 percent who showed healing in the same period when they were treated. The percentage of subjects with severe symptoms decreased from 59 percent to 7 percent with lysine, subjects with moderate symptoms increased from 18 percent without treatment to 27 percent with treatment. Those with mild symptoms increased from 3 percent without therapy to 65 percent with lysine treatment, and subjects with intolerable symptoms decreased from 20 percent without treatment to 1 percent with treatment. During the period of treatment with lysine, recurrence was reportedly prevented in 35 percent, decreased in 49 percent, and was unchanged in 16 percent of the total subject population. Severity of symptoms, time required for healing, and frequency of recurrences were all reported as decreased in subjects who supplemented their diets with lysine.

The usual dosage of lysine reported by the respondents for this study was three tablets (936 mg/day). Subjects with cold sores reportedly averaged 2 to 3 lysine tablets (780 mg/day).

The authors noted that prior to the time of their publication no extensive double-blind study had been published testing the therapeutic value of lysine for the treatment of herpes infection. They concluded that the results of this survey demonstrated sufficient potential to encourage more definitive studies on the efficacy of supplemental lysine for the treatment of herpes viral infections.

The agency finds that this study does not establish effectiveness for the following reasons: (1) it was a retrospective, epidemiological survey, based on responses to a questionnaire and was not a double-blind, placebo-controlled, or prospective clinical trial; (2) because the study did not include subjects treated with a placebo, the study objectives could not be achieved; (3) there was no particular setting at which the subjects were treated (only 54 percent of the population stated that "at some time" they had been treated for herpes by a physician); (4) the diagnoses were varied for the study population and included cold sores, cold sores and canker sores, canker sores alone, genital herpes, shingles, and various combinations of herpes (there should have been a uniform population of subjects with fever blisters and cold sores only for the indication desired in this rulemaking); (5) the dosages used by the participants in this study varied: 3 tablets of lysine (936 mg/day) was the usual dosage, while subjects with cold sores reported an average dosage of 2 to 3 lysine tablets (780 mg/day); (6) none of the study participants was examined by the investigators for measurements of lesion size, or for the presence of vesicles or crusting; (7) admissibility

and exclusion criteria which might influence the response of the subject are not mentioned, e.g., good health, hypersensitivity history, concomitant medication, skin creams, or food products (e.g., milk products); and (8) study subjects should be able to adhere to a study protocol (e.g., take the drug and report daily for examination as required by the protocol). Certain variables should be considered in the pre-episode period: the distance of the subject from the clinical facility and the person's ability to come to the facility on a daily basis during an episode of a fever blister should be determined at this time.

Because of these problems, this study cannot be used to demonstrate lysine's effectiveness in relieving the discomfort of fever blisters or cold sores.

DiGiovanna and Blank (Ref. 7) conducted a randomized, placebo-controlled, double-blind study to determine whether lysine can modify or prevent clinical recurrences of *herpes simplex* virus infections. There were 21 subjects (10 lysine, 10 placebo, and 1 untreated due to spontaneous remission and failure to have further episodes of *herpes simplex* virus infection during the study). Subjects enrolled in this study were volunteers in good health with a history of herpes simplex infections recurring at least every 6 weeks and without previous therapy with lysine. After the diagnosis of herpes simplex was made based on clinical examination by one of the investigators and a positive Tzanck smear for abnormal cytologic findings was obtained, the subjects were randomly assigned in a double-blind fashion to either the placebo or lysine treatment group. Treatment consisted of 400 mg lysine oral capsules or placebo (lactose) capsules given three times daily for 4 to 5 months. Patients were given a 1-month supply of capsules on admission to the study. The instructions given at that time were that the capsules should only be taken when prodromal symptoms or a lesion appeared, and the medication should be continued for the duration of the study. Subjects were instructed to keep records of the date of onset of the prodrome, date of appearance of the first visible lesion, the number of individual lesions (single vesicles or papules), and the date of healing (day when the crust came off without bleeding or reforming). The subjects were to bring this information with them for review at the time of their monthly medical visits. At this time, they were given another month's supply of medication. During this study, limitation of foods high in arginine (seeds, nuts, chocolate, etc.) was advised.

In both groups, the subjects had lesions more than 40 percent of the time. This was believed to be affected by the admission criteria. There was no substantial difference in the frequency or duration of episodes and no difference in the number of lesions per episode between the two groups.

The investigators concluded that there was no significant difference between the lysine and placebo groups in episode frequency, duration, or severity. They were unable to substantiate any statistically significant effect of lysine in the treatment or prophylaxis of recurrent *herpes simplex* virus infection. They felt that this conclusion was valid despite the small number of subjects. The agency concurs that the results do not support effectiveness.

McCune, et al. (Ref. 8) studied the effect of oral lysine treatment on the severity, duration, and recurrence of symptoms and lesions in nonimmunocompromised subjects with *herpes simplex* virus infection. This was a prospective, randomized, double-blind, placebo-controlled crossover study with 41 evaluable subjects. In contrast to a number of other studies, the subjects in this study were diagnosed with culture proven *herpes simplex* virus infection at the time when they were enrolled in the study, but were not differentiated as Type 1 or Type 2 by viral subtyping. The subjects were in general good health except for their history of recurrent *herpes simplex* virus infection with at least 3 episodes in the preceding 6 months.

Each subject was seen by one investigator on entry into the study and at 12, 24, 36, and 48 weeks of treatment. A questionnaire was completed by each subject at each visit and reviewed by the investigator. The protocol recommended a dietary limitation of foods high in arginine content (peas, cereals, peanuts, cashews, cola drinks, beer (barley), and chocolate). Foods high in lysine content were encouraged (dairy products, milk, potatoes, Brewer's yeast). Subjects received either two or four 312 mg lysine tablets.

In 98 percent of the subjects, complete healing (time to loss of crust) of *herpes simplex* virus infection occurred within 2 weeks after the onset of the acute episode, and 71 percent noted healing in less than 9 days. Decreased recurrence rate occurred in nonimmunocompromised subjects treated with oral lysine tablets—four 312 mg tablets/day. A dose of 624 mg/day (one 312 mg tablet twice daily) was noted as not effective.

The agency believes that the data show that lysine may be capable of decreasing the severity of symptoms associated with *herpes simplex* virus recurrences; however, neither dosage shortened healing time when compared with placebo.

Because animal models have shown that oral lysine can alter intracellular sodium and potassium levels without detectable serum changes, serum sodium and chloride levels were checked in each subject at baseline examination and at each 12-week recheck examination. No subject was on supplemental oral potassium treatment or receiving any other medication which could change the serum levels of these electrolytes. No abnormalities were detected at baseline or during followup, and there were no complaints of weakness, ataxia, or muscle tremors.

A major deficiency of this study was the failure to have the subjects come in for daily evaluation for the first 8 days or at some specified time during the first 8 days after the onset of the fever blister. The guidelines recommended by the Panel stress this requirement and note that one of the criteria for admissibility and exclusion is that the subjects should be able to comprehend instructions and adhere to the study protocol (e.g., take the drug and report daily for examination as required).

The Panel's guidelines also restrict the use of other medications, skin creams, or food products (e.g., milk products) that might influence the response of the subject in the study. In this study, dairy products were encouraged as foods that were high in lysine content, and foods high in arginine content were discouraged.

The data concerning the duration of fever blisters and the duration of symptoms were not given in actual number of days, but were recorded as either healing in or lasting for more than 5 days.

Information was collected by questionnaires which the subjects completed at each visit to the investigator. These subjects were seen by the investigator on one pretreatment visit, and then at 3-month intervals at 12, 24, 36, and 48 weeks. The agency believes that information collected at these protracted intervals will not be as accurate as information collected daily, or at much more frequent periods. Based on these deficiencies, this study cannot be used to demonstrate lysine's effectiveness in relieving the discomfort of fever blisters and cold sores.

Miller and Foulke (Ref. 9) reviewed studies concerned with the roles of arginine and lysine in *herpes simplex*

virus replication and the mechanisms by which lysine seems to antagonize arginine. The authors reached the following conclusions: (1) treatment of *herpes simplex* virus infections should involve curtailment of arginine intake and increased lysine intake; (2) the ratio of lysine to arginine in a person's diet is a critical factor in prevention of recurrent *herpes simplex* virus infection. Tables are given listing the lysine/arginine ratio for foods high in lysine (milk, fish, chicken, beef, pork, Brewer's yeast, soybeans, and legumes) and for foods high in arginine (nuts, chocolate, popcorn, jello, gelatin, brown sugar, raisins, seeds, whole wheat bread); (3) if people restrict arginine intake during lysine treatment of an active episode of *herpes simplex* virus infection, the size and the duration of lesions can be decreased; (4) lysine only suppresses virus infections, it does not cure; (5) though lysine halts herpetic replication, it has no role in the healing process; and (6) some people have controlled recurrence by merely limiting their dietary intake of foods high in arginine content.

These authors also studied nine subjects with recurrent oral *herpes simplex* virus over a period of 8 months. An arginine-restricted diet was prescribed, and lysine hydrochloride 500 mg was given each day. The results reported were smaller lesions of shorter duration (2 to 5 days versus 7 to 10 days in the past). The authors concluded that further clinical studies are needed, including double-blind placebo-controlled studies with and without arginine limitation.

The agency finds that this study cannot be used to demonstrate lysine's effectiveness in relieving discomfort of fever blisters and cold sores because it was not placebo-controlled.

Thein and Hurt (Ref. 10) conducted a randomized, double-blind, placebo-controlled, crossover study of 26 subjects (3 male and 23 female), aged 8 to 50 years (median age 29 years), to investigate why people who have circulating antibodies to *herpes simplex* virus 1 do not suffer from recurrent lesions. They examined the efficacy of long-term prophylactic lysine supplementation, with dietary arginine reduction, and the relationship of serum amino acid concentrations to the frequency of herpetic lesions. The subjects were divided into two groups (A–15 subjects and B–11 subjects) and given either lysine 1,000 mg or placebo daily for 6 months. The subjects were then crossed over to the opposite treatment for another 6 months. The criteria for acceptance into this study required subjects to be healthy except for a history of at least three episodes of circumoral herpes lesions in the preceding year. A baseline history, physical examination, data concerning herpetic lesion history, and information concerning dietary habits were obtained. Blood samples were obtained pretreatment, and at the 6-month and 12-month visits. Journals were distributed at the pretreatment and 6-month visits for recording of information pertinent to herpetic episodes throughout the study. Each participant was given a 6-month supply of the active drug (500 mg lysine tablets) or placebo. The dosage was two tablets each morning before breakfast.

After the study began, each participant was to contact the authors at the next appearance of a lesion, in order to permit a positive diagnosis of recurrent herpes simplex labialis. After 52 weeks, the study was terminated. All previously obtained and frozen serum samples were analyzed for levels of lysine and arginine, a lysine:arginine ratio was computed, and the significance between sample means was determined.

The two test groups were rated as comparable during the first 6-month period with regard to recurrences. The investigators concluded that the frequency of recurrences of herpetic lesions appeared to correlate with the serum levels of lysine. Those with elevated serum levels had fewer recurrences than those with serum levels less than 165 nanomols per milliliter (nmols/mL).

The agency notes that the study results showed that, during the first 6 months of the study, the subjects initially given placebo (Group B) showed a steadily rising increase in serum lysine concentration which nearly equalled the increase demonstrated by the subjects who were receiving lysine supplementation (Group A). When the Group B subjects were given lysine for the second 6-month period of the study, their serum lysine levels continued to increase at an even more rapid rate. The lysine-arginine concentration ratio also showed a consistent increase for both Groups A and B, with Group B exceeding Group A for about the last one-third of the first 6 months, and continuing to increase during the second 6 months, whereas the Group A subjects showed a decrease in this ratio when they were started on the placebo portion of the study for the second 6-month period. In this study, dietary arginine restriction was recommended. The role of diet in these findings cannot be assessed because dietary intake is not explicitly itemized. This is the only study submitted which measured serum for lysine and arginine concentrations. The agency believes it would be necessary to have some replication of these findings in order to consider the results conclusive.

Simon, Van Melle, and Ramelet (Ref. 11) described a randomized, double-blind study comparing episodes of herpes simplex labialis or herpes simplex genitalis in 31 subjects treated with either lysine or mannitol capsules (250 mg/capsule). For inclusion in this study, subjects were required to have a history of at least 4 (average was 9.7) annual episodes of herpes simplex labialis or genitalis infections. After the initial visit, at which time the treatment regimen was randomly assigned, the subjects were seen at 3 and 6 months. In the interim periods, they recorded the severity and duration of each recurrence.

The dosage used for the first trimester was 1,000 mg daily. During the second trimester, subjects were given 250 mg each morning and 500 mg at night for a total dosage of 750 mg each day.

The 15 placebo subjects were reported to have approximately a 25 percent reduction in the expected number of recurrences during both trimesters of treatment. The 16 subjects in the lysine group, after correction for placebo effect, were reported to experience a 47 percent reduction in recurrences during the first trimester, but during the second trimester showed a less beneficial effect than was noted for the placebo subjects.

The authors concluded that there was a dose-related effect with lysine treatment based on the differences between the first and second trimester results. The authors stated that further studies are needed at doses of more than 1,000 mg/day before dismissing lysine treatment in the prophylaxis of recurrent *herpes simplex* infection.

Walsh, et al. (Refs. 12 and 36) conducted a double-blind, placebo-controlled, randomized study over a 6-month period of 114 subjects (29 male and 85 female) who had at least two episodes of *herpes simplex* virus infection in the 6 months preceding the study period. The subjects were randomly assigned to a lysine or placebo group.

Of the evaluable subjects, 27 (6 male and 21 female) received lysine (1,000 mg three times a day) and 25 (6 male and 19 female) received placebo. The subjects were examined pre-treatment, at 3 months, and at 6 months at the end of the trial. On the initial visit, the participating physician gave the subjects a 6-month supply of tablets with instructions to take two tablets three

times a day with meals. The subjects were also advised to avoid foods containing large amounts of arginine such as nuts, chocolate, and gelatin. Each subject was to record the occurrence, severity, and duration of herpes attacks for the 6-month study period.

The participating physicians completed followup forms at 3 and 6 months. The information included subject compliance, number of *herpes simplex* virus attacks, severity of attacks, healing time, symptoms, and the subjects' perceived effectiveness of the treatment.

The investigators evaluated results for expected outcomes based on the subjects' recall of their herpes simplex virus attacks for the 6 months preceding the study as well as the actual outcomes for this study. Subjects rated their overall experience during the trial with the 6 months just prior to the trial. The subjects who received lysine reported the treatment was either "effective" or "very effective," whereas only 28 percent of the subjects who received placebo reported lysine as "effective" or "very effective." The subjects who received lysine reported shorter healing time, fewer attacks, and milder symptoms when compared with the subjects who received placebo. No significant adverse effects were reported.

The agency finds a number of deficiencies with this study: (1) lack of information concerning the qualifications of the participating physicians or their study settings; (2) the dosage of lysine used in this study is much higher than the dosage used in any of the other studies submitted, which may explain the improved results reported; (3) none of the subjects was actually seen by the investigators; (4) subjects were advised to avoid foods known to contain large amounts of arginine (nuts, chocolate, and gelatin). The effect of diet cannot be assessed because too little information is available concerning the actual dietary intake of the participants; and (5) there should be a breakdown of the data so that the data for genital herpes would be separate from the data for oral herpes.

In summary, only seven of the studies were described as placebo-controlled, randomized, and double-blind (Refs. 3, 5, 7, 8, 10, 11, 12, and 36). The data for these studies were obtained in the following ways: (1) from questionnaires mailed to the investigators (Ref. 5), (2) from questionnaires filled out at the time of the revisit to the investigator (Refs. 3 and 8), and (3) from journals kept by the subjects and which were reviewed at the scheduled followup visits at various monthly intervals (Refs. 7, 10, 11, 12, and 36).

The results reported by these investigators can be summarized as follows: (1) there was no difference between lysine and placebo for the rate of healing and the appearance of the lesion at its worse (Refs. 3 and 5); (2) there was no significant difference in the frequency, duration, or severity of the infectious episodes when lysine and placebo results were compared (Ref. 7); (3) the recurrence rate was decreased by the 1,248 mg/day dosage of lysine, but not by the 624 mg/day dosage; neither dosage shortened healing time when compared with placebo; lysine treatment was recommended with reservation due to the small sample size and because of variable factors such as spontaneous cures and placebo effect (Ref. 8); (4) the frequency of occurrences correlated with the serum levels of lysine; lesions were suppressed when lysine was present at levels equal to or greater than 165 nmols/mL (Ref. 10); (5) there was a dose-related effect for recurrences; no effect was seen at 750 mg/day but recurrences were decreased at the dosage of 1,000 mg/day (Ref. 11); and (6) lysine was noted to reduce the frequency, increase the healing rate, and decrease the severity of symptoms (Refs. 12 and 36).

Three of these studies reported no significant difference between placebo and lysine, two reported a dose-related effect, one reported a decrease in the frequency of recurrences when serum levels for lysine were at least 165 nmols/mL, and only one (Refs. 12 and 36) reported unequivocal superiority of lysine treatment when compared with placebo.

The agency concludes that those studies that are not placebo-controlled do not meet the basic agency criteria that require the drug under investigation be shown to be more effective than placebo in relieving the discomfort, shortening the duration, or decreasing the frequency of fever blisters or cold sores. Study protocols should require the study subjects to return to the investigator or an assistant for examination of the herpes lesions within 24 hours after the lesion first occurs, and for interview and examination daily for the 8-day period after onset of the lesion. At each of these visits, the subjects should have lesions examined for vesicles, dry crust, and size. They should also be evaluated for discomfort on a preselected scale for the preceding 24 hours. When claims are to be made for decreased duration of lesions, the number of days must be given from onset of the lesion(s) to the time of healing (crust falling off). When claims are to be made for decreased frequency of lesions, the number of days must be given from the time of healing of the lesion(s) until the time of recurrence of lesions. Because so many investigators stress the importance of diet as a source of lysine and arginine, diet as a variable needs to be prescribed and monitored in a manner which would create greater consistency from one study to another. In order to compare studies with one another, the dosages of lysine should be comparable. Subjects with genital herpes should be evaluated separately from oral-facial herpes, and dosages should be given separately for these subjects. Genital herpes is currently not included as an acceptable claim in this OTC drug review rulemaking. Further studies are needed before evaluation can be made of the significance of serum concentrations of 165 nmols/mL of lysine as an indicator of lysine's effectiveness. Anecdotal information in the form of testimonial comments is not adequate to establish lysine's effectiveness in treatment of fever blisters. (See 21 CFR 330.10(a)(4)(ii).)

Because the agency finds all of the submitted studies are deficient in one or more essential items as discussed above, the data are not adequate for lysine to be considered generally recognized as safe and effective for OTC drug use for oral administration in the treatment of fever blisters and cold sores.

The agency's detailed comments on the data are on file in the Dockets Management Branch (Ref. 37).

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(13) Table: Summary of Studies in References 1 through 12, in Tab 16, Comment C00004, Docket No. 81N–0060, Dockets Management Branch.

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(16) Summary of the October 14, 1985 Symposium on L-Lysine for the Treatment of Herpes Infections, in Tab 18, Comment No. C00004, Docket No. 81N–0060, Dockets Management Branch.

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(37) Letter from W. E. Gilbertson, FDA, to R. S. Griffith, coded LET4, Docket No. 81N–0060, Dockets Management Branch.

2. Two comments stated their belief that, if lysine was found safe and effective in the prophylaxis and treatment of fever blisters, there would be enough interest generated in the various viral research centers to study and evaluate lysine in more serious herpes virus infections, such as genital herpes, shingles, and infectious mononucleosis. One comment stated that lysine may have a role in anticancer therapy since arginine stimulates and lysine inhibits certain tumor viruses. The second comment described an animal study in which "tumor implants grow faster with arginine and that lysine antagonizes or prevents tumor growth." The comment added that this study should be verified because lysine may have value as adjunctive therapy in human tumors.

One of the comments suggested that lysine be evaluated as an additive to enhance the effectiveness of other antiviral agents such as acyclovir. The other comment added that lysine's role in the treatment of conditions which may be related to herpes infections, such as Bell's palsy, also warrants evaluation.

The uses of lysine in more serious herpes infections, as mentioned by the comments, are outside the scope of this rulemaking for OTC drug products used for the treatment of fever blisters. Therefore, they will not be discussed further in this document. Persons interested in studying lysine for those uses should follow the investigational new drug procedures. (See 21 CFR Part 312.)

B. Comment on Lactobacillus Acidophilus and Lactobacillus Bulgaricus

3. One comment stated that data from its clinical studies on a product containing *Lactobacillus acidophilus* and *Lactobacillus bulgaricus* failed to provide convincing evidence of efficacy (Ref. 1). Accordingly, the comment voluntarily decided to drop the claim that this product is helpful in relieving the discomfort associated with fever blisters (Ref. 2).

REFERENCES

(1) Comment No. C00003, Docket No. 81N–0060, Dockets Management Branch.

(2) Comment No. SUP1, Docket No. 81N–0060, Dockets Management Branch.

C. Comment on Labeling

4. One comment discussed suggested labeling for OTC lysine drug products. Because lysine has been classified as a nonmonograph ingredient in this final rule for OTC orally administered drug products for the treatment of fever blisters, the agency is not addressing the comment's request. Data in the form of a new drug application or a petition to establish a monograph, pursuant to 21 CFR 10.30, may be submitted to support lysine's effectiveness for the treatment of fever blisters and cold sores. Should such data demonstrate lysine's effectiveness in treating fever blisters and cold sores, the agency will then consider labeling recommendations such as those made by the comment.

II. The Agency's Final Conclusions on OTC Orally Administered Drug Products for the Treatment of Fever Blisters

At this time, there is a lack of data from adequate and well-controlled, double-blind studies to establish that lysine (lysine hydrochloride), *Lactobacillus acidophilus*, *Lactobacillus bulgaricus*, or any other ingredients are effective for oral administration to treat fever blisters. The agency has proposed the use of topically applied OTC skin protectant or external analgesic drug products as the only current effective OTC treatment for relief of discomfort of fever blisters. The agency published its notices of proposed rulemaking for those classes of OTC drug products in the **Federal Register** of January 31, 1990 (55 FR 3362 and 3370, respectively).

The agency has determined that no orally administered active ingredient has been found to be generally recognized as safe and effective for OTC use for the treatment of fever blisters. Therefore, all orally administered active ingredients for the treatment of fever blisters, including but not limited to lysine (lysine hydrochloride), *Lactobacillus acidophilus*, and *Lactobacillus bulgaricus* that were reviewed by the Panel and the agency, are considered nonmonograph ingredients and misbranded under section 502 of the act (21 U.S.C. 352) and are new drugs under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR Part 314 of the regulations is required for marketing. In appropriate circumstances, a citizen petition to establish a monograph may be submitted under 21 CFR 10.30 in lieu of an application. Any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule that is not in compliance with the regulation is subject to regulatory action.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (50 FR 25156 at 25158). The agency has examined the economic consequences of this final rule 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 final rule for OTC orally administered drug products for the treatment of fever blisters, 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 orally administered drug products for the treatment of fever blisters is not expected to pose such an impact on small businesses because only a limited number of products are affected. 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 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. New § 310.537 is added to subpart E to read as follows:

§ 310.537 Drug products containing active ingredients offered over-the-counter (OTC) for oral administration for the treatment of fever blisters and cold sores.

(a) L-lysine (lysine, lysine hydrochloride), *Lactobacillus acidophilus*, and *Lactobacillus bulgaricus* have been present in orally administered OTC drug products to treat fever blisters and cold sores. There is a lack of adequate data to establish general recognition of the safety and effectiveness of these or any other orally administered ingredients for OTC use to treat or relieve the symptoms or discomfort of fever blisters and cold sores. Based on evidence currently available, any OTC drug product for oral administration containing ingredients offered for use in treating or relieving the symptoms or discomfort of fever blisters and cold sores cannot be generally recognized as safe and effective.

(b) Any OTC drug product for oral administration that is labeled, represented, or promoted to treat or relieve the symptoms or discomfort of fever blisters and cold sores is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act), for which an approved application under section 505 of the act and part 314 of this chapter is required for marketing. In the absence of an approved application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product for oral administration labeled, represented, or promoted for OTC use to treat or relieve the symptoms or discomfort of fever blisters and cold sores is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

(d) After December 30, 1992, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

Dated: June 17, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–15301 Filed 6–29–92; 8:45 am]

BILLING CODE 4160–01–F

federal register

Tuesday
June 30, 1992

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; Final Monograph for Expectorant Drug Products; Updating and Technical Changes; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Part 341

[Docket No. 76N-052E]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Final Monograph for Expectorant Drug Products; Updating and Technical Changes

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the regulations for over-the-counter (OTC) expectorant drug products that will update these regulations by making noncontroversial technical changes that clarify use of the terms "mucus" and "sputum" in the labeling of OTC antitussive and expectorant drug products. The final rule also establishes a warning statement for OTC expectorant drug products intended solely for use in children under 12 years of age, should manufacturers decide to market such products. This warning is consistent with similar warnings in the labeling of OTC antitussive and other cold, cough, allergy, bronchodilator, and antiasthmatic drug products. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Effective July 30, 1992; written comments by August 31, 1992; written comments on the agency's economic impact determination by August 31, 1992.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 28, 1989 (54 FR 8494), FDA issued a final rule for OTC expectorant drug products (21 CFR part 341) that specifies the following indication and warning statements for these drug products under § 341.78(b) and (c)(1), respectively. "Helps loosen phlegm (sputum) and thin bronchial secretions to" (select one or more of the following: "rid the bronchial passageways of bothersome mucus," "drain bronchial tubes," and "make coughs more productive,") and "Do not take this product for persistent or chronic cough such as occurs with smoking, asthma, or where cough is accompanied by excessive phlegm (sputum) unless directed by a doctor."

In the **Federal Register** of August 12, 1987 (52 FR 30042), FDA issued a final rule for OTC antitussive drug products (21 CFR part 341) that specifies the following warning statements for these drug products under § 341.74(c)(2) and (c)(3), respectively: "*For oral and topical antitussives labeled for adults or for adults and children under 12 years of age.* 'Do not take this product for persistent or chronic cough such as occurs with smoking, asthma, or emphysema, or if cough is accompanied by excessive phlegm (mucus) unless directed by a doctor.'" and "*For oral and topical antitussives labeled only for children under 12 years of age.* 'Do not give this product for persistent or chronic cough such as occurs with asthma or if cough is accompanied by excessive phlegm (mucus) unless directed by a doctor.'"

The indication and warning statements for expectorant drug products include the parenthetical term "(sputum)," while the parenthetical term "(mucus)" is used for antitussive drug products. This final rule provides consistency in the labeling of these drug classes by revising the expectorant labeling to include the parenthetical term "(mucus)" in place of the parenthetical term "(sputum)." This change will facilitate the labeling of combination drug products containing an expectorant and an antitussive ingredient and provide more consistent labeling for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products.

In addition, this final rule amends the expectorant final monograph to include a new warning identical to the warning described above for drug products labeled only for use by children under 12 years of age that is included in the antitussive portion of the cold, cough, allergy, bronchodilator, and antiasthmatic monograph. Although the expectorant final monograph includes warnings for products used by adults only or by adults and children, it does not include a specific warning for drug products labeled only for use by children under 12 years of age. Because expectorant drug products could be marketed with labeling for use only by children under 12 years of age, the agency believes that the expectorant final monograph should include a children's warning that is identical to the warning for OTC antitussive drug products.

This final rule provides consistency between the expectorant and antitussive final monographs by revising the terminology used in the indications and warning statements for expectorant drug products to make them consistent with the terminology used in the warnings for antitussive drug products and by adding a children's warning to the expectorant final monograph. This warning appears in § 341.78(c)(3) as follows: "*For expectorant drug products labeled only for children under 12 years of age.* 'Do not give this product for persistent or chronic cough such as occurs with asthma or if cough is accompanied by excessive phlegm (mucus) unless directed by a doctor.'" In addition, the agency is redesignating § 341.78(c)(1) as § 341.78(c)(2) and is adding the following heading to § 341.78(c)(2) to differentiate the warning in this paragraph from the new warning added in § 341.78(c)(3): "*For expectorant drug products labeled for adults or for adults and children under 12 years of age.*" Finally, the agency is redesignating § 341.78(c)(2) as § 341.78(c)(1).

These labeling revisions represent minor clarifying changes that do not change the substance of the labeling requirements contained in the final regulations. Therefore, the agency has determined that these labeling revisions do not need to be implemented on the effective date of this final rule. Manufacturers may implement the revisions at the next printing of labels for affected products.

The agency has examined the economic consequences of this final rule 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 final rule amending the final monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic 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 expectorant drug products is not expected to pose such an impact on small business. The only requirement is minor labeling revisions, and the agency is allowing these to be made at the manufacturer's next printing of labels for affected products. 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.

As noted previously, this final rule institutes changes that are of a nonsubstantive nature. Because the revisions are not controversial and because, when effective, they provide clarification of a final OTC drug monograph, FDA finds that the usual notice and comment procedures are unnecessary. The final rule, therefore, shall become effective July 30, 1992. However, interested persons may, on or before August 31, 1992, submit written comments on this final rule, including the agency's economic impact determination, to the Dockets Management Branch (address above). Three 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 Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 341

Expectorant 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 341 is 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:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 341.78 is amended by revising the first sentence in paragraph (b), by redesignating existing paragraph (c)(1) as paragraph (c)(2) and revising it, by redesignating existing paragraph (c)(2) as paragraph (c)(1), and by adding new paragraph (c)(3) to read as follows:

§ 341.78 Labeling of expectorant drug products.

* * * * *

(b) *Indications.* The labeling of the product states, under the heading "Indications," the following: "Helps loosen phlegm (mucus) and thin bronchial secretions to" (select one or more of the following: "rid the bronchial passageways of bothersome mucus," "drain bronchial tubes," and "make coughs more productive"). * * *

(c) * * *

(2) *For expectorant drug products labeled for adults or for adults and children under 12 years of age.* "Do not take this product for persistent or chronic cough such as occurs with smoking, asthma, chronic bronchitis, or emphysema, or where cough is accompanied by excessive phlegm (mucus) unless directed by a doctor."

(3) *For expectorant drug products labeled only for children under 12 years of age.* "Do not give this product for persistent or chronic cough such as occurs with asthma or if cough is accompanied by excessive phlegm (mucus) unless directed by a doctor."

* * * * *

Dated: June 17, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–15318 Filed 6–29–92; 8:45 am]

BILLING CODE 4160–01–F

federal register

Tuesday
June 30, 1992

Part VIII

Department of Education

34 CFR Part 303

Early Intervention Program for Infants and Toddlers With Disabilities; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 303

RIN 1820-AA97

Early Intervention Program for Infants and Toddlers With Disabilities

AGENCY: Department of Education.

ACTION: Extension of comment period.

SUMMARY: On May 1, 1992, the Department of Education published in the **Federal Register** a notice of proposed rulemaking (NPRM) for the Early Intervention Program for Infants and Toddlers with Disabilities. The purpose of the NPRM was to implement changes to the Early Intervention Program resulting from the Individuals with Disabilities Education Act Amendments of 1991. The NPRM provided for a 60-day comment period ending June 30, 1992 (57 FR 18986).

In response to requests received, the Secretary extends the comment period to July 31, 1992. The extension applies to all proposed regulations except § 303.124.

DATES: Comments must be received on or before July 31, 1992, except for § 303.124 for which the comment period ends June 30, 1992.

ADDRESSES: All comments concerning the proposed regulations should be addressed to James Hamilton, U.S. Department of Education, 400 Maryland Avenue SW., room 4611, Switzer Building, Washington, DC 20202-2732.

A copy of any comments that concern information collection requirements should also be sent to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

FOR FURTHER INFORMATION CONTACT: Peggy Cvach or Bobbi Stettner-Eaton, U.S. Department of Education, 400 Maryland Avenue SW., rooms 4609 and 4618, respectively, Switzer Building, Washington, DC 20202-2732. Telephone (202) 205-9807 and (202) 205-8828, respectively. Individuals with hearing impairments or deafness may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Dated: June 26, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-15425 Filed 6-29-92; 8:45 am]

BILLING CODE 4000-01-M

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.J. Res. 517/P.L. 102–306

To provide for a settlement of the railroad labor-management disputes between certain railroads and certain of their employees. (June 26, 1992; 106 Stat. 260; 4 pages)
Price: $1.00

Last List June 29, 1992

Public Laws

102d Congress, 2nd Session, 1992

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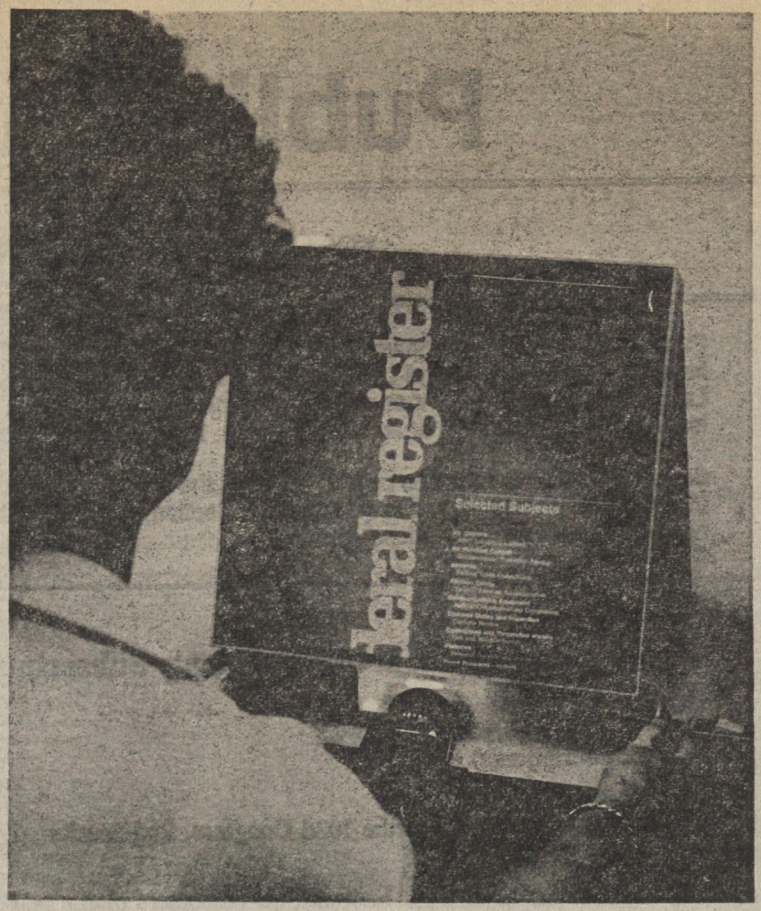

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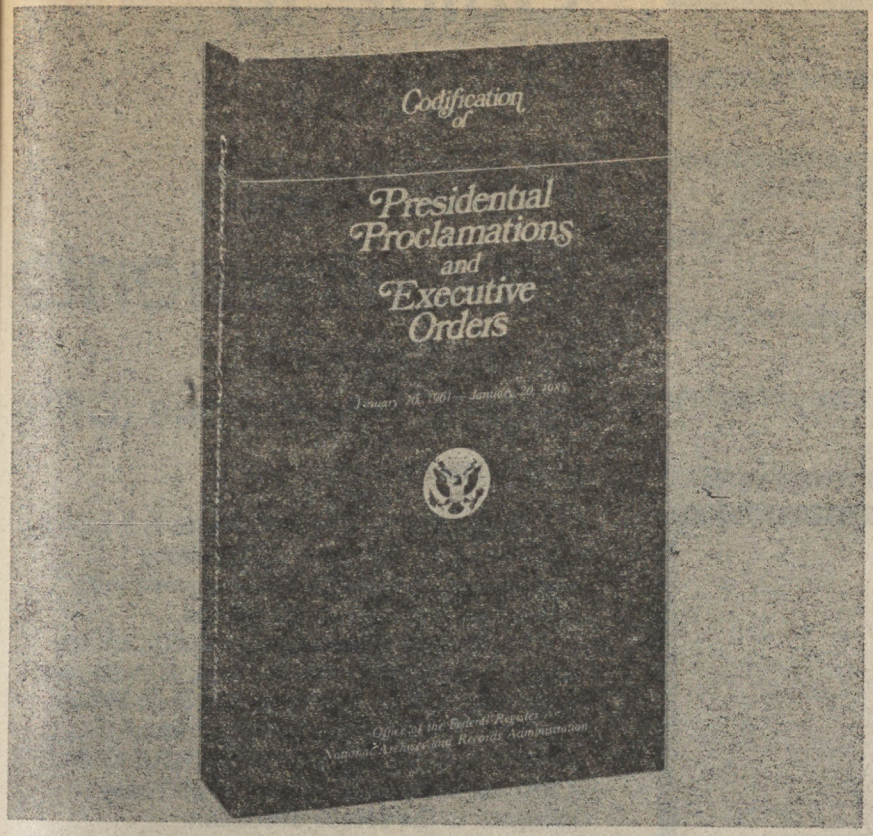

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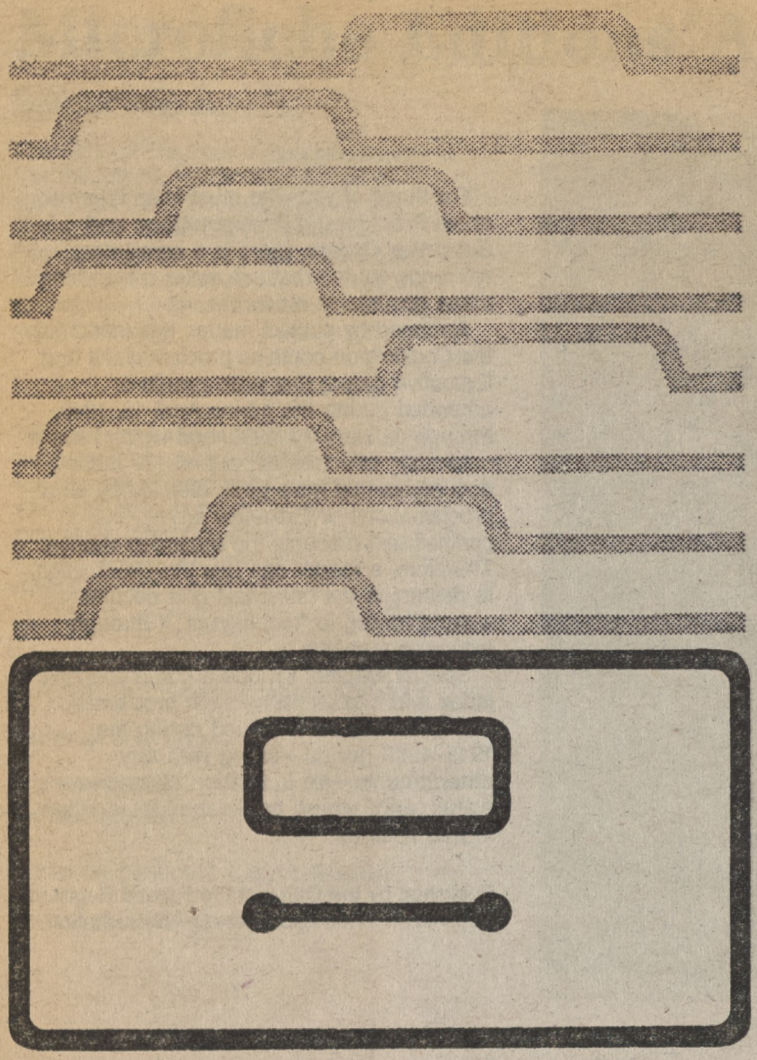

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