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Presidential Documents

Title 3—

The President

Proclamation 6494 of October 16, 1992

Country Music Month, 1992

By the President of the United States of America

A Proclamation

While our flag is the greatest tangible symbol of the United States—one recognized and admired around the world—country and western music might well be described as America's signature in song.

With nothing fancy, yet with every bit of pride befitting a great land such as ours, country and western music celebrates the things that our Nation has always valued most: faith, family, and freedom. It is the sound of hardworking, God-fearing men and women who cherish home and country and who would never turn their backs on a true friend. It is also the sound of a people who know how to kick up their feet and enjoy some good-natured fun and relaxation at the end of an honest day's labor.

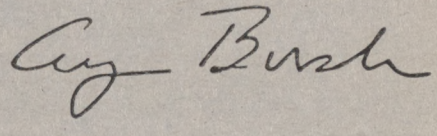
While country music celebrates all the good things in life, it does not overlook life's various disappointments and struggles. A frequent listener is just as likely to be reminded of broken hearts and heroes lost in battle as the beauty of clear blue sky or the laughter of friends and loved ones. From the sad strains of a traditional ballad to the stirring sound of bluegrass and honky-tonk, country music is honest, straight-forward music that recalls the full range of human experience. Such sincerity and scope may well be the reason why "America's music" is so very popular among millions of people around the globe.

This month we tip our hats to the many talented composers, lyricists, and performers who bring country and western music to our ears. These artists carry on a great tradition of musical achievement, and we are very proud of their outstanding work. Like countless other products "Made in the U.S.A," country music reflects the best in American creativity and craftsmanship.

The Congress, by House Joint Resolution 520, has designated October 1992 as "Country Music Month" and has requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 1992 as Country Music Month. I invite all Americans to observe this month with appropriate programs, ceremonies, and activities.

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



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Rules and Regulations

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-58-AD; Amendment 39-8390; AD 92-22-04]

Airworthiness Directives; British Aerospace Model DH/HS/BH 125 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model DH/HS/BH 125 series airplanes, that requires a one-time inspection to detect misalignment of fuel feed pipe joints, and realignment, if necessary. This amendment is prompted by an incident in which the tailcone inside area of a Model BAe 125-800A series airplane was soaked with fuel that leaked out of fuel feed pipe joints during a high altitude transatlantic flight. The actions specified by this AD are intended to prevent an in-flight fire hazard in the rear equipment bay.

DATES: Effective November 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to British Aerospace Model DH/HS/BH/BAe 125 series airplanes, excluding Model BAe 125-1000A series airplanes, was published in the Federal Register on June 5, 1992 (57 FR 23973). That action proposed to require a one-time inspection to detect misalignment of fuel feed pipe joints, and realignment, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Another commenter requests that the proposed rule amend, not supersede, the existing AD. The commenter states that the supersedure would not serve any useful purpose, since no additional work is required for airplanes that have already been modified in accordance with the existing AD. Supersedure of the existing rule will require operators now in compliance with AD 92-01-09 to change their paperwork to reflect the new AD number. The FAA concurs that, in this case, a different approach may be warranted. The FAA's normal policy in this regard is that, when an AD requires a substantive change such as a change in its applicability, the "old" AD is superseded by being removed from the system and a new AD added. However, in consideration of the entire fleet size that would be affected by the supersedure action, as proposed, and the consequent workload associated with revising maintenance record entries, the FAA has determined that a less burdensome approach is to issue a separate AD applicable only to the 149 airplanes that would have been added to the applicability of the existing AD. Therefore, the final rule has been revised to reflect that this action does not supersede AD 92-01-09; airplanes listed in the applicability of AD 92-01-09 continue to be required to comply with the requirements of that AD. This new final rule is a separate AD action, and is applicable only to Model DH/HS/BH 125 series airplanes, excluding all turbo fan engine powered Model 125-600A, 125-700A, 125-800A, and 125-1000A series airplanes, as listed in British Aerospace Service Bulletin SB 28-87, dated December 31, 1991.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 149 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $65,560, or $440 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 23; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

92-22-04. British Aerospace: Amendment 39-8390. Docket 92-NM-58-AD.

Applicability: Model DH/HS/BH 125 series airplanes, excluding all turbo fan engine-powered Model 125-600A, 125-700A, 125-800A, and 125-1000A series airplanes; as listed in British Aerospace Service Bulletin SB 28-87, dated December 31, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent an in-flight fire hazard in the rear equipment bay, accomplish the following:

(a) Within 6 months after the effective date of this AD, accomplish a visual inspection for proper alignment of fuel feed pipes at pipe joint couplings, in accordance with British Aerospace Service Bulletin SB 28-87, dated December 31, 1991.

(1) If misalignment is detected outside the specifications cited in the service bulletin, prior to further flight, correct the alignment by installing an "O" ring modification and fuel pipe clamping modification, in accordance with the service bulletin.

(2) If misalignment is not detected outside the specifications cited in the service bulletin, no further action is necessary.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

(d) The inspection and modification shall be done in accordance with British Aerospace Service Bulletin SB 28-87, dated December 31, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 24, 1992.

Issued in Renton, Washington, on September 30, 1992.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-25354 Filed 10-19-92; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-51-AD; Amendment 39-8381; AD 92-21-01]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, that requires visual inspections to detect voids and excessive thickness of the polymer coating applied to the structure surrounding the wing center section fuel tank; and repair of any discrepancies found. This amendment is prompted by reports of voids found in the polymer coating that is applied to the structure surrounding the center section fuel tank. The actions specified by this AD are intended to prevent fuel seepage into a passenger compartment, in the event of a wing center section fuel tank leak, which could result in fire or explosion.

DATES: Effective November 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes was published in the Federal Register on July 7, 1992 (57 FR 29849). That action proposed to require visual inspections to detect voids and excessive thickness of the polymer coating applied to the structure surrounding the wing center section fuel tank; and repair of any discrepancies found.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 43 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $165,550, or $2,365 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not

have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

92-21-01. British Aerospace: Amendment 39-8381. Docket 92-NM-51-AD.

Applicability: Model BAe 146-100A, -200A, and -300A series airplanes; as listed in British Aerospace BAe 146 Inspection Service Bulletin SB 28-18, dated March 12, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel seepage into a passenger compartment, in the event of a wing center section fuel tank leak, which could result in fire or explosion, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a visual inspection of the polymer coating applied to frames 26 and 29 in the center section of the wing, to detect voids and excessive thickness of the polymer coating that will not permit a visual inspection of the underlying structure, in accordance with British Aerospace BAe 146 Inspection Service Bulletin SB 28-18, dated March 12, 1991.

(b) If no voids are found and if the polymer coating is of sufficient thickness so as to allow a visual inspection of underlying structure, no further action is necessary.

(c) If any voids are found, or if the polymer coating is found to be excessively thick: Within 12 months after the completion of the inspection required by paragraph (a) of this AD, perform a visual inspection of the polymer coating applied to the wing center section fuel tank and to frames 26 and 29, to detect additional voids or excessive thickness, in accordance with British Aerospace BAe 146 Inspection Service Bulletin SB 28-18, dated March 12, 1991.

(1) Prior to further flight, repair all voids detected, in accordance with paragraph 2.B.(3) of the Service Bulletin.

(2) Prior to further flight, repair all excessively thick polymer coating areas detected, in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

(f) The inspections shall be done in accordance with British Aerospace BAe 146 Inspection Service Bulletin SB 28-18, dated March 12, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 24, 1992.

Issued in Renton, Washington, on September 25, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-25359 Filed 10-19-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-18-AD; Amendment 39-8384; AD 92-21-04]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that requires modification of the main deck cargo door lock, viewing windows, and warning indication system. This amendment is prompted by a report that a cargo door opened in flight, resulting in an explosive decompression of the airplane. The actions specified by this AD are intended to prevent a cargo door from opening in flight, which could result in rapid decompression of the airplane.

DATES: Effective November 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2783; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes was published in the **Federal Register** on July 23, 1992 (57 FR 32744). That action proposed to require modification of the main deck cargo door lock, viewing windows, and warning indication system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 57 Boeing Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 52 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $519 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,758. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

92-21-04. Boeing: Amendment 39-8384. Docket 92-NM-16-AD.

Applicability: Model 737 series airplanes; as listed in Boeing Service Bulletin 737-52-1060, dated June 11, 1976; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a cargo door from opening in flight, which could result in rapid decompression of the airplane, accomplish the following:

(a) Within 2 years after the effective date of this AD, modify and test the main deck cargo door lock, viewing windows, and warning indication system, in accordance with Section III of Boeing Service Bulletin 737-52-1060, dated June 11, 1976.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(d) The modification and test shall be done in accordance with of Boeing Service Bulletin 737-52-1060, dated June 11, 1976. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 24, 1992.

Issued in Renton, Washington, on September 25, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-25360 Filed 10-19-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-83-AD; Amendment 39-8383; AD 92-21-03]

Airworthiness Directives; Fokker Model F28 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 series airplanes, that requires installation of an improved top of the center wing-to-fuselage skin connection. This amendment is prompted by several reports of fatigue cracks found in the connection angles that are part of the top of the center wing-to-fuselage skin connection. The actions specified by this AD are intended to prevent failure of the wing-to-fuselage connection.

DATES: Effective on November 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 series airplanes was published in the Federal Register on July 10, 1992 (57 FR 30695). That action proposed to require installation of an improved top of the center wing-to-fuselage skin connection.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 450 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $3,600 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,247,400. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

92-21-03. Fokker: Amendment 39-8383. Docket 92-NM-83-AD.

Applicability: Model F28 series airplanes; serial numbers 11003 through 11161, inclusive, 11991, and 11992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent potential failure of the wing-to-fuselage connection, accomplish the following:

(a) Prior to the accumulation of 30,000 landings, or prior to June 1, 1997, whichever occurs later, install improved connection angles with reinforcement angles, in accordance with Fokker Service Bulletin F28/53-101, dated May 31, 1991.

(b) Accomplishment of the installation required by paragraph (a) of this AD constitutes terminating action for the inspection identified as item 53-10-14 in the Fokker F28 Structural Integrity Program (SIP), which is required by AD 89-07-16 R1, Amendment 39-6444.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

(e) The installation shall be done in accordance with Fokker Service Bulletin F28/53-101, dated May 31, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 24, 1992.

Issued in Renton, Washington, on September 25, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-25358 Filed 10-19-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-107-AD; Amendment 39-8382; AD 92-21-02]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires revisions to the FAA-approved Airplane Flight Manual (AFM) to include a minimum speed limitation and to amend weather and automatic flight control and augmentation system (AFCAS) limitations. This amendment also requires one-time inspection to determine the dimensions of the autopilot input brackets of the rudder post assembly, and replacement of incorrect brackets. This amendment is prompted by a recent report that incorrect brackets were mounted on the rudder post assembly on one of these airplanes. The actions specified by this AD are intended to prevent an incorrect rudder deflection.

DATES: Effective November 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was

published in the Federal Register on July 10, 1992 (57 FR 30693). That action proposed to require revisions to the FAA-approved Airplane Flight Manual (AFM) to include a minimum speed limitation and to amend weather and automatic flight control and augmentation system (AFCAS) limitations. That action also proposed to require a one-time inspection to determine the dimensions of the autopilot input brackets of the rudder post assembly, and replacement of incorrect brackets.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 51 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required AFM revision, and 5 work hours per airplane to accomplish the required inspection. The average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $16,830.

The total cost figure discussed above assumes that no operator has yet accomplished any of the requirements of this AD. However, a recent survey conducted of U.S. operators has revealed that, to date, the required actions already have been accomplished on 48 of the 51 affected airplanes. Therefore, the actual total cost impact of this proposed rule will be substantially less than the figure indicated above.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

92-21-02. Fokker: Amendment 39-8382. Docket 92-NM-107-AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11262 through 11267, inclusive, and 11270 through 11376, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent an incorrect rudder deflection, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) as follows. Paragraph (a)(1) of this AD may be accomplished by inserting a copy of this AD into the AFM.

(1) Add the following to § 2.04.01, Speed Limitations: "Minimum V_1 on dry or wet runway is 110 knots. Minimum V_1 on icy runway is 117 knots."

(2) Amend § 2.05.01, Weather Limitations, as follows: "Maximum allowable cross-wind component for takeoff and landing—25 knots"

(3) Amend § 2.08.01, AFCAS Limitations, as follows: "Do not engage AP while AFCAS is in takeoff mode.

Approach/Landing

In land mode (GS/LOC in FMA) disengage AP at 1,500 feet AGL and continue approach on flight director."

(b) Within 45 days after the effective date of this AD, inspect to determine the dimensions of the autopilot rudder servo input brackets of the rudder post assembly, part numbers 77938-003 and 77939-003, in accordance with Fokker Service Bulletin SBF100-027-041, dated February 24, 1992. If brackets with incorrect dimensions are found, prior to further flight, replace those brackets in accordance with the service bulletin.

(c) After accomplishment of paragraph (b) of this AD, the limitations required by paragraphs (a)(1), (a)(2), and (a)(3) of this AD may be removed from the FAA-approved Airplane Flight Manual.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

(f) The inspection and replacement shall be done in accordance with Fokker Service Bulletin SBF100-027-041, dated February 24, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 24, 1992.

Issued in Renton, Washington, on September 25, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-25356 Filed 10-19-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-94-AD; Amendment 39-8385; AD 92-21-05]

Airworthiness Directives; Garrett Model GTCP 36-280 and GTCP 36-300 Auxiliary Power Units, as Installed in, But Not Limited to, Airbus Industrie Model A320 Series Airplanes, McDonnell Douglas Model DC-9-80 Series Airplanes, and Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Garrett Model GTCP 36–280 and GTCP 36–300 auxiliary power units (APU), that requires a modification of these APU's that will ensure the retention of the APU tieshaft. This amendment is prompted by two incidents of separation of APU tieshafts. The actions specified by this AD are intended to prevent APU tieshaft separation, which could cause the tieshaft to exit the inlet plenum and puncture the titanium fire wall of the airplane.

DATES: Effective November 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Garrett Airlines Services Division, Technical Publications, Department 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–140L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5245; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Garrett Model GTCP 36–280 and GTCP 36–300 auxiliary power units (APU) was published in the **Federal Register** on July 10, 1992 (57 FR 30687). That action proposed to require a modification of these APU's that will ensure the retention of the APU tieshaft.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the rule as proposed.

Since the issuance of the notice, the FAA has been advised that Garrett Model GTCP 36–300 APU's are not installed in McDonnell Douglas Model DC–9–80 series airplanes, or in Boeing Model 737 series airplanes. The applicability statement of the final rule has been changed to remove references to these airplane models, where appropriate. (This change does not affect the economic impact of the rule, however.)

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 247 Airbus Industrie Model A320 series airplanes, 118 McDonnell Douglas Model DC–9–80 series airplanes, and 34 Boeing Model 737 series airplanes of the affected design in the worldwide fleet that may be equipped with the affected APU's. The FAA estimates that 47 Airbus Industrie Model A320 series airplanes and 118 McDonnell Douglas Model DC–9–80 series airplanes of U.S. registry will be affected by this AD. There are currently no Boeing Model 737 series airplanes of U.S. registry equipped with the affected APU's. The FAA estimates that it will take approximately 15 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts will be provided by the manufacturer at no cost to operators.

Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $136,125, or $825 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

92–21–05. Garrett Auxiliary Power Division: Amendment 39–8385. Docket 92–NM–94–AD.

Applicability: Garrett Model GTCP 36–300 auxiliary power units (APU), as installed in, but not limited to, Airbus Industrie Model A320 series airplanes; Garrett Model GTCP 36–280[D] APU's, serial numbers prior to P–80346, as installed in, but not limited to, McDonnell Douglas Model DC–9–80 series airplanes; and Garrett Model GTCP 36–280[B] APU's, serial numbers prior to P–40182, as installed in, but not limited to, Boeing Model 737 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the titanium APU fire wall due to APU tieshaft separation, which could lead to a reduction in the fire protection capability of the APU compartment, accomplish the following:

(a) For airplanes equipped with Garrett Model GTCP 36–300 APU's: Within 30 months after the effective date of this AD, modify the APU, in accordance with Garrett Service Bulletin GTCP36–49–A6642, dated May 1, 1992.

(b) For airplanes equipped with Garrett Model GTCP 36–280 APU's: Within 30 months after the effective date of this AD, modify the APU, in accordance with Garrett Service Bulletin GTCP36–49–A6653, dated May 1, 1992.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance

Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

(e) The modification shall be done in accordance with either Garrett Service Bulletin GTCP36–49–A6642, dated May 1, 1992, or Garrett Service Bulletin GTCP36–49–A6653, dated May 1, 1992, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Garrett Airlines Services Division, Technical Publications, Department 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 24, 1992.

Issued in Renton, Washington, on September 25, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–25357 Filed 10–19–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–AAL–2]

Alteration and Designation of VOR Federal Airways; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several existing VOR Federal airways and designates six new airways in the State of Alaska, to replace the alternate airway segments in the descriptions of V–321, V–438, V–444, and V–506. This action supports the FAA's agreement with the International Civil Aviation Organization (ICAO) to eliminate all alternate airway segments from the National Airspace System (NAS).

EFFECTIVE DATE: 0901 u.t.c., December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, 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) 267–9230.

SUPPLEMENTARY INFORMATION:

History

On July 31, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of several existing VOR Federal airways, and to designate six new airways to replace the alternate airway segments in the descriptions of V–321, V–438, V–444, and V–506. (57 FR 33906). 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 and the removal of Cape Newenham, AK, from V–322 because it was inadvertently added to the description, this amendment is the same as that proposed in the notice. Alaskan VOR Federal airways are published in Section 71.125 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the descriptions of several airways and designates six new airways located in the State of Alaska. This action supports the FAA's agreement with ICAO to eliminate all alternate airway segments from the NAS.

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

Alaskan VOR Federal airways, Aviation safety, Incorporation by reference.

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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 71.125 Alaskan VOR Federal Airways.

* * * * *

V–301 [New]

From Fairbanks, AK; INT Fairbanks 046° and Fort Yukon, AK, 199° radials; to Fort Yukon.

V–302 [New]

From Fairbanks, AK; INT Fairbanks 016° and Fort Yukon, AK, 229° radials; to Fort Yukon.

* * * * *

V–321 [Revised]

From Cape Newenham, AK, NDB via King Salmon, AK; to Homer, AK.

V–322 [New]

From King Salmon, AK, INT King Salmon 087° and Homer, AK 237° radials; to Homer.

* * * * *

V–438 [Revised]

From Kodiak, AK, 27 miles 12 AGL, 24 miles 35 MSL, 29 miles 55 MSL, 40 miles 12 AGL, via Homer, AK; INT Homer 027° and Anchorage, AK, 198° radials; Anchorage; Big Lake, AK; Fairbanks, AK; Fort Yukon, AK; 89 miles 12 AGL, 52 miles 95 MSL, 27 miles 75 MSL, 61 miles 12 AGL, Deadhorse, AK; to Barrow, AK.

V–439 [New]

From Kodiak, AK, 27 miles 12 AGL, 24 miles 35 MSL; INT Kodiak 358° and Homer, AK, 209° radials; 33 miles 55 MSL, 40 miles 12 AGL; to Homer.

* * * * *

V–444 [Revised]

From Barrow, AK, 117 miles 12 AGL, 102 miles 95 MSL, 69 miles 12 AGL, Evansville, AK, NDB; Bettles, AK; Fairbanks, AK; Big Delta, AK; Northway, AK; Burwash, YT, Canada.

V–445 [New]

From Bettles, AK; INT Bettles 155° and Fairbanks, AK, 307° radials; to Fairbanks.

* * * * *

V–506 [Revised]

From INT Kodiak, AK, 107° radial and the Anchorage Oceanic CTA/FIR boundary, 37 miles 20 MSL, 24 miles 12 AGL, via Kodiak; 50 miles 12 AGL, 50 miles 95 MSL, 51 miles 12 AGL, King Salmon, AK; 51 miles 12 AGL, 84 miles 70 MSL, 63 miles 12 AGL, Bethel, AK; Nome, AK; 35 miles 12 AGL, 71 miles 55 MSL, 53 miles 12 AGL, Kotzebue, AK; Hotham, AK, NDB; 69 miles 12 AGL, 124 miles 95 MSL, 98 miles 12 AGL, Barrow, AK.

V–507 [New]

From Nome, AK; 38 miles 12 AGL, 71 miles 55 MSL; INT Nome 009° and Kotzebue, AK, 221° radials; 56 miles 12 AGL; to Kotzebue.

* * * * *

Issued in Washington, DC, on October 8, 1992.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–25372 Filed 10–19–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 92–AGL–5]

Alteration to VOR Federal Airway V–103; MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Federal Airway V–103 by realigning the airway from the Windsor, ON, Canada, VHF omnidirectional range (VOR) to the Pontiac, MI, VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) and to the Lansing, MI, VORTAC. Realigning V–103 will reduce controller workload, simplify routings and make better use of the airspace.

EFFECTIVE DATE: 0901 UTC, December 10, 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 July 8, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign V–103 from the Windsor, ON, Canada, VOR to the Pontiac, MI, VORTAC and to the Lansing, MI, VORTAC (57 FR 30179). 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. Domestic VOR Federal airways are published in Section 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations realigns V–103 from the Windsor, ON, Canada, VOR to the Pontiac, MI, VORTAC and to the Lansing, MI, VORTAC. The current alignment of V–103 coupled with the 8,000 feet mean sea level minimum en route altitude restrict operations along the airway. Realigning V–103 will allow air traffic control the capability to utilize a lower en route altitude. Modifying the airway will reduce controller workload, simplify routings, and make better use of the 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, Domestic VOR Federal airways, Incorporation by reference.

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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–103 [Revised]

From Chesterfield, SC; Greensboro, NC; Roanoke, VA; Elkins, WV; Clarksburg, WV; Bellaire, OH; INT Bellaire 327° and Akron, OH, 181° radials; Akron; INT Akron 319° and Windsor, ON, Canada, 125° radials; Windsor; Pontiac, MI; to Lansing, MI. The airspace within Canada is excluded.

* * * * *

Issued in Washington, DC, on October 9, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–25374 Filed 10–19–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 73

[Airspace Docket No. 92–ANM–19]

Removal of Restricted Area R–6713; Whidbey Island, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Restricted Area R–6713 Whidbey Island, WA. An FAA review of the annual utilization data for R–6713 revealed that the area is no longer required for its designated purpose. The Department of the Navy subsequently submitted a proposal to remove the restricted area.

EFFECTIVE DATE: 0901 UTC, December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7686.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations removes R–6713 Whidbey Island, WA. An FAA review of the annual utilization reports submitted for R–6713 revealed that this area received limited usage during the last 3 years. After reviewing their operational requirements, the Department of the Navy submitted a proposal to disestablish the area. This action returns formerly restricted

airspace to public use, therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.67 of part 73 of the Federal Aviation Regulations was republished in FAA Handbook 7400.8 effective November 1, 1991.

The FAA has determined that this 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 73

Aviation safety, Restricted areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.67 [Amended]

2. Section 73.67 is amended as follows:
R–6713 Whidbey Island, WA [Removed]

Issued in Washington, DC, on October 7, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–25373 Filed 10–19–92; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Parts 100 and 165

[CGD 92–054]

Safety and Security Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between July 1, 1992, and September 30, 1992, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard district regulations that were established and terminated between July 1, 1992 and September 30, 1992, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The complete text of any temporary regulation may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Don Harris, Docket Clerk Specialist, Marine Safety Council at (202) 267–1477 between the Hours of 8 a.m. and 3:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or an event occurs without advance notice. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation.

Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary local regulations, security zones, and safety zones. Permanent regulations are not included in this list. They are published in their entirety in the **Federal Register**. Temporary regulations are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. Non-major safety zones, special local regulations and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period July 1, 1992 to September 30, 1992, unless otherwise indicated.

Docket number	Location	Type	Effective date
CGD1–92–024	East Passage, Narragansett Bay	Safety	20 July 1992.
CGD1–92–037	Mount Hope Bay, RI	Safety	17 July 1992.
CGD1–92–053	Piscataqua River	Safety	3 May 1992.
CGD1–92–075	Groton-New London Harbor Firework	Safety	11 July 1992.
CGD1–92–078	Fort Knox, Penobscot River	Safety	27 June 1992.
CGD1–92–080	Lower East River, New York	Security	20 June 1992.
CGD1–92–088	Sippican Harbor, MA	Safety	10 July 1992.
CGD1–92–089	Annual Norwich Fireworks	Safety	17 July 1992.
CGD1–92–091	Launching of the USS Columbus	Safety	1 August 1992.
CGD1–92–092	Ray Catena Mercedes-Benz Classic	Safety	25 July 1992.
CGD1–92–093	Bay Head, New Jersey	Safety	22 August 1992.
CGD1–92–094	Mount Misery, Long Island Fireworks	Safety	27 July 1992.
CGD1–92–095	Hartford Triathlon, Connecticut	Safety	9 August 1992.

Docket number	Location	Type	Effective date
CGD1-92-098	Lower East River, New York	Security	5 August 1992.
CGD1-92-099	Fore River, House Island	Safety	9 July 1992.
CGD1-92-102	Columbus Committee Fireworks	Safety	12 September 1992.
CGD1-92-106	Norwich Harbor Day Fireworks	Safety	30 August 1992.
CGD1-92-107	Narragansett Bay, Providence River	Safety	19 August 1992.
CGD1-92-111	Sandy Hook Bay, New Jersey	Safety	12 September 1992.
CGD1-92-112	Feast of Madonna Di Martiri	Safety	6 September 1992.
CGD1-92-113	Burlington Independence Day	Safety	12 September1992.
CGD1-92-115	Bayville, NY Fireworks	Safety	7 September 1992.
CGD1-92-116	Grande Festa Italiana Firework	Safety	13 September 1992.
CGD1-92-118	Geraldo Fireworks, Upper Bay	Safety	14 September 1992.
CGD1-92-120	Riverfront Festival Rowing	Safety	19 September 1992.
CGD1-92-200	Raritan Bay, New York, NJ	Safety	4 July 1992.
CGD1-92-201	Navesink River, Red Bank, NJ	Safety	5 July 1992.
CGD2-92-010	Bud Light Championship Grand Prix	Special	21 August 1992.
CGD2-92-014	Muscatine Great River Days	Special	22 August 1992.
CGD2-92-017	Aspinwall Centennial Air Show	Special	7 September 1992.
CGD2-92-018	Portsmouth Riverdays Regatta	Special	7 September 1992.
CGD2-92-019	Kentuckiana Powerboat Classic	Special	13 September 1992.
CGD2-92-020	Steamboat Days Festival	Special	11 September 1992.
CGD2-92-021	1992 Busch Beer Drag Boat Classic	Special	13 September 1992.
CGD2-92-022	Dardenne Boat Race	Special	20 September 1992.
CGD5-92-063	Hampton Bay Days Festival	Special	11 September 1992.
CGD7-92-055	City of Miami, Florida	Special	15 August 1992.
CGD7-92-067	City of Charleston, South Carolina	Special	4 July 1992.
CGD7-92-068	S.O.R.A. Kilo Run, Sarasota, FL	Special	3 July 1992.
CGD7-92-069	Offshore Challenge, Sarasota, FL	Special	4 July 1992.
CGD7-92-070	Suncoast Offshore Grand Prix	Special	5 July 1992.
CGD7-92-077	Commissioners Run for the Gold	Special	18 July 1992.
CGD7-92-078	City of Augusta, Georgia	Special	17 July 1992.
CGD7-92-079	City of Beaufort, South Carolina	Special	18 July 1992.
CGD7-92-081	Ponce de Leon Inlet, Florida	Special	20 September 1992.
CGD9-92-015	N.Y. State Hydroplane Championship	Special	25 July 1992.
CGD9-92-017	American Legion National Convention	Special	24 August 1992.
	Captain of the Port Regulations		
Baltimore 92-05-23	Severn River, Annapolis	Security	17 June 1992.
Baltimore 92-05-25	Spa Creek, Annapolis, MD	Safety	8 July 1992.
Baltimore 92-05-28	Potomac River, Quantico	Safety	21 July 1992.
Charleston 92-83	Cooper River, SC	Safety	28 July 1992.
Charleston 92-85	Cooper River, SC	Safety	3 August 1992.
Charleston 92-90	Cooper River, SC	Safety	4 August 1992.
Charleston 92-95	Cooper River, SC	Safety	31 August 1992.
Chicago 09-92-19	Lake Michigan	Security	25 August 1992.
Chicago 09-92-25	Port of Chicago	Safety	23 September 1992.
Corpus Christi 92-04	Corpus Christi Channel	Safety	2 July 1992.
Corpus Christi 92-06	Corpus Christi Channel	Safety	27 May 1992.
Corpus Christi 92-07	Corpus Christi Channel	Safety	14 June 1992.
Corpus Christi 92-08	GIWW	Safety	28 June 1992.
Corpus Christi 92-09	Corpus Christi Channel	Safety	1 July 1992.
Corpus Christi 92-10	Gulf of Mexico	Security	9 August 1992.
Corpus Christi 92-11	Corpus Christi Channel	Safety	5 August 1992.
Corpus Christi 92-12	Corpus Christi Channel	Safety	12 August 1992.
Corpus Christi 92-13	Corpus Christi Channel	Safety	18 August 1992.
Corpus Christi 92-15	Corpus Christi Channel	Safety	21 August 1992.
Duluth 92-03	Lake Superior Duluth, MN	Safety	11 July 1992.
Hampton Roads 92-05-26	Chesapeake Bay	Security	31 July 1992.
Huntington 92-04	Big Sandy River	Safety	21 September 1992.
Jacksonville 92-59	Atlantic Ocean	Safety	3 July 1992.
Jacksonville 92-60	Amelia River	Safety	4 July 1992.
Jacksonville 92-61	Intracoastal Waterway	Safety	4 July 1992.
Jacksonville 92-62	St. Johns River	Safety	4 July 1992.
Jacksonville 92-63	Halifax River	Safety	4 July 1992.
Jacksonville 92-64	Atlantic Ocean	Safety	4 July 1992.
Jacksonville 92-65	Indian River	Safety	4 July 1992.
Jacksonville 92-66	St. Johns River	Safety	4 July 1992.
Jacksonville 92-87	St. Johns River	Security	3 August 1992.
Jacksonville 92-94	St. Johns River	Safety	23 August 1992.
Jacksonville 92-97	St. Johns River	Safety	28 August 1992.
Jacksonville 92-98	St. Johns River	Safety	5 September 1992.
Jacksonville 92-99	St. Johns River	Safety	15 September 1992.
Jacksonville 92-100	Port Canaveral, Fl	Safety	17 September 1992.
Los Angeles 92-04	Ports of LA/LB	Safety	28 September 1992.
Louisville 92-08	Ohio River	Safety	6 September 1992.
Miami 92-84	Port Everglades, FL	Safety	15 August 1992.
Memphis 92-03	Lower Mississippi River	Safety	26 June 1992.
Memphis 92-04	Lower Mississippi River	Safety	4 July 1992.
Memphis 92-17	Tennessee River	Safety	27 June 1992.
Mobile 92-04	Gulf of Mexico	Safety	24 August 1992.
Mobile 92-05	Pensacola Bay	Safety	19 July 1992.
Mobile 92-06	Gulf of Mexico	Safety	28 August 1992.

Docket number	Location	Type	Effective date
New Orleans 92-12	Lake Pontchartrain	Safety	6 June 1992.
New Orleans 92-13	Above Head of Passes	Safety	24 June 1992.
New Orleans 92-14	Above Head of Passes	Safety	4 July 1992.
New Orleans 92-15	Above Head of Passes	Safety	4 July 1992.
New Orleans 92-16	Above Head of Passes	Safety	4 July 1992.
New Orleans 92-17	Ouachita River	Safety	4 July 1992.
New Orleans 92-18	Ouachita River	Safety	1 August 1992.
New Orleans 92-19	Black River	Safety	1 August 1992.
New Orleans 92-20	Ouachita River	Safety	8 August 1992.
New Orleans 92-21	Ouachita River	Safety	9 August 1992.
New Orleans 92-22	Above Head of Passes	Safety	21 August 1992.
Paducah 92-06	Tennessee River	Special	2 May 1992.
Paducah 92-06	Kittanning Rotary Regatta	Special	23 August 1992.
Paducah 92-08	Fernbank Regatta	Special	16 August 1992.
Paducah 92-09	Tarentum Regatta	Special	16 August 1992.
Paducah 92-18	Ohio River	Safety	4 July 1992.
Paducah 92-20	Ohio River	Safety	1 August 1992.
Paducah 92-21	Tennessee River	Safety	25 August 1992.
Paducah 92-22	Tennessee River	Safety	16 August 1992.
Pittsburgh 92-01	Ohio River M0.0 to M0.8	Safety	3 July 1992.
Pittsburgh 92-02	Allegheny River	Safety	7 September 1992.
Port Arthur 92-03	Port of Beaumont	Security	3 August 1992.
Prince Wm Sound 92-01	Prince William Sound	Safety	4 July 1992.
Puget Sound 92-03	USS Conserver	Safety	14 April 1992.
Puget Sound 92-06	USNS Narragansett/Navajo	Safety	13 April 1992.
Puget Sound 92-07	USNS Narragansett/Navajo	Safety	12 May 1992.
Puget Sound 92-08	Nat'l Maritime Week	Safety	16 May 1992.
Puget Sound 92-09	Moving Safety Zone	Safety	20 May 1992.
Puget Sound 92-10	Moving Security Zone	Security	20 May 1992.
Puget Sound 92-11	Puget Sound, WA	Security	20 May 1992.
Puget Sound 92-13	Puget Sound, Seattle	Safety	7 June 1992.
San Diego 92-02	San Diego Bay, CA	Safety	9 August 1992.
San Juan 92-80	San Juan Harbor	Safety	2 August 1992.
Sault Ste. Marie 92-01	Grand Traverse Bay	Safety	2 July 1992.
Savannah 92-72	Hilton Head Island, SC	Safety	4 July 1992.
Savannah 92-75	Festival of the 4th, Ashley River	Safety	4 July 1992.
Savannah 92-76	Savannah River	Safety	10 September 1992.
Savannah 92-106	Savannah River	Safety	10 September 1992.
Southeast Alaska 92-03	Clarence Strait	Safety	22 May 1992.
Southeast Alaska 92-04	Clarence Strait	Safety	15 June 1992.
Southeast Alaska 92-05	Clarence Strait	Safety	14 June 1992.
Southeast Alaska 92-06	Clarence Strait	Safety	4 July 1992.
Southeast Alaska 92-07	Clarence Strait	Safety	4 July 1992.
Southeast Alaska 92-08	Clarence Strait	Safety	4 July 1992.
St. Louis	Missouri River	Safety	30 May 1992.
St. Louis 92-06	Upper Mississippi River	Safety	11 August 1992.
St. Louis 92-07	Upper Mississippi River	Safety	5 August 1992.
Wilmington 92-005	Beard Island	Safety	20 August 1992.
Wilmington 92-007	Cape Fear River	Safety	29 August 1992.

Dated: October 14, 1992.

T.R. Cahill,

Lieutenant Commander, USCG, Acting Executive Secretary, Marine Safety Council.

[FR Doc. 92-25306 Filed 10-19-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Port Arthur, Texas Regulation 92-02]

Safety Zone Regulations; West Port Arthur TX, Turning Basin

AGENCY: Coast Guard DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the West Port Arthur Turning Basin. The zone is needed to protect all vessels in the vicinity from a safety hazard associated with the shoaling of the West Port Arthur Turning Basin. The COTP Port Arthur TX is requiring a 36 foot maximum draft restriction in this area.

EFFECTIVE DATES: This regulation becomes effective on June 24, 1992. It terminates on February 1, 1993 unless emergency dredging operations are completed prior to this date.

FOR FURTHER INFORMATION CONTACT: The Captain of the Port, Port Arthur, Texas representative, LCDR M.R. DeVries at (409) 723-6511.

SUPPLEMENTARY INFORMATION: In accordance with 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 the public interest since immediate action is needed to prevent damage to the vessels involved.

Drafting Information

The drafters of this regulation are LCDR M.R. DeVries, Project Officer for the Captain of the Port, and LT J.A. Wilson, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The conditions requiring this regulation were discovered with the grounding of a deep draft vessel transiting the West Port Arthur Turning Basin and further verified by USACE's June 12, 1992 hydrographic survey results.

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.

Federalism Implications

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been

determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Safety 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. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T841 Safety Zone: West Port Arthur Turning Basin, Taylor Bayou.

(a) *Location.* The following area is a safety zone: West Port Arthur Turning Basin, Taylor Bayou.

(b) *Effective Date.* This regulation becomes effective on June 24, 1992. It terminates on February 1, 1993 unless emergency dredging operations are completed prior to this date.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, the COTP Port Arthur TX is establishing a safety zone requiring a 36 foot draft restriction in the West Port Arthur Turning Basin. No vessel with greater than a 36 foot draft may traverse the West Port Arthur Turning Basin.

Dated: June 24, 1992.

J.L. Robinson,

Captain, USCG Captain of the Port, Port Arthur, Texas.

[FR Doc. 92–25308 Filed 10–19–92; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–4524–6]

Notice of Final Oxygenated Fuels Labeling Regulations Under Section 211(m) of the Clean Air Act as Amended

AGENCY: Environmental Protection Agency.

ACTION: Notice of final rulemaking.

SUMMARY: Section 211(m) of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (the Act) requires that various states submit revisions to their State Implementation Plans, and implement an oxygenated gasoline program. Section 211(m)(4) of the Act provides that any person selling retail oxygenated gasoline pursuant to these state programs shall be required to label the fuel dispensing system—in accordance with EPA regulations—providing notice that the gasoline is oxygenated and will reduce motor vehicle CO pollution. This action promulgates these labeling regulations. The oxygenated gasoline program, and therefore the labeling regulations, applies to all states with carbon monoxide (CO) nonattainment areas having design values of 9.5 ppm or more based generally on data for 1988 and 1989.[1] The lableing regulations apply to those retail gasoline pumps located within the control area of the state oxygenated gasoline program, and apply during the period of the year (control period) covered by the state oxygenated gasoline program. EPA's guidance on control periods by area will be addressed in a separate **Federal Register** notice.

EFFECTIVE DATE: These regulations are effective on November 19, 1992.

ADDRESSES: Materials relevant to this rulemaking have been placed in Docket A–91–04 by EPA. The docket is located in the Air Docket Section (LE–131), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, in room M–1500 Waterside Mall and may be inspected from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket material.

EPA utilized the Regulatory Negotiation process developing the labeling regulations that appeared in the July 9, 1991 **Federal Register.**[2] A separate docket exists for the Regulatory Negotiation. Materials related to the Regulatory Negotiation have been placed in Docket A–91–17 by EPA.

FOR FURTHER INFORMATION CONTACT: Alfonse Mannato, (202) 260–9050.

SUPPLEMENTARY INFORMATION:

I. Introduction

This notice promulgates EPA's labeling regulations for certain retail pumps that dispense oxygenated gasoline. Under Section 211(m)(4) of the Act, the Administrator is authorized to promulgate regulations for labeling of retail fuel dispensing systems which dispense oxygenated gasoline pursuant to the requirements of section 211(m) of the Act. On July 9, 1991 EPA proposed labeling regulations in the **Federal Register.**[3] EPA utilized the Regulatory Negotiation process in the development of those proposed regulations. This process is discussed below.

The remainder of this preamble is divided into three parts. Section II provides background information on today's action. Section III presents EPA's final action and rationale. Section IV summarizes and addresses comments received in response to the July 9, 1991 Notice of Proposed Rulemaking (NPRM).

II. Background

Requirements of Section 211(m)

Section 211(m) of the Act requires states with carbon monoxide nonattainment areas with design values of 9.5 parts per million (ppm) or more, based on data for the two year period of 1988 and 1989,[4] to submit revisions to their State Implementation Plans (SIP's) to implement an oxygenated gasoline program. The state must implement an oxygenated gasoline program in specified control areas, requiring gasoline to meet a minimum oxygen content of 2.7% by weight, subject to a testing tolerance established by the Administrator. As noted above, the control period guidance will be the subject of a separate **Federal Register** notice.

Section 211(m)(4) authorizes the Administrator to promulgate labeling regulations for the sale of gasoline at retail gasoline stations in oxygenated gasoline control areas. On July 9, EPA proposed such labeling regulations.[5] On July 16, 1991, a public hearing was held.

Regulatory Negotiation Process

EPA utilized the Regulatory Negotiation process to aid in the development of these regulations. This process was initiated on February 8, 1991, when EPA announced its intent to form an Advisory Committee to negotiate certain guidelines and proposed regulations implementing the clean fuels provisions of Section 211 (k) and (m) of the Act.[6] A public meeting was held on February 21–22, 1991 in Washington, D.C. and, after considering comments submitted in response to the notice and the results of that public meeting, an Advisory Committee was established on March 13, 1991.[7] On

[1] Please refer to the "Supplemental Notice of Proposed Guidance on Establishment of Control Periods under Section 211(m) of the Clean Air Act as Amended," 57 FR 4408, 4409 (February 5, 1992). Final guidance on establishment of control periods will be published shortly.

[2] 56 FR 31151.

[3] 56 FR 31148 (July 9, 1991).

[4] *See* footnote 1, above.

[5] 56 FR 31148 (July 9, 1991).

[6] 56 FR 5167 (February 8, 1991).

[7] 56 FR 10522 (March 13, 1991).

August 16, 1991, an Agreement in Principle was signed by members of the Advisory Committee. That Agreement embodies the consensus on the part of the Advisory Committee members on basic elements of the oxygenated gasoline and reformulated gasoline programs. A copy of the Agreement has been placed in the public docket for this rulemaking. The above-referenced notices contain a more detailed discussion of the issues referred to the Regulatory Negotiation Advisory Committee, as well as information on the requirements of the regulatory negotiation process.

III. Description of Today's Action

Under the labeling regulations issued today, the gasoline pumps at retail stations in each control area are to be labeled, during the applicable control period, with conspicuous labels. Persons who own, lease, operate, control, or supervise retail gasoline stations are responsible for compliance with the labeling requirements of this section. The label must be clearly readable to the public, in order to inform the public of what product it is receiving.

EPA's labeling regulations require that each gasoline pump stand at the affected retail outlets must have, during the control periods, a legible and conspicuous label stating the following: The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles.

This language is proper either for a per gallon 2.7% program or for a credit program requiring a 2.7% average oxygen content and a minimum oxygen content for each gallon of gasoline sold in the control area.

If the state oxygenated gasoline program contains a credit program with no minimum oxygen content requirement, then the label must state the following: The fuel dispensed from this pump meets the requirements of the Clean Air Act as part of a program to reduce carbon monoxide pollution from motor vehicles.

This second form of labeling language is necessary so consumers are not misled into believing that the purchased gasoline is oxygenated, when in fact it lawfully may contain no oxygen at all. This could occur if a state oxygenated gasoline program contains a credit program, without requiring a minimum oxygen content for all gasoline.[8] Under such a scenario, gasoline with no oxygen content could legally be sold in the control area, during the applicable control period, if it is averaged with gasoline that has an oxygen content greater than the standard. EPA has recommended in its guidelines for credit programs that states adopt a 2.0% minimum oxygen content in connection with their credit program.

The first form of the labeling language is to be used where the state oxygenated fuel program has a minimum oxygen content requirement or a per gallon requirement.

EPA believes each form of these labels conforms with the requirements of the Act. They each inform the public of the beneficial goal of section 211(m)'s mandated oxygenated gasoline program, and of reductions in carbon monoxide emissions from motor vehicles. The consumer is provided information in a clear and understandable way, while minimizing the changes of confusing the public.

In order to ensure that this information is legible and made readable to the public, EPA's labeling regulations require that the posting be in block letters of no less than 20-point bold type. In the July 9, 1991 Notice of Proposed Rulemaking, EPA had proposed to require that the posting be in block letters of no less than 36-point bold type. However, several parties pointed out that 36-point letters would be much too large for this label. EPA agrees with this concern and has adjusted the required lettering size to 20-point.

The color of the letters should contrast with the background upon which they are placed. The label is to be placed on the vertical surface of the pump on each side with gallonage and dollar amount meters. The label is to be placed on the upper two-thirds of the pump. By specifying the placement and size of the label, EPA seeks to ensure that it is clearly recognizable and readable for the public. EPA realizes that, in some rare cases, the specified placement of the label required by this rule may be illogical because of pump design. EPA anticipates that the placement specified here will work well in the vast majority of situations. However, the Agency is willing to work with parties who experience placement problems because of pump design, in order to develop equivalent placements that are readily visible to consumers.

IV. Summary of Comments and EPA Responses

A. Location of Labels

Comments: Some commenters expressed concern that gasoline pumps are already cluttered with labels. A few commenters suggested that labels should be permitted on the gas station building itself, in a window, or near the fuel dispensing area. These commenters expressed concern that too many labels may create information "noise," and therefore not serve the purpose of informing consumers.

Response: An oxygenated gasoline labeling regulation is mandated by the Clean Air Act and requires the "fuel dispensing system" to be labeled.

B. Older Pumps

Comment: A commenter pointed out that older pumps may have glass covering the upper one-half of the pump. Some customers may have trouble reading pump meters if the labels are required on the upper one-third of the pump. The commenter suggests that EPA allow labels to be on the upper two-thirds of the pump in situations where placing labels on the upper one-third would interfere with a customer's ability to read the pump meters.

Response: EPA agrees with this concern and has revised the regulation accordingly.

C. Wording of Labels

Comment: Some commenters expressed concern about a label stating, "The fuel dispensed from this pump meets the requirements of the Clean Air Act as part of a program to reduce carbon monoxide pollution from motor vehicles." The concern is that such a label may mislead consumers into believing that they are purchasing oxygenated gasoline when they may not be when there is no minimum oxygen content requirement in a state credit program. It has been suggested that when a gasoline contains 0% oxygen, the label should not be used on that pump. EPA specifically requested comments on this issue in the July 9, 1991 Notice of Proposed Rulemaking.

Some commenters suggested that EPA should change the word "pollution" to "emissions" in the labeling language.

Some commenters felt that the control period should be added to the labeling language. They believed that if the control period is stated on the labels, the labels can stay on the pumps all year. Labels would not have to be replaced at the start of each control period or removed at the end of the control period.

Response: EPA believes that the language as originally agreed upon at the Regulatory Negotiation is the most appropriate language. The Agency feels that the word "pollution" will be better understood than the word "emissions" by the general public. Also, if it is so desired, a state could add a requirement to their oxygenated gasoline program that the relevant control period be listed

[8] A separate Federal Register notice will address guidelines for averaging programs.

on the label. This would be acceptable to EPA provided that the statement required by today's regulations also appears in its entirety, without alteration or addition.

D. Labeling with the Type of Oxygenate

Comment: Some commenters are concerned about users (e.g. civil aviation, boats) who need to know whether the oxygenated gasoline they receive contains ethanol or MTBE. These commenters ask whether EPA's language is meant to substitute for, or be an additional requirement to, state labeling regulations.

Response: EPA's labeling regulation is not meant to restrict states from imposing additional informational requirements. However, the statement required by today's regulations must also appear in its entirety, without alteration or addition.

E. Type Size for Labels

Comment: Some commenters were concerned that 36-point type is too large for the required labels. The statement required by today's regulation is somewhat lengthy and, if it were to be printed in 36-point type, would take up a good deal more space than is necessary to serve its purpose. Several parties suggested 20-point type, which is easily readable by consumers at the pump.

Response: EPA agrees with this concern and has revised the type size accordingly. The label must be printed in block letters of no less than 20-point bold type.

V. Environmental Impact

The sale of oxygenated gasoline reduces carbon monoxide emissions from motor vehicles and thereby helps carbon monoxide nonattainment areas in their efforts to achieve compliance with the national ambient air quality standard for carbon monoxide. Oxygenated gasoline is becoming a widely recognized control strategy for reducing carbon monoxide emissions from motor vehicles in a timely and cost-effective manner. These labeling regulations will promote consumer awareness about the beneficial effects of oxygenated gasoline in the reduction of carbon monoxide emissions from motor vehicles.

VI. Public Participation

EPA held a public hearing on these labeling regulations on July 16, 1991. Major comments and response are summarized in part IV, above. All comments have been placed in the public docket specified in the "Addresses" section of this notice.

VII. Impact on Small Entities

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public contact, a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e. small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required, however, if the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities.

Because the information required to comply with these labeling regulations will be supplied to retailers as part of the normal course of business by marketers and distributors, EPA estimates that the only cost of this regulation to retailers will be the cost of the label itself. Therefore, the Administrator certifies that the rule will not have a substantial effect on small entities.

VIII. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a regulatory impact analysis. Today's rule is not major. It will not result in an effect on the economy of $100 million or more, will not result in significant increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity and innovation, and will not disrupt domestic export markets. Therefore the Agency has not prepared a regulatory impact analysis under the Executive Order.

These final regulations were submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291. Any written comments received from OMB and any EPA response to those comments have been placed in the public rulemaking docket.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR Part 1320, EPA must obtain clearance from OMB for any activity that will involve collecting substantially the same information from 10 or more non-Federal respondents. This rule does not conduct or sponsor the collection of information, and is therefore not subject to the requirement of the Paperwork Reduction Act.

X. Statutory Authority

Authority for today's action is granted to EPA by Sections 211 and 301 of the Clean Air Act (42 U.S.C. 7545 and 7601).

List of Subjects in 40 CFR Part 80

Fuel additives, Gasoline, Labeling, Motor vehicle pollution.

Dated: October 14, 1992.

William K. Reilly,

Administrator.

Part 80 of title 40 of the Code of Federal Regulations is amended to read as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545, and 7601(a).

2. Section 80.2 is amended by adding new paragraphs (pp), (qq), and (rr) to read as follows:

§ 80.2 Definitions.

* * * * *

(pp) *Control area* means a geographic area in which only oxygenated gasoline under the oxygenated gasoline program may be sold or dispensed, with boundaries determined by Section 211(m) of the Act.

(qq) *Control period* means the period during which oxygenated gasoline must be sold or dispensed in any control area, pursuant to Section 211(m)(2) of the Act.

(rr) *Oxygenated gasoline* means gasoline which contains a measurable amount of oxygenate.

3. New subpart C consisting of §§ 80.35 thru 80.39 is added as follows:

Subpart C—Oxygenated Gasoline

Sec. 80.35 Labeling of retail gasoline pumps; oxygenated gasoline.

Secs. 80.36–80.39 [Reserved.]

§ 80.35 Labeling of retail gasoline pumps; oxygenated gasoline.

(a) For oxygenated gasoline programs with a minimum oxygen content per gallon or minimum oxygen content requirement in conjunction with a credit program, the following shall apply:

(1) Each gasoline pump stand from which oxygenated gasoline is dispensed at a retail outlet in the control area shall be affixed during the control period with a legible and conspicuous label which contains the following statement: The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles.

(2) The posting of the above statement shall be in block letters of no less than 20-point bold type; in a color contrasting with the intended background. The label shall be placed on the vertical surface of the pump on each side with gallonage and price meters and shall be on the upper two-thirds of the pump, clearly readable to the public.

(3) The retailer shall be responsible for compliance with the labeling requirements of this section.

(b) For oxygenated gasoline programs with a credit program and no minimum oxygen content requirement, the following shall apply:

(1) Each gasoline pump stand from which oxygenated gasoline is dispensed at a retail outlet in the control area shall be affixed during the control period with a legible and conspicuous label which contains the following statement: The fuel dispensed from this pump meets the requirements of the Clean Air Act as part of a program to reduce carbon monoxide pollution from motor vehicles.

(2) The posting of the above statement shall be in block letters of no less than 20-point bold type; in a color contrasting with the intended background. The label shall be placed on the vertical surface of the pump on each side with gallonage and price meters and shall be on the upper two-thirds of the pump, clearly readable to the public.

(3) The retailer shall be responsible for compliance with the labeling requirements of this section.

[FR Doc. 92–25399 Filed 10–19–92; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 268

[FRL–4524–5]

Hazardous Waste Management System: Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Approval of Interim Final Hazardous Soil Case-By-Case Capacity Variance.

SUMMARY: In the final rule establishing land disposal restrictions (LDR) for Third Third hazardous wastes, EPA granted a national capacity variance for those hazardous soils whose best demonstrated available technology (BDAT) was incineration, retorting, or vitrification, as well as for soils contaminated with radioactive mixed waste, due to a lack of treatment capacity. Approximately 73 percent of the wastes restricted from land disposal by the Third Third rule received the national capacity variance when they were contained in soils. The national capacity variance expired on May 8, 1992.

While the variance was in effect, EPA received information from generators of hazardous soils and trade associations indicating that there would not be sufficient treatment capacity for hazardous soils when the variance expired on May 8, 1992. In response to this information, EPA gathered data to determine whether treatment capacity is available for hazardous soils to which the national capacity variance applied, and, if not, to determine the reasons that it is not available. Information obtained from various companies and trade associations indicated that a shortage of treatment capacity for hazardous soils continues to exist, for reasons beyond their control.

Under 40 CFR 268.5, EPA is approving an interim final case-by-case extension of the LDR effective date, to May 8, 1993, applicable to all persons handling Third Third hazardous soils whose BDAT is either incineration, retorting, or vitrification, or handling Third Third soils contaminated with radioactive mixed waste. No further applications will be required at this time from persons granted the extension by this action. However, EPA is requiring such persons to do certain recordkeeping, and to meet certain other requirements to qualify for the extension.

DATES: This action becomes effective on October 13, 1992 and expires on May 8, 1993. Comments on this action must be submitted on or before November 19, 1992.

ADDRESSES: Any person wishing to comment on this interim final variance must send an original and two copies of their comments to the EPA RCRA Docket (OS–305), room 2427, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Place the docket number F–92–CD2P–FFFFF on all copies of the comments. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy a maximum of 100 pages from any document in the docket at no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424–9346 toll–free or (703) 920–9810 locally. For information on specific aspects of this notice, contact Nicholas R. Vizzone, Analysis and Land Disposal Restrictions Section, Capacity Programs Branch (OS–321W), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, (703) 308–8477.

SUPPLEMENTARY INFORMATION:

Outline

I. Background
A. History
B. Revised Treatment Standards for Hazardous Soils
II. Justification for this Extension
A. Demonstration under 40 CFR 268.5
B. Consultation With the States
C. Conclusion
III. Requirements for this Extension

I. Background

A. History

Congress enacted the Hazardous and Solid Waste Amendments (HSWA) of 1984, which amended the Resource Conservation and Recovery Act (RCRA). Among other things, HSWA required EPA to develop regulations that would impose, on a phased schedule, restrictions on the land disposal of hazardous wastes. In particular, sections 3004(d), (e), and (g) of RCRA (2 USC 6924 (D), (e), and (g)) prohibit the land disposal of all wastes identified or listed as hazardous as of November 1984, unless the wastes are treated (or meet treatment standards) in a manner that "substantially diminish(es) the toxicity of the waste or substantially reduce(s) the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." That alternative to satisfying these treatment standards is disposal in a unit from which there will be no migration of hazardous constituents for as long as the waste remains hazardous.

In developing such a broad program, Congress recognized that adequate alternative treatment, recovery, or protective disposal capacity might not be available by the applicable effective dates. Therefore, section 3004(h)(2) authorized EPA to grant a national capacity variance (based on the earliest date that such capacity would be available but not to exceed two years) that delays the effective date for new treatment standards. In addition, under section 3004(h)(3), EPA can grant an extension of the deadline on a case-by-case basis for one year (renewable for one additional year); however, variances are limited to a four year time period from the effective date.

On June 1, 1990, EPA published a final rule (55 FR 22520) establishing prohibitions and treatment standards for wastes in the final third of scheduled prohibitions. Among other things, the

rule established prohibitions and treatment standards for soil contaminated with all hazardous wastes subject to the LDRs (except for soil contaminated with the solvents and dioxins under section 3004(e) and soil contaminated with "California List Wastes" under section 3004(d) for which land disposal had been prohibited earlier). Because of a lack of treatment capacity as of June 1990, EPA granted a two-year national capacity variance for most hazardous soils (40 CFR 268.35(e)).[1] As such, disposal of these hazardous soils in untreated form became prohibited as of May 8, 1992.

B. Revised Treatment Standards for Hazardous Soils

Hazardous soils present unique problems under the land disposal restriction program.[2] Hazardous soils are not a distinct waste form; rather, they are an environmental medium which has become contaminated with hazardous waste. Furthermore, hazardous soils are not the product of particular industrial processes, but rather are generated, for the most part, when hazardous waste is released. The need for treatment generally occurs when the hazardous soil is removed as part of a cleanup effort.

Hazardous soils, however, are regulated as hazardous wastes by virtue of the principle that materials containing hazardous wastes are themselves considered to be hazardous wastes. When EPA promulgated treatment standards for hazardous wastes (see 57 FR 37225 (Aug. 18, 1992)), it did not establish separate standards for wastes contained in other materials such as soil. Rather, the standards for the specified wastes applied as well to materials in which such wastes are contained or mixed. Thus, the treatment standards for the wastes with which soil is contaminated are the applicable standards for treatment of the soil/waste matrix as well.

However, applying such standards to hazardous soils presents significant difficulties. In general, hazardous soil is more difficult to treat than the corresponding industrially generated RCRA hazardous waste. The treatment standards for most of the wastes affected by today's extension are based on performance of incineration. However, incineration of soil poses some technical problems including the following: (1) The feed systems for most solids incinerators are not designed to sufficiently handle the throughput needed for the large volumes of soils typically found at a site where cleanup is occurring; (2) a large percentage of the hazardous soil is contaminated with low concentrations of toxic organics and is, therefore, primarily non-combustible (due largely to the fact that soil does not burn); and (3) a significant amount of supplemental fuel must be burned and, as such, incineration of soils typically utilizes a great deal of energy to treat the waste with which the soil is contaminated.

In addition, incinerators that are currently commercially available are typically designed to manage conventional industrial hazardous wastes residues that consist primarily of organics rather than inorganics (such as those that comprise soil). These incinerators are not generally capable of handling significant volumes of hazardous soil due to their throughput designs, feed preparation units, retentions times, ash/residue handling units, etc. Incinerators designed specifically for soil have not generally been constructed, due to the previous low generation rates of soils requiring incineration and the practical problems discussed above which are exacerbated by the fact that the generation of hazardous soils is irregular both spatially and over time. This has made it difficult to develop an adequate amount of effective treatment capacity for their management. The irregular generation patterns has been a particularly significant factor impeding the development of commercial treatment capacity for soils contaminated with radioactive mixed wastes.

Because of these unique considerations where soils are concerned, EPA is currently developing a separate set of treatment standards for hazardous soils. These standards will be based on the use of alternative technologies, including the use of technologies such as soil washing, thermal desorption, and biodegradation. These standards have not been proposed to date, but EPA announced its intention to issue such standards in an Advance Notice of Proposed Rulemaking; see 56 FR 55160, 55172–77 (October 24, 1991). This notice discussed in detail the difficulty in applying the existing BDAT standards to hazardous soils and sought comment on a variety of issues to be addressed before such treatment standards are proposed.

In the meantime, however, the existing treatment standards remain applicable to soils contaminated with a hazardous waste, even though EPA has recognized the impracticality of attempting to comply with them in many instances. As would be expected in light of such impracticality and uncertainty about the standards that will ultimately be adopted, treatment capacity based on the BDAT standards of the Third Third rule has not been developed. While the existing regulations allow the regulated community to obtain treatability variances from the existing treatment standards, the regulated community believes, and EPA agrees, that it is inappropriate to use this regulatory mechanism (which was designed to address exceptional circumstances) as the means to develop treatment standards for hazardous soils; they believe it to be highly inefficient and resource intensive for both the regulated community and EPA.

Therefore, in contrast to other wastes for which the waste volumes and treatment technology are known, and capacity is lacking, but for which EPA expects capacity can and will be developed, EPA does not believe that the development of treatment capacity for effectively managing most hazardous soils can realistically be expected until revised standards more appropriate for such hazardous soils have been issued. In addition, EPA is concerned that fear of liability could hinder present and future voluntary cleanup operations. EPA believes that allowing cleanup projects to continue is more protective of the environment that allowing wastes to remain in the soil.

Therefore, EPA is granting today, on an interim final basis an extension under 40 CFR 268.5, until May 8, 1993, for most hazardous soils. Although such extensions are normally granted on the basis of site-specific applications, EPA previously granted such extensions on a nationwide basis where it has concluded that conditions warranting such an extension apply to a class of generators, or treatment or storage facilities nationwide. The Agency concludes that such circumstances exist in the case of certain hazardous soils as well.

The capacity extension provided today is applicable to hazardous soil containing Third Third wastes whose BDAT is either incineration, retorting, or vitrification, and to soils contaminated with radioactive mixed waste, which received a national capacity variance in

[1] The existing treatment standards for hazardous soil subject to the national capacity variance granted on June 1, 1990, and to today's case-by-case extension, are based upon incineration, retorting, or vitrification; the variance and extension also applies to soil contaminated with radioactive mixed wastes.

[2] Hazardous soil means soil that contains a hazardous waste listed in subpart D of 40 CFR part 261 that is subject to the LDRs of this part, or that exhibits a characteristic of hazardous waste identified in subpart C of 40 CFR part 261 that is subject to the LDRs of this part.

the Third Third rule.[3] Soils contaminated with listed solvent or dioxin waste covered by the section 3004(e) prohibition and soil contaminated with "California List Wastes" pursuant to section 3004(d) are not covered by this extension. The time for granting national and case-by-case capacity extensions for both of these groups has expired, so that further extension is not possible (See 55 FR 2265–52).

II. Justification for This Extension

A. Demonstration Under 40 CFR 268.5

In this notice, EPA is taking regulatory action to grant an interim final national case-by-case extension of the effective date for treatment standards for certain hazardous soil, as described elsewhere in the preamble.

40 CFR 268.5 specifies seven demonstrations that must be made for the approval of a case-by-case extension to a treatment standard of the prohibition effective date. From information it has obtained from generators and handlers of hazardous soils, EPA has made an evaluation of these seven required demonstrations as follows:

Demonstration 40 CFR 268.5(a)(1)

The applicant must demonstrate that he has made a good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his waste in accordance with the effective date of the applicable restriction established under subpart C of this part.

Due to the generic nature of the problem presented by hazardous soils, it has not been practicable to gather this information from every owner/operator managing such wastes. However, site-specific information is not required because the information obtained by EPA (and placed in the docket for this extension) indicates that there is a general nationwide lack of capacity for treatment of certain hazardous soils. This is because, as discussed above, the technologies on which the promulgated treatment standards were based are simply not appropriately designed for soils in many cases, and alternative treatment standards, based on technologies designed specifically for such soils, discussed in this notice have not yet been promulgated. Parties involved in the chemical and petroleum industries, or in the remediation of contaminated sites, have indicated to EPA that they are unable at this time to locate treatment, recovery, or protective disposal capacity for hazardous soils. The data recently provided to the Agency indicate that hazardous soils contaminated with organics will be generated by hundreds of remediation efforts that are underway or are planned. The available capacity for soil incineration (the primary treatment technology for such soil) is limited and would not beable to handle this large influx of soil.

Likewise, there is limited commercial retorting capacity available for the treatment of hazardous soils contaminated with high levels of mercury. The feed systems for commercial mercury retorting units are typically designed for batch processing of small volumes of wastes (such as glass, electrical devices, and light bulbs). Other retorting systems are currently being designed for specific hazardous wastes from the chlor-alkali industry (K106—mercury sulfide wastes). Neither of these types of retorting systems have been specifically designed to handle soils nor the large volumes of soil that are expected. Information EPA has obtained from companies and trade associations indicate that clean-ups of more than 700 sites contaminated with mercury will produce over 30,000 tons of hazardous soil. The current limited retorting capacity would be overwhelmed by this amount of hazardous soil.[4]

EPA promulgated standards for arsenic wastes based on the use of a vitrification technology that was designed to handle industrial wastes with very high concentrations of arsenic. On the other hand, contaminated soils are comprised primarily of inert inorganic materials that require a significantly larger amount of energy to vitrify than the industry wastes. Commercial vitrification capacity designed specifically for soils is virtually nonexistent and, as such, is not adequate. Information obtained from companies and trade associations involved with hazardous soils (available in the docket) indicates that an estimated 120,000 tons or more of arsenic hazardous soil is expected to be generated at over 600 sites nationwide by remediation efforts. There is a clear shortfall of vitrification capacity with regard to arsenic contaminated hazardous soil.[5]

EPA believes that these data portray the existing insufficient capacity for treatment of hazardous soil. EPA agrees that there is, in general, far less treatment capacity available than would be required to handle the soil being generated, and that the development of capacity consistent with the current treatment standards is uncertain. Furthermore, the Agency would not expect the industry to construct and make available capacity based on alternative technologies until the Agency promulgates revised treatment standards for hazardous soils.

Therefore, for all of the reasons discussed above, through no fault of their own, generators are unable to, or cannot reasonably be expected to enter into contracts at this time, to construct or otherwise obtain access to treatment, recovery, or protective disposal facilities.

Demonstration 40 CFR 268.5(a)(2)

The applicant has entered into a binding contractual commitment to construct or otherwise provide alternative treatment, recovery (e.g., recycling), or disposal capacity that meets the treatment standards specified in subpart D or, where treatment standards have not been specified, such capacity is protective of human health and the environment.

For the reasons discussed above, the treatment of soil to meet certain existing BDAT standards is impractical in most cases and construction of additional capacity will require new standards to be issued. Therefore, until the anticipated revision of the treatment standards for hazardous soils is promulgated, it will be difficult, if not impossible, for generators to construct or enter into contractual commitments to

[3] The major waste types that did not receive a national capacity variance were corrosive wastes (D002), reactive wastes (D003), barium (D005), cadmium (D006), chromium (D007), lead (D008), selenium (D010), and silver (D011) wastes. For soils, contaminated with these wastes, the LDRs became effective May 8, 1990 and EPA has no authority to provide relief from these requirements. For toxicity characteristic wastes, treatment standards have not yet been set; therefore, these soils may still be land disposed.

[4] It should be noted that the process of retorting is designed to thermally desorb (i.e., extract) mercury from an inorganic matrix. In the final rule for debris wastes (57 FR 37194 (August 18, 1992)), EPA recognized the usefulness of other extraction technologies in addition to thermal desorption for the removal of other hazardous constituents from inorganic debris. As such, EPA is currently investigating alternative means of extraction of mercury that are specifically designed for contaminated soil and that could potentially achieve a level of performance similar to retorting.

[5] Many of the sites are contaminated with relatively low total concentrations of arsenic. Data received for the Third rulemaking indicated that industrial wastes containing low concentrations of arsenic could be chemically stabilized (with careful consideration of the unique chemistry of arsenic) to levels that could comply with the standard established based on vitrification. EPA is currently investigating the applicability of these special chemical stabilization process for contaminated soil as an alternative to the energy intensive vitrification processes.

construct or otherwise provide additional treatment capacity.

EPA is requiring, however, that each generator of hazardous soil subject to this extension make a good faith effort to enter into such a contract at the earliest date practicable after revised treatment standards are promulgated (if that occurs during the extension period) to provide the necessary treatment capacity.

Demonstration 40 CFR 268.5(a)(3)

Due to circumstances beyond the applicant's control, such alternative capacity cannot reasonably be made available by the applicable effective date. This demonstration may include a showing that the technical and practical difficulties associated with providing the alternative capacity will result in the capacity not being available by the applicable effective date.

As discussed above, information obtained by EPA indicates major technical and practical difficulties that make it impractical to provide alternative capacity under the current treatment standards. For example, large volumes of hazardous soils are typically found at a site where cleanup is occurring. Most feed systems on solids incinerators are not capable of handling these large volumes due to their throughput designs, feed preparation units, retention times, ash/residue handling units, etc.

EPA believes these to be valid concerns and agrees that additional time is needed to resolve these concerns by issuing revised standards tailored to the unique nature of hazardous soils. These circumstances are beyond the control of the generators who need to treat or dispose of their hazardous soils.

Demonstration 40 CFR 268.5(a)(4)

The capacity being constructed or otherwise provided by the applicant will be sufficient to manage the entire quantity of waste that is the subject of the application.

As discussed above, generators will be unable to provide capacity that meets treatment standards until the revised treatment standards are promulgated. Since generators cannot immediately plan to construct capacity because of uncertainty associated with appropriate treatment technology, EPA believes that these uncertainties make it difficult for generators to determine their capacity requirements at this time. In addition, a key timing concern relates to the immediate logistical problems relating to the time needed for permit modifications. EPA does believe, however, that adequate treatment capacity can be provided once the revised hazardous soil standards are promulgated.

Demonstration 40 CFR 268.5(a)(5)

He provides a detailed schedule for obtaining required operating and construction permits or an outline of how and when alternative capacity will be available.

As discussed above, it will be difficult for generators to provide a detailed schedule outlining how and when alternative capacity will be available until revised treatment standards are issued. EPA is requiring, however, as a condition of this variance that owners and operators place a planned schedule into their facility operating record within 90 days after the revised treatment standards are promulgated (if that date occurs before the extension expires).

Demonstration 40 CFR 268.5(a)(6)

The applicant must demonstrate that he has arranged for adequate capacity to manage his waste during an extension and has documented in the application the location of all sites at which the waste will be managed.

Due to the nature of this extension, EPA has little facility-specific information on the amount and location of the capacity that operators will use to manage their hazardous soil during this extension. Rather, as discussed below, EPA is requiring owners and operators to include documentation in the facility record describing the means by which their hazardous soil will be managed between October 13, 1992, and May 8, 1993, and showing the location and adequacy of such capacity.

Demonstration 40 CFR 268.5(a)(7)

Any waste managed in a surface impoundment or landfill during the extension period will meet the requirements of paragraph (h)(2) of 40 CFR 268.5.

Due to the nature of the extension, site specific information available to EPA on management in land disposal facilities during the extension period is not available. However, any generator who intends to manage his hazardous soil in a surface impoundment or landfill during the extension must ensure that the unit meets the requirements of 40 CFR 268.5(h)(2) (i.e., meets the minimum technology requirements set out in regulation 40 CFR parts 264 and 265) (see RCRA section 3004(h)(4)). Failure to do so may be grounds for revocation of the extension for the generator.

B. Consultation With the States

In addition to the above seven demonstrations, EPA is required under 40 CFR 268.5(e) to consult with appropriate State agencies in all affected States. EPA consulted with the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) who developed a questionnaire regarding hazardous soils contaminated with mercury and arsenic, that was sent out to all the states. The questionnaire was sent to all states, of whom thirty-five states chose to respond to the survey. The responses from these states support the need for an extension of the LDR effective date for hazardous soils. These responses have been included in the docket for this extension.

C. Conclusion

Based on its evaluation of the demonstrations required under 40 CFR 268.5, and for the reasons stated above, EPA is approving an interim final case-by-case extension to the Land Disposal Restrictions for those hazardous soils previously subject to the national capacity variance for soils granted in the Third Third land disposal restriction rule (June 1, 1990) whose BDAT is either incineration, retorting or vitrification, or those Third Third soils were contaminated with radioactive mixed waste. This extension is effective from October 13, 1992, to May 8, 1993. EPA is taking this exceptional regulatory action because of the unique circumstances which have resulted in the lack of treatment, recovery, and protective disposal capacity for hazardous soil, the need for promulgation of revised treatment standards before such capacity can be constructed, and EPA's conclusion that treatment capacity meeting those standards is limited, or is limited due to logistical problems, but can be provided after revised treatment standards are promulgated. EPA believes that granting this extension is the most environmentally protective option because it will eliminate some of the regulatory obstacles that could force cleanup projects to be postponed.

III. Requirements for This Extension

To receive the benefit of this extension, a generator or owner/operator must include the following information in its onsite records by December 21, 1992, or at the time the hazardous soil is generated:

(1) The name, mailing address, location, and EPA identification number (if assigned) of facility. The term "facility" includes any site, whether permanent (such as a manufacturing plant), or temporary where hazardous soil will be generated;

(2) A description of the hazardous soil waste stream, including the RCRA waste code(s);

(3) Waste generation rates (cu.m./yr.), and estimated inventories (cu.m.);

(4) Certification as required under 40 CFR 268.5(b);

(5) The method of any storage for hazardous soil, storage capacity, and RCRA permit status (i.e., interim status, permitted, or 90-day generator) of the storage unit during the extension period; and

(6) If management of hazardous soil during the extension includes the use of a surface impoundment or landfill, the owner operator must certify that such unit meets the requirements of 40 CFR 268.5(h)(2).

In addition, within 90 days after revised treatment standards are promulgated (if this occurs before the extension expires), each owner and operator must maintain in the facility record (or, for generators, in the files maintained pursuant to § 268.7(a)(5)) a written plan that describes how the facility will obtain adequate treatment capacity. At a minimum, this plan must include a schedule of how the owner or operator plans to design, construct, and obtain the necessary permits to provide on-site treatment, recovery, or disposal capacity or a description of how the owner or operator intends to obtain a binding contractual commitment for off-site capacity.

This information must be furnished upon request, and made available at all reasonable times for inspection by any officer, employee, or representative of EPA, or the appropriate State agency who is duly designated by EPA or the State agency.

Under 40 CFR 268.5(e), the Administrator may renew this extension to allow continued land disposal from May 8, 1993, to May 8, 1994. Prior to the May 8, 1993 effective date, EPA will evaluate the status of available capacity, current capacity needs, as well as the status of the revised treatment standards for hazardous soils as they relate to an owner or operators ability to satisfy the demonstrations. Based on this evaluation, EPA may extend the national case-by-case for up to an additional year; if so, all persons who qualify for today's extension would be allowed until May 1994 to construct or otherwise provide the necessary treatment, recovery, or protective disposal capacity for his hazardous soil.

EPA is also using this opportunity to make certain clarifications to the amendatory language promulgated on June 26, 1992 (57 FR 28628) in connection with a similar extension for contaminated debris. These changes do not alter that extension and are intended solely to clarify the Agency's original intention.

List of Subjects in 40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

Dated: October 13, 1992.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. In § 268.35 paragraphs (c), (d) and (e) are revised to read as follows:

§ 268.35 Waste specific prohibitions—Third Third wastes.

* * * * *

(c) Effective May 8, 1992, the following waste specified in 40 CFR 261.31 as EPA Hazardous Waste Numbers F039 (nonwastewaters); the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Number K031 (nonwastewaters); K084 (nonwastewaters); K101 (nonwastewaters); K102 (nonwastewaters); K106 (nonwastewaters); the wastes specified in 40 CFR 261.33(e) as EPA Hazardous Waste Numbers P010 (nonwastewaters); P011 (nonwastewaters); P012 (nonwastewaters); P036 (nonwastewaters); P038 (nonwastewaters); P065 (nonwastewaters); P087; and P092 (nonwastewaters); the wastes specified in 40 CFR 261.33(f) as EPA Hazardous Waste Numbers U136 (nonwastewaters); and U151 (nonwastewaters); the following wastes identified as hazardous based on a characteristic alone: D004 (nonwastewaters); and D009 (nonwastewaters); and RCRA hazardous wastes that contain naturally occurring radioactive materials are prohibited from land disposal.

(d) Effective May 8, 1992, hazardous wastes listed in 40 CFR 268.10, 268.11 and 268.12 that are mixed radioactive/hazardous wastes are prohibited from land disposal, except as provided in paragraph (e) of this section.

(e) Subject to applicable prohibitions in §§ 268.30, 268.31, and 268.32, contaminated soil and debris are prohibited from land disposal as follows:

(1) Effective May 8, 1993, debris that is contaminated with wastes listed in 40 CFR 268.10, 268.11, and 268.12 (including such wastes that are mixed radioactive hazardous wastes), and debris that is contaminated with any characteristic waste for which treatment standards are established in subpart D of this part (including such wastes that are mixed radioactive hazardous wastes), are prohibited from land disposal.

(2) Effective May 8, 1993, hazardous soil having treatment standards in subpart D of this part based on incineration, mercury retorting or vitrification, and soils contaminated with hazardous wastes listed in 40 CFR 268.10, 268.11 and 268.12 that are mixed radioactive hazardous wastes, are prohibited from land disposal.

* * * * *

[FR Doc. 92-25398 Filed 10-19-92; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-26

[FPMR Amendment E-272]

Purchase of New Motor Vehicles

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation provides current coverage on the procurement by civilian executive agencies and the Department of Defense (DOD) of new motor vehicles from source suppliers. The regulation is issued to reflect recent changes in GSA procurement policy and procedures, methods of acquisition, and responsibility to DOD customers. The intended result is to improve overall efficiency in the Federal procurement of new motor vehicles.

EFFECTIVE DATE: October 20, 1992.

FOR FURTHER INFORMATION CONTACT: Dave Pickeral, Automotive Commodity Center (703-603-1249).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the

alternative approach involving the least net cost to society.

Regulatory Flexibility Act

The General Services Administration has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Part 101–26

Government property management, Motor vehicles.

For reasons set forth in the preamble, 41 CFR part 101–26 is amended as follows:

PART 101–26—PROCUREMENT SOURCES AND PROGRAMS

1. The authority citation for part 101–26 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101–26.5—GSA Procurement Programs

2. Section 101–26.501 is revised to read as follows:

§ 101–26.501 Purchase of new motor vehicles.

(a) It shall be the policy to procure commercially available motor vehicles, unless other vehicles are specifically required.

(b) New sedans, station wagons, and light trucks (other than those to be used for law enforcement or where other than standard vehicles are required) shall be procured as follows: Sedans, class IB-subcompact or II-compact; station wagons, class I-subcompact or class II compact vehicles, as described in Federal standard No. 122; and light trucks as defined in Federal standard Nos. 292 and 307. (Federal standard Nos. 122, 292, and 307 as used in this section mean the latest editions.)

Requisitions submitted to GSA for motor vehicles shall be in conformance with the requirements of subpart 101–38.1.

(1) Standard passenger vehicles as defined in Federal standard No. 122 are considered to be completely equipped for ordinary operation and are subject to the maximum statutory price limitation.

(2) Items (vehicles) included in Federal standard No. 122 other than those listed as standard (basic units) are considered to be equipped with additional systems and equipment for passenger vehicles.

(c) Requisitions submitted to GSA for the acquisition of new passenger vehicles and light trucks under 8500 GVWR (gross vehicle weight rating) shall be in conformance with Pub. L. 94–163 and Executive Order 12375.

(d) New trucks and buses shall be requisitioned in accordance with the provisions of this § 101–26.501 and the following:

(1) Light trucks shall be in accordance with Federal standard Nos. 292 and 307; and

(2) Medium and heavy trucks and buses, when not procured from standardized buying programs, shall be in accordance with the latest editions of Federal standard No. 794, Federal specification Nos. KKK–T–2107, 2108, 2109, 2110, 2111, and Federal specification No. KKK–B–1579. Standardized buying programs shall be based on these specifications as appropriate.

(e) Selection of additional systems or equipment in new vehicles shall be made by the requiring agency and shall be based on the need to provide for overall safety, efficiency, economy, and suitability of the vehicle for the purposes intended pursuant to § 101–38.104–2.

(1) The essentiality of such systems or equipment shall be weighed against the economic factors involved, the potential benefits to be derived therefrom, and the impact on the fuel consumption characteristics of the vehicle.

(2) Additional systems or equipment requested to be purchased by GSA will be construed to have been determined essential for the effective operation of the vehicle involved by the agency head or a designee. When systems or equipment other than those listed in Federal standards are requested, these systems or equipment shall be considered and treated as deviations under § 101–26.501–4(b).

3. Section 101–26.501–1 is amended by revising paragraph (a) to read as follows:

§ 101–26.501–1 General.

* * * * *

(a) DOD shall submit to GSA for procurement its orders for purchase in the United States for all non-tactical vehicles including, but not limited to, commercial-type passenger motor vehicles (FSC 2310), including buses, and trucks and truck tractors (FSC 2320).

* * * * *

4. Section 101–26.501–2 is revised to read as follows:

§ 101–26.501–2 Standardized buying programs.

Wherever practical, requirements for motor vehicles will be satisfied under existing standardized buying programs (Indefinite Quantity, Requirements, Federal Supply Schedule contracts). Agencies not familiar with these programs, or seeking additional information about them, are encouraged to contact the GSA Automotive Commodity Center prior to submitting their orders.

(a) Requirements contracts are in place or anticipated to be in place for the following types of standard motor vehicles:

(1) Medium and heavy trucks:

(i) 4x2 and 6x4 cab-chassis, stake, van, dump, and truck-tractor; 19,000 to 60,000 pounds GVWR.

(ii) 4x4 and 6x4 cab-chassis, stake, dump, and truck-tractor; 26,000 to 52,000 pounds GVWR.

(iii) 1,200 and 2,000 gallon fuel servicing vehicles; and 2,000 gallon aircraft refueler.

(2) Ambulances (in accordance with Federal Specification No. KKK–A–1822): Type I, modular body on cab-chassis; Type II, van body with raised roof; Type III, modular body on van cutaway chassis.

(3) Buses and mini-buses, including school buses:

(i) 32 to 44 adult passenger; 48 to 66 school age passenger.

(ii) 12 to 28 adult passenger; 24 to 42 school age passenger.

(4) Sedans and station wagons (based on standardized, consolidated requirements).

(5) Certain types of light trucks (e.g., conventional carryall, maintenance telephone utility); requirements contracts are established to cover as many types of light trucks as feasible.

(b) Federal Supply Schedule contracts are available to cover certain special purpose motor vehicles, such as firefighting trucks, waste disposal trucks, and construction equipment.

5. Section 101–26.501–3 is revised to read as follows:

§ 101–26.501–3 Consolidated purchase program.

(a) Except as noted in § 101–26.501(a) and where motor vehicle requirements can not be satisfied under the standardized buying programs described in § 101–26.501–2, GSA will continue to make consolidated procurements of all motor vehicle types each year to achieve maximum benefits and economies, as follows:

(1) Family buys—Large annual consolidated buys for sedans, station wagons, and standard light trucks, purchased in the aggregate by group to the extent practical. These procurements are designed to obtain the best market prices available and are normally definite quantity type with maximum option potential. It is anticipated that

resulting contracts will remain in place from approximately mid-November to approximately May 1 (or end of model year closeout).

(2) Two (2) volume procurements each year for light trucks of the types covered by Federal standard Nos. 292 and 307, but not covered by standardized buying programs or family buys, as previously described. Requisitions to be included under these two procurements should reach the GSA Automotive Commodity Center by June 15 and December 1 respectively.

(3) Up to three (3) consolidated procurements for medium and heavy trucks and buses of the types covered by Federal standard No. 794, Federal specification Nos. KKK–T–2107, 2108, 2109, 2110, 2111, and Federal specification No. KKK–B–1579.

(b) Requirements not covered by Federal standards 122, 292, 307, or 794 shall conform with the provisions of § 101–26.501–4.

6. Section 101–26.501–4 is revised to read as follows:

§ 101–26.501–4 Submission of orders.

Orders for all motor vehicles shall be submitted on GSA Form 1781, Motor Vehicle Requisition, or DD Form 448, Military Interdepartmental Purchase Request (MIPR), to the General Services Administration, Automotive Commodity Center (FCA), Washington, DC 20406, and shall contain required FEDSTRIP data for mechanized processing. The Department of Defense shall ensure that appropriate MILSTRIP data are entered on DD Form 448.

(a) Requisitions covering vehicle types not included in Federal standard Nos. 122, 292, 307, or 794, in a military specification, or in an agency specification on file with GSA, shall contain complete descriptions of the vehicles required, the intended use of the vehicles, and terrain in which the vehicles will be used.

(b) Requisitions for vehicles within the category of Federal standard Nos. 122, 292, 307, or 794, but for which deviations from such standards are required, unless already waived by the Director, Automotive Commodity Center (FCA), Federal Supply Service, GSA, Washington, DC 20406, shall include with the requisition a justification supporting each deviation from the standards and shall contain a statement of the intended use of the vehicles, including a description of the terrain in which the vehicles will be used. Prior approval of deviations shall be indicated on the requisitions by citing the waiver authorization number.

(c) GSA Form 1781, Motor Vehicle Requisition, has been specifically designed for agency use to expedite ordering of all vehicles. Agencies are requested to use GSA Form 1781 as a single-line-item requisition for nonstandard as well as standard vehicles. When ordering standard vehicles, the appropriate standard item number for such vehicles equipped to meet specific operational needs may be selected from the applicable table in the Federal standards. Additional systems and equipment may be added by inserting in the "Option Codes" portion of the form the appropriate code for the selected items from the table of options in the standard. When ordering nonstandard vehicles or options, the instructions on the reverse of GSA Form 1781, properly completed, will satisfy the requirements regarding the submission of requisitions as set forth in paragraph (a) of this section.

(d) Each requisition shall indicate the appropriation fund code to be charged and must bear the original signature of an officer authorized to obligate cited funds.

(e) Separate requisitions shall be submitted for each vehicle type and consignee.

7. Section 101–26.501–5 is revised to read as follows:

§ 101–26.501–5 Procurement time schedules.

(a) Requisitions covering vehicle types included in Federal standard Nos. 122, 292, 307, 794, Federal specification Nos. KKK–T–2107, 2108, 2109, 2110, 2111, and Federal specification No. KKK–B–1579 will be procured either under a standardized buying program, as described in § 101–26.501–2, or a consolidated purchase program, as described in § 101–26.501–3, unless a statement is included justifying the need for delivery other than the delivery times indicated in this section. Requisitions containing a statement of justification will be handled on an emergency basis in accordance with § 101–26.501–5(b).

(b) *Emergency requirements.* Emergency requirements will receive special handling only when the requisitions are accompanied by adequate justification for individual purchase action. Every effort will be made to meet the delivery date specified in the requisition.

(c) *Delivery time.* Delivery times for motor vehicle requirements will range widely depending on method of purchase.

(1) *Existing contracts.* Delivery times for motor vehicle requirements submitted and placed against existing in-place contracts (family buy option, requirements contract or Federal Supply Schedule contract) will range from 60 to 150 days from date of purchase order.

(2) *Volume consolidated procurements.* Delivery times for motor vehicle requirements submitted for volume consolidated purchases will range from 210 to 330 days after solicitation consolidation date. Included in delivery time estimates are 90 to 105 days required for soliciting and receiving offers, 30 to 60 days for evaluation and award of contracts, 90 to 180 days from date of award for delivery of vehicles to destination (dealer or consignee, as applicable).

(3) For buses, ambulances, and other special duty vehicles which can not be procured under the standardized buying programs or consolidated purchase programs described in §§ 101–26.501–2 and 101–26.501–3, 240 to 270 days from date of award are usually required to effect delivery. However, special purpose vehicles with unique characteristics, such as certain types of firetrucks, may require longer delivery. In such instances, every effort will be made by GSA to facilitate deliveries and keep the requisitioning agencies informed of any unauthorized delay.

8. Section 101–26.501–6 is amended by revising paragraphs (b) and (c) to read as follows:

§ 101–26.501–6 Forms used in connection with delivery of vehicles.

* * * * *

(b) *Standard Form 368, Quality Deficiency Report (Category II).* GSA is constantly striving to improve customer service and the quality of motor vehicles for which it contracts. To inform contractors of the deficiencies noted during the life of the vehicles, Standard Form 368 shall be prepared by the consignee and sent to GSA describing details of vehicle deficiency and action taken for correction. Procedures for documenting and reporting quality deficiencies are set forth in the GSA Publication "Discrepancies or Deficiencies in GSA or DOD Shipments, Material or Billings." Agencies are urged to report all deficiencies to GSA irrespective of satisfactory corrective action taken by the manufacturer's authorized dealer. If the dealer refuses to take corrective action on any vehicle within its warranty period, the report shall so state and include an explanation of circumstances. Standard Form 368 shall also be used to report all noncompliance with specifications or other requirements of the purchase order.

(c) *Instructions to Consignee Receiving New Motor Vehicles Purchased by General Services*

Administration. This information is printed on the reverse of the consignee copy of the delivery order. Personnel responsible for receipt and operation of Government motor vehicles should be familiar with the instructions and information contained in the document entitled "Instructions to Consignee Receiving New Motor Vehicles Purchased by General Services Administration."

9. Section 101–26.501–7 is revised to read as follows:

§ 101–26.501–7 Sale of vehicles.

GSA will not solicit trade-in bids when purchasing new motor vehicles for replacement purposes because experience has shown that suppliers (manufacturers) are unwilling to accept used vehicles in part payment for new ones. Accordingly, used vehicles that are being replaced will be disposed of by sale as set forth in Part 101–46.

§ 101–26.501–8 [Reserved]

10. Section 101–26.501–8 is removed and reserved.

Dated: August 28, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92–25320 Filed 10–19–92; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 466

[HSQ–199–F]

RIN 0938–AF88

Medicare Program; Payment to Hospitals for Furnishing Photocopies to Peer Review Organizations

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

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing Utilization and Quality Control Peer Review Organizations (PROs) to provide for a uniform methodology for determining payment to hospitals for the costs of furnishing photocopies of medical records of Medicare beneficiaries to PROs. We also are establishing the rate of payment for these costs at $.07 per page. This amount includes payment for labor and supply costs, but not the costs of equipment and overhead, which are already otherwise paid under the Medicare program.

EFFECTIVE DATE: This regulation is effective November 19, 1992.

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FOR FURTHER INFORMATION CONTACT: Sandy Kappert, 410–966–6890.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (Title I, subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248) amended part B of title XI of the Social Security Act (the Act) to establish the Utilization and Quality Control Peer Review Organization (PRO) program. The 1982 legislation provided that PROs assume the responsibilities that previously had been assigned to Professional Standards Review Organizations (PSROs) and fiscal intermediaries. Those responsibilities include the review of health care services funded under Medicare (Title XVIII of the Act) to determine whether those services are medically necessary, are furnished in the most appropriate setting and are of a quality that meets professionally recognized standards. In addition, PROs monitor and validate a sample of diagnostic and procedural information supplied by hospitals to fiscal intermediaries regarding the inpatient hospital prospective payment system.

To carry out their responsibilities, PROs acquire information from the medical records of patients and from other records maintained by health care facilities, practitioners, and claims payment agencies. In addition, they generate information regarding the quality and appropriateness of health care services. PROs use this information to develop and review profiles (practice patterns) that enable them to focus on suppliers of health care (for example, practitioners and hospitals) and specific aspects of Medicare payment (for example, the assignment of discharges to diagnosis-related groups (DRGs) in the hospital prospective payment system) for the purpose of assessing the care being furnished and to recommend any required corrective action.

Under section 1866(a)(1)(F) of the Act, in order to receive payment under the Medicare program, a hospital must enter into an agreement with the PRO in the area in which the hospital is located for the peer review of Medicare services provided by the hospital. Section 466.78(b) provides that health care facilities that submit Medicare claims must cooperate in the assumption and conduct of PRO review. Facilities must provide patient care data and other pertinent data to the PRO at the time the PRO is collecting review information necessary for making its determinations.

Section 466.78(b)(2) currently provides that when the PRO review is conducted offsite, the facility must photocopy and deliver to the PRO, without charge, all required information within 30 days of the request. This regulation was challenged by a group of Wisconsin hospitals that brought suit against the Wisconsin Peer Review Organization (WiPRO) and the Secretary of the Department of Health and Human Services (HHS) arguing that the "without charge" provision did not adequately take into account the hospitals' increased costs of offsite review. The United States District Court for the Western District of Wisconsin handed down a decision in the case in favor of the hospitals. *Burlington Memorial Hospital et. al.* v. *Bowen*, 644 F. Supp. 1020 (W.D. Wis. 1986).

The Court found that the rulemaking record did not adequately address the Secretary's contention that photocopying costs were already included as part of a hospital's payment under the Medicare prospective payment system. The Court concurred, however, with the Secretary's position that the statute does not require that these costs be paid twice; that is, once under the prospective payment system and again under section 1866(a)(1)(F) of the Act.

The thrust of the Court's holding in the *Burlington Memorial Hospital* case was echoed in two similar suits, *American Hospital Association (AHA)* v. *Bowen*, No. 86–1487–A (E.D. Va. July 13, 1987) and *Beverly Hospital et al.* v. *Bowen*. No. 86–3079 (L.F.O.), (D.D.C. Oct. 26, 1987). In the *AHA* and *Beverly Hospital*

cases, the courts expressed the expectation that HHS would promulgate regulations that would specifically accommodate the increased costs that providers incur in the context of offsite review that are not already otherwise paid under the Medicare program.

In light of these court decisions, on March 16, 1988, we published in the Federal Register a proposed rule that would, among other things, permit payment to hospitals for the costs of photocopying medical records required by the PROs for their review (53 FR 8654–8687). In particular, we proposed to revise § 466.78(b)(2) and add a new paragraph (c) to that section. The Secretary would furnish PROs with funds to pay hospitals directly for photocopying and mailing records for offset review. These payments would be in addition to other payments made to a hospital under the prospective payment system. A hospital not being paid under the prospective payment system would continue to be paid for photocopying costs as part of its overall payment under Medicare's principles of reasonable cost.

In determining that HHS should pay certain costs of photocopying related to PRO review, the Agency does not concede that it is necessarily required to do so under law. The prospective payment system is designed to cover the general category of administrative costs without regard to particular increased or decreased burdens that particular hospitals might incur because of changes in Medicare program requirements, other legal requirements, or other external forces that may impose greater or lesser administrative burdens on a hospital. Based on the court decisions reviewing the photocopying regulation and our further analysis of costs incurred by hospitals under the PSRO and PRO review systems, we concluded, however, that the cost of PRO photocopying could reasonably be the object of separate payment.

II. Payment Under the Proposed Rule

Under the proposed rule PROs would negotiate with prospective payment hospitals in their area and, within established constraints, implement a payment process with each hospital that would determine the frequency of payments and the manner by which the PRO would verify aspects of the hospital's photocopying costs. The supplemental payment for photocopying would be made at a national rate based on a fixed cost per page. The fixed cost per page was to be determined by dividing the total costs of photocopying by the number of pages. The resulting cost per page was equivalent to $.0498. We proposed to pay postage costs as an item over and above the amount we would pay for photocopying costs.

In determining the payment rate per page, in both the proposed rule and this final regulation, we have examined the four basic cost components of photocopying: Labor, supplies, equipment, and overhead. In the proposed regulation, the labor cost per page was determined by dividing the annual salary and fringe benefit costs of the individual performing the photocopy activities by the number of pages photocopied in one year. We assumed an average salary cost of $16,310 based on the payment rate for a GS–5 federal employee, an experienced mid-level secretary. Fringe benefits for the individual were set at 27.9% of salary, a standard rate set forth in OMB Circular A–76, that amounted to $4,551. As a result, total labor costs were estimated to be $20,861 per year.

To determine a per-page rate, the total labor costs were divided by the number of pages that could reasonably be expected to be photocopied in a year. In the proposed rule, we indicated that a typical photocopy machine copies 748,000 pages per year. This amount was based on copying documents at a rate of six pages per minute for each hour in an eight hour day, five days a week, 52 weeks a year. This estimate was quite conservative since it was based entirely upon hand feeding of documents when it is clear that there are many times when automatic feeds will be used. Automatic feeds permit copying at a rate of 60 pages per minute. The use of automatic feeds greatly increases the number of pages that can be generated on an hourly basis, and as a result, greatly decreases the cost of photocopying per page.

Under the proposed rule, labor costs amounted to approximately $.0279 per page. This amount was derived by dividing the total labor costs of $20,861 by 748,000, the number of copies made in one year.

In the proposed rule, paper costs were based on a provider's projected average use of 150 cases of paper purchased for slightly in excess of $30 per case. Costs for toner and developer were calculated on the basis of a machine producing 748,000 copies annually.

The equipment costs were determined based on a price range of lease costs of typical machines that reasonably represented the spectrum of types and costs that would tend to be found nationally. For each machine we determined the basic rental amount and the costs for maintenance and repairs.

Total additional Medicare payment was calculated at $.0498 per page for labor, supplies and equipment. Under the proposed regulation no additional payment was provided for indirect, overhead or space costs as these costs are already paid under the Medicare program.

In the March 16, 1988 proposed rule, we proposed to make the change in the regulation governing the payment of photocopying costs retroactive to April 1, 1987. That is, we concluded that an adjustment to a provider's reimbursement to reflect a greater use of offsite review was warranted for periods after April 1, 1987. The April 1st date signified the date HCFA determined an adjustment to the current rule was justified in light of what was essentially a change in circumstances surrounding the implementation of the PRO program, namely the increased use of offsite review which may have increased the costs of a provider in a way that was not accounted for in the prospective payment system. Therefore, with publication of the proposed rule, HCFA began paying PROs, who in turn paid hospitals, at $.0498 per page. Under the proposed regulation, any challenge relating to payment for photocopying costs for offsite review for cost reporting periods ending before the effective date of the regulation had to be expressed in the form of a claim for additional payment for inpatient costs on the hospital's cost report submitted to the fiscal intermediary and subject to review pursuant to the provisions of section 1878 of the Act and subpart R of 42 CFR part 405.

Subsequent to publication of the proposed regulation, however, the United States Court of Appeals for the District of Columbia Circuit ruled in the appeal of the *Beverly Hospital* decision that the rulemaking process was not the proper vehicle for providing retroactive payment for photocopying. *Beverly Hospital, et al.* v. *Bowen*, 872 F.2d 483 (D.C. Cir. 1989). The Court of Appeals remanded the case to the District Court with instructions that HHS ensure the hospitals a fair opportunity to recover photocopy costs incurred from the time of the initial promulgation of the regulation requiring photocopies to be provided without charge.

Before the District Court took any action on the remand, a class action was filed seeking similar retroactive payments for all hospitals participating in the Medicare program. *Swedish Hospital, et al.* v. *Sullivan* (D.D.C. filed June 12, 1989). Subsequently, the parties in the *Swedish Hospital* case reached a settlement agreement with regard to the

additional payments to be made to hospitals for PRO photocopying for the period July 1, 1984 to June 30, 1991. As a result of the decision in *Beverly Hospital* and the settlement in *Swedish Hospital* governing prior periods, this final rule deals only with prospective payment for PRO photocopying from the date of publication of this final regulation. Additional issues that were included in the proposed regulation, but do not involve photocopy costs, are being addressed in a separate rule.

We have continued to make payment for photocopying at a rate of $.0498 per page since July 1, 1991. Additional payments will be made by HHS, outside the rulemaking process, for PRO photocopying for the period from July 1, 1991 (the end of the settlement period) to the effective date of this final rule to provide for the difference between $.0498 and the amount established by this final regulation.

III. Provisions of This Final Rule and Discussion of Comments

We received a total of 197 comments regarding photocopy costs in response to our March 16, 1988 proposed rule. Comments were received from 159 hospitals that participate in the Medicare and Medicaid programs. We also received comments from 19 hospital associations, six medical record associations, and several miscellaneous sources. The American Hospital Association (AHA) also provided HHS with the results of a study it had conducted entitled "Photocopy Cost Determination Study: Final Report" ("AHA Report"). Many of the commenters referred to and relied upon this study. In addition, the parties in the *Swedish Hospital* litigation have conducted discovery with regard to the costs of photocopying for PRO review. The comments received, including the results of the AHA study, and the relevant information obtained during the course of the *Swedish Hospital* litigation have been included in the rulemaking record and have been considered in the development of this final rule. Specific comments are addressed following the description of the provisions of this final rule.

A. Payment Under the Final Rule

In the proposed rule, we presented a methodology that yields a uniform per-page rate that would be applied on a nationwide basis to all Medicare prospective payment hospitals that have PRO agreements. We received no comments concerning the use of a uniform per-page rate and we continue to believe it should be utilized; accordingly, we have not changed this approach in this final rule. As described below, however, we have modified the calculation of that rate.

In developing the final rule, we took into account the two major principles enunciated in the court decisions described above. First, hospitals should be paid for the reasonable costs of providing photocopies pursuant to their PRO agreements. Second, hospitals should not be paid twice for these costs. In other words, any costs of complying with the PRO agreement that are paid elsewhere under the Medicare program should not be paid through the methodology established in this rule. With these principles in mind, and based on the comments received as well as other considerations set forth below, we have made two basic changes to the approach taken in the proposed rule: Prospective payment for PRO photocopying will be made under the regulation from the data of publication of the final regulation and the additional Medicare payment will be increased from $.0498 per page to $.07 per page, exclusive of postage costs.

As described in greater detail below, we believe that, as a result, total payment to hospitals under the Medicare program for PRO photocopy costs will amount to over $.10 a page. Of this amount, hospitals will be paid directly under this regulation for $.07 per page for labor and supply costs. The remaining costs per page represent equipment and overhead costs for which hospitals are already paid under other payment provisions of the Medicare program.

Labor Costs

In response to the proposed rule, commenters objected that labor costs were not accurately calculated because it was unrealistic to assume that an individual photocopying records for a PRO could make 748,000 copies per year. They objected that time was required for processing the request in addition to the actual time spent photocopying and that these costs were not adequately accounted for in the prospective payment system base year rate. In addition, we have determined that the number of hours available for copying should be reduced to allow for vacation and sick leave and holidays.

As a result, the total number of hours available for an individual to perform photocopying has first been reduced to account for 2 weeks of vacation leave, 2 weeks of sick leave, and 10 holidays, or a total of 30 days times 8 hours a day or 240 hours. The total number of hours available in a work year is 2080 (52 weeks times 40 hours). When 240 hours are subtracted for leave and holidays there are 1840 hours remaining. Under the formula set forth above, 662,400 copies could then be made per year (6 pages per minute times 60 minutes in an hour times 1840 hours).

In addition, we carefully considered the comments regarding the need to perform other tasks such as retrieval and refiling of the records, in addition to the actual photocopying. As a result, we have further adjusted the calculation to take into account the appropriate amount of labor time required to perform all the steps identified by the commenters that are performed in addition to the actual photocopying, for example, log in the request, retrieve the record, refile the record, and mail the copies. Although it is impossible to determine precisely what percentage of time is devoted to these tasks, several indicators provide guidance in determining a reasonable allocation of time for these tasks.

The AHA Report included a time study of the steps believed to be included in the production of copies of hospital records for PRO review. An examination of the results of this study indicates that between 42% and 57% of the time was spent on photocopying, depending upon which steps are included in the definition of photocopying. The remainder of time was dedicated to other tasks such as logging in the request, retrieving the record, refiling the record, and mailing the copies.

In addition, during the discovery conducted in the *Swedish Hospital* litigation, deposition testimony described another time study conducted by a photocopy company of the steps necessary for copying hospital records for PRO review. This study indicated that 65% of the time was devoted to actual photocopying with the remainder of the time spent on such tasks as logging in the request, retrieving the record, disassembling the chart, reassembling the chart, and mailing the copies to the PRO. Although it is impossible to determine exactly what percentage of time any given hospital will devote to the steps necessary to complete the required photocopying, these studies provide some general indication of the division of tasks necessary to provide the required copies.

As a result, we have adopted a figure of 55%, which is the rounded average of the three figures that are available from these studies and which we believe is a reasonable division of the steps required. If it is assumed that only 55% of the time is available for actual photocopying, then the number of copies

which can be made by an individual would be reduced accordingly. Fifty-five percent of 662,400 copies equals 364,320 copies annually.

We have also increased the salary level of the employee to $17,686 to reflect the calendar year 1992 GS–5 level secretary pay rate. When this number is added to the fringe benefits, calculated at 27.9%, the total annual labor costs equal $22,620. When the annual labor costs of $22,620 are divided by 364,320, the revised number of copies in a year, the labor cost to be paid per page equals $.06 per-page.

Supply Costs

We have also increased the amount for paper, toner, and supplies from $.0063 to $.01 per page. We note at the outset that, as described below, it is clearly documented that the costs for all supplies used in PSRO delegated review were reported as indirect, overhead costs on each hospital's cost report and thus were included in the hospital's base year costs upon which the base year prospective payment rates were established. We believe that supply costs for the extensive activities conducted as part of PSRO delegated review were by definition greater than the paper and toner required for the single activity of PRO photocopying. Thus, there is a strong basis for excluding the costs of supplies from the additional amount to be paid. However, because it is difficult to document the amount already paid, and relatively easy to ascertain supply costs, additional payment is being made through this rule for supply costs, notwithstanding the fact that we are not obligated to do so.

The $.01 per page provided for supplies is calculated on the basis of $.005 for paper and $.005 for toner and developer. The paper cost is based on a cost of $25 per case of paper with 5,000 sheets in a case. In the March 16, 1988 proposed rule we estimated the cost of paper to be $30 per case. The reduced figure of $25 per case was established based on comments on the proposed rule from individual hospitals and a national hospital association. Deposition testimony in the *Swedish Hospital* litigation also confirmed a paper cost of $25 per case. The costs of toner and developer vary widely depending on the types of photocopy machine utilized. However, based on comments from hospitals, and a large hospital association, we believe a reasonable amount for toner and developer is $.005 per page.

Also, as indicated under new § 466.78(c)(3) of this final rule, we have revised the calculation of the payment rate per page by including a separate calculation of the per-page costs of supplies. As discussed above, based on comments received on the proposed rule, we have increased the payment for supplies from $.0063 per page to $.01 per page for paper, toner, and developer. The increased payment reasonably reflects the information available to HHS concerning supplies and is, in fact, even slightly more than the amount for supplies included in the AHA study of $.0094 per page.

Total Payment Per Page

The total additional payment per page to be provided for labor and supplies thus equals $.07. We acknowledge that it is impossible, in setting such a national rate for these costs, to guarantee that payment will duplicate precisely the costs of any one hospital. However, we have established a reasonable rate of payment that is fully supported by information provided to the Agency in comments on the regulation from providers, their employees, and associations representing providers. This information has been confirmed by information received as a result of discovery in the *Swedish hospital* litigation.

Based on the comments received, the number of copies made annually has been reduced by more than 50% from 748,000 to 364,320 copies. As a result, the payment for labor costs has more than doubled from approximately $.027 under the proposed rule to $.06 under the final regulation, an increase of over three cents per page. Supplies have likewise been increased from $.0063 per page under the proposed rule to $.01 in the final rule, an increase of 58%.

Payment at $.07 per page is also fully supported by the AHA Study, which found a total median cost per page for labor and supplies of $.0556, an amount significantly less than the $.07 payment rate adopted here. While the average, as opposed to median, cost calculations contained in the AHA study resulted in a slightly higher rate ($.077), we believe this figure is not as accurate as the median figure because the calculations for average costs fail to make adjustments for the unexplained, extremely high amounts reported by two hospitals in the study for labor and supply costs. In any event, even the average figure in the AHA Study is only slightly higher than the $.07 adopted by the HCFA. Furthermore, as described below, when additions are included to account for equipment and overhead that are already paid, the total estimated Medicare payment would amount to well over $.10 per page.

Equipment Costs

The proposed rule included a methodology that would have provided additional payment for the costs of photocopying equipment. In response to the comments received on this issue, as well as our review of the statutory provisions concerning how these costs are already paid, we have determined that additional payment for photocopy equipment cannot be provided under this rule. Pursuant to sections 1886(a)(4), 1886(d)(1)(A), 1886(g)(1), and 1814(b) of the Act, and regulations at § 413.130, capital-related costs, including the costs of photocopy equipment, repairs, and space costs are paid directly to each hospital based on the hospital's actual reasonable costs for equipment, repairs, and space for cost reporting periods beginning prior to October 1, 1991. For future cost reporting periods, capital-related costs are paid for under the capital prospective payment system implemented by regulations at 42 CFR 412, Subpart M, published in the **Federal Register** on August 30, 1991 (56 FR 43358). Thus, hospitals are already being paid for these costs, and no additional Medicare payment is provided through the per-page rate of payment described here. To do so would, we believe, violate the statutory provisions governing the payment of these costs and the clear Congressional intent that payment for these costs must be through the appropriate payment provisions. (See 56 FR 43358 (Aug. 30, 1991) for discussion of Congressional action with regard to these payments.) Additionally, it would provide for the kind of duplicate payment that the court in *Burlington Memorial Hospital* specifically ruled must not occur.

Payment of equipment costs through the capital-related cost provisions is likewise consistent with section 1866(a)(1)(F)(i) of the Act, which states that the costs of the PRO agreement with a hospital are considered costs incurred in providing inpatient services under Part A of Medicare. As indicated above, capital-related costs incurred under Part A are paid through the capital prospective payment system. Thus, we believe payment of such costs incurred in photocopying must be paid as well under these Part A provisions.

We note that current statutory limitations at sections 1886(g)(1)(A) and 1886(g)(3)(A) of the Act on the payment of capital-related costs prohibit HHS from paying 100% of the facility's equipment costs. These limitations are imposed on the payment of all capital-related costs and there is no basis for exempting equipment that is already

paid for under the capital-related cost provisions merely because it is used to produce copies for PRO review.

Payment of equipment costs is also based on a utilization formula, applicable to all providers, that apportions costs between Medicare and non-Medicare patients in order to determine Medicare's share of the cost incurred based on the percentage of Medicare patients. (See 31 FR 14808 (Nov. 23, 1966); 51 FR 11142 (April 1, 1986).) This system ensures that Medicare pays for only its portion of total hospital costs since it is clear that not all hospital patients are Medicare patients; that not all costs are attributable to Medicare; and, as is the case here, that not all hospital photocopy equipment is used exclusively for PRO review. There is thus no basis for exempting these equipment costs from this required apportionment of costs (*Boswell Memorial Hospital* v. *Heckler*, 749 F.2d 788 (D.D.C. 1984); *St. James Hospital* v. *Heckler*, 760 F.2d 1460 (D.D.C. 1985)).

Overhead Costs

Payment for the overhead costs of photocopying is provided through the Medicare prospective payment system for operating costs. Therefore, additional payment for overhead was not provided in the proposed rule and is not included in the per-page rate of payment adopted through this final regulation. The payment rates for hospitals under the prospective payment system were established utilizing a base year ending on or after September 30, 1982, and before September 30, 1983. (See § 412.71(a).) During this period, the review of hospital services was conducted not by PROs but under the predecessor PSRO program. In contrast to the current PRO program in which review is conducted by the PROs themselves, under the PSRO program, review was delegated almost entirely to the individual participating hospitals through an agreement with a PSRO.

The hospital's review costs under the PSRO program were paid in two ways. The direct costs of review were paid based upon the actual costs reported by the hospitals on a form entitled "Delegated Hospital Function Cost Summary". Payments were made directly to the hospitals by the fiscal intermediaries based on a unit cost rate for these actual costs. Direct costs were defined as the costs of physicians, physician advisors, other health care professionals, review coordinators, technical/support personnel, applicable fringe benefits, training, and travel.

All other review costs incurred by the hospital, including overhead costs, were considered indirect costs and were required to "be included in administrative and general or other appropriate overhead expense accounts." (See § 466.62(c)(1) (1982).) Even hospitals that were not delegated review but that provided the PSRO with space or other services were required to include these indirect costs "in administrative and general or other appropriate overhead expense accounts." (See § 466.63(d) (1982).)

These overhead costs included, but were not limited to, "administrative costs, utilities, maintenance, space, depreciation, data costs, office supplies, etc." The hospitals were directed that such costs "should continue to be accounted for under the appropriate cost center for Medicare cost reporting." Hospitals were instructed not to include the indirect costs on the "Function Cost Summary", which included the direct costs of review. Instead, they were to "be reflected in all other hospital indirect costs on the cost reporting form filed at the close of the cost reporting period" (1975 Amendments Supplement to the Provider Reimbursement Manual, at pages 14 and 16).

As a result of these requirements, the indirect costs of PSRO review clearly were included in a hospital's base year costs upon which the prospective payment system base year rates were established, a fact confirmed by comments on the proposed rule and in the *Swedish Hospital* discovery. The overhead costs of these delegated PSRO review programs, which included the overhead for all of the PSRO functions and the individuals responsible for performing these functions (including physicians, nurse coordinators, other health care professionals, and administrative staff) were by definition much greater than those associated at present with the single activity of photocopying. This fact was confirmed as well during deposition testimony taken in the *Swedish Hospital* litigation. Accordingly, the payment of the overhead costs of the photocopy activity, minor in comparison to the costs of the prior, more extensive PSRO delegated review system, are adequately paid under the prospective payment system through their inclusion in the base year rate calculations.

Under this final rule, HCFA will pay all of the labor costs of PRO photocopying because the amount of photocopying required by offsite review is probably greater now than under PSRO delegated review and because the majority of the labor costs of PSRO review were paid outside the cost reporting process and thus were not included in the base year calculations forming the prospective payment. In contrast, however, the overhead costs of PSRO review were included in the cost report and were included in the base year calculation. Furthermore, payment for space costs is also provided through the capital-related cost provisions described above. Thus, there is a clear basis for excluding additional payment for these costs from this rule.

As discussed above, the equipment and overhead costs of hospitals attributable to photocopying are paid through other payment provisions of the Medicare statute on the basis of the actual costs reported by the specific hospitals. While we have no precise figures as to the amounts paid to each hospital by Medicare, we can only assume that hospitals have claimed and are receiving all such payments to the extent permitted by law. According to the AHA Report, the median equipment cost per page of the hospitals profiled in the report was $.0153 per page. AHA also calculated a median overhead factor of $.0145 per page. When the total costs per page for labor and supplies provided under this final rule are added to the AHA-reported equipment and overhead costs, the estimated total amount of payment equals $.12, more than the $.10 per page requested by the majority of commenters. Similar and even higher figures are obtained from data on equipment and overhead costs submitted by hospitals along with comments on the proposed rule as well as information obtained in the course of discovery in the *Swedish Hospital* litigation.

While the current payment rate has been set at $.07 per page, HCFA will periodically review the rate to ensure that it still accurately reflects hospital costs. Notice of any such changes will be published in the **Federal Register.** As described above, the payment rate for labor and supplies has been increased substantially from the amount included in the proposed rule. With regard to any additional increases, we note that comments received in response to the regulation as well as information obtained in the *Swedish Hospital* litigation indicate that hospital employees performing photocopying currently often make less per hour than the amount for labor included in the payment rate to be provided here. New photocopy equipment, which is able to process more easily irregular size sheets of paper, such as medical records, will enable copies to be made much more rapidly. Furthermore, deposition testimony indicated that the current cost of paper is $25 per case, just as is included in our calculation. In light of

this information we can find no basis at this time for further increasing the payment rate per page.

In addition to the changes made in 42 CFR 466.78 to permit payment of photocopy costs, regulations at 42 CFR 412.115 governing Medicare payments under the prospective payment system have been amended to include payment for the costs of photocopying and mailing records required for PRO review. Consequently, as with other disputes regarding Medicare payments to hospitals, disputes concerning payments for the costs of PRO review under 42 CFR 466.78 and the other payment provisions of the Medicare statute and regulations must be presented in accordance with the administrative and judicial review requirements of section 1878 of the Social Security Act and subpart R of 42 CFR part 405.

B. Comments and Responses

The majority of commenters objected to the total proposed rate of payment per page and the specific payment rates for the four components making up the rate: labor, supplies, equipment, and overhead.

Comment: Most of the commenters believed that the per-page amount did not include enough payment for the many labor steps included in photocopying. There was also one comment that noted that the proposed rule did not provide for a search fee, despite the fact that HCFA charges a search fee when responding to a request made under the Freedom of Information Act (FOIA). In addition, several commenters indicated that a GS–5 level employee is not capable of performing the retrieval and refiling steps and that a certified medical records technician would be necessary at a higher level of pay.

Response: As indicated above, the labor costs have been recalculated since the publication of the proposed rule and the recalculation takes these comments into account. Under this final rule, payment for all of the steps involved in photocopying a record are accounted for, including time for "searching" for the record. This was done by reducing the number of copies that could be made by almost one-half to provide for the time needed for retrieval, refiling, etc. As a result of this change, as well as calculations made to account for leave days and holidays, the amount paid per page for labor has more than doubled from the amount under the proposed rule of $.027 to $.06 under the final regulation.

We have not accepted the comments regarding the need to use more costly personnel such as accredited medical records technicians to perform the steps necessary to photocopy records for PRO review. We proposed a salary component that reflect the payment rate for a GS–5 federal employee, an experienced mid-level secretary. That figure has been increased in this final regulation to reflect current federal payment rates. As we indicated in the preamble to the proposed rule, while provider experience may vary, the operation of a photocopy machine is not a complicated task regardless of the fact that medical records do not always consist of pages that are the same size or that are inserted in the file in a uniform manner. Training an employee to retrieve and refile a record and operate a photocopy machine is not a particularly difficult undertaking nor does it require great technical expertise on the part of the trainee. Therefore, it would not be unreasonable to expect that such a person would earn the minimum wage for these tasks. In order to ensure an adequate skill level, however, we have provided for additional payment amounting to twice the federal minimum wage.

While some hospitals may use accredited medical records technicians to perform photocopy functions, information supplied by other commenters indicates that in the majority of cases such highly trained personnel are not required to perform these functions. Comments received on the proposed rule as well as deposition testimony obtained in the *Swedish Hospital* litigation from hospital administrative staff confirm that clerical staff are used to perform these functions and that the skill level required is often that of a high school graduate.

The rulemaking record also includes comments that indicate that the salary level accurately reflects the level of skill required for photocopying. Furthermore, during deposition testimony in the *Swedish Hospital* litigation, hospital representatives testified that the individuals performing the photocopy functions currently make less than that proposed in the regulation. While some hospitals may use more highly trained staff to perform these functions and pay higher wage costs as a result, it is clear that these activities can be and are performed by hospital personnel who are paid at lower rates than those used for the calculation of this final rule. This is further confirmed by the fact that the labor cost component payment under this final rule is higher than that found in the AHA study. Thus, we believe that there is no reasonable basis for further increasing the salary level.

Comment: One commenter noted that our calculation of fringe benefits at 27.9% of annual salary was generous.

Response: We agree. In several instances, such as the adopt of OMB Circular A–76 as the basis for the fringe benefit computation, we have provided a higher rate of payment than is prevalent in the hospital industry.

Comment: Several commenters suggested that the amount provided for supplies under the proposed rule did not reflect the true costs of these items.

Response: As noted above, in response to these comments we have increased the amount of payment for supplies to $.01 per page. This amount reflects the figures submitted by commenters, is slightly more than the median amount reported for supplies in the AHA Report, and is consistent with information submitted in the *Swedish Hospital* litigation.

Comment: Two commenters indicated that basing costs on nearly 750,000 copies per year was unrealistic, especially for small rural hospitals who made far fewer copies.

Response: As described above, we have reduced the number of copies used in the per-page calculation by more than half, from 748,000 to 364,320 copies per year. While some hospitals may make fewer copies, this figure is a reasonable average that reflects the overall hospital experience. Furthermore, while this figure is a component of the per-page amount, the amount of payment is based on the actual number of copies made.

Comment: Fifty-four comments were received, many from hospitals and a few from hospital associations, concerning their estimates of costs per page for photocopying. These costs ranged from a low of $.058 to a maximum of $.57. Other commenters noted that, since we charge $.10 per page for FOIA requests, the rate per page under this rule ought to be the same. Several other commenters requested payment for photocopying and associated costs at the rate of $.1259 per copy, based on what they believed were the results of the AHA study. Other individuals felt that $.10–.15 per copy would be reasonable.

Response: We examined carefully all of the comments received concerning the establishment of a per-page rate of payment, including the results of studies conducted by individual hospitals and the AHA study upon which many commenters relied. As a result, we have increased the additional amount per page to be paid under the Medicare program by $.02 per page to $.07 for labor and supplies. The rulemaking record would not support an increase beyond this amount.

As is also described above, equipment and overhead costs are already paid under other provisions of the Medicare statute. Although we have no specific calculations as to how much is paid to a specific hospital for equipment and overhead, based on information supplied by the commenters and the AHA study, and information obtained in the conduct of the *Swedish Hospital* litigation, we believe this payment equals well over $.03 per page. Thus, the total amount of payment per page will be at least $.10 per page, as many commenters have requested. This amount is above what some hospitals stated were their costs and below the costs stated by others. We note that the very high per page amounts submitted by some commenters, such as $.57 per page, were not accompanied by any documentation as to whether these amounts were based on actual costs. We do not believe that such high and entirely undocumented rates, which are not consistent with comments received from other hospitals, compel further increases in the payment rate.

As to the AHA Report, we have fully considered its contents and have now increased the amount to be paid for both labor and supplies to an amount that is higher than that proposed in the report.

Comment: Several hospitals indicated that because they were never subject to PSRO review, either delegated or undelegated, the costs of such review would not have been included in their base year calculations and thus they are not receiving payment for photocopying under the prospective payment system.

Response: As indicated above, we have established a per-page payment amount that provides for all labor and supply costs without regard to whether some are paid under the prospective payment system. Capital-related costs are separately paid to these hospitals as they are to all other prospective payment hospitals. With regard to overhead costs, although they would not have been reporting these as PSRO costs, hospitals not under PSRO review were required to provide their own utilization review and all of these costs were included the calculations of the prospective payment system rate. Utilization review costs included in the costs of personnel, supplies, and overhead for the entire medical review system. These costs were much greater than those for the single activity of photocopying. When the PRO assumed review, the hospitals were no longer required to conduct Medicare utilization review and thus no longer were required to incur these costs for the Medicare program. These costs, however, were included in the establishment of the rate and thus continue to be paid at that rate.

Comment: Several commenters indicated that we should provide special payment for costs of repairs to photocopying equipment.

Response: A facility's equipment repair costs, including repairs to photocopy machines, are already paid as operating costs under the Medicare program, and thus, no additional payment is made for such costs in this regulation. Prospective payment system hospitals are paid for such costs through the prospective payment rate. As indicated above, costs such as these were included in the overhead costs of PSRO review which were in turn included in the hospitals' base year costs upon which the prospective payment system base year rates were established. Hospitals excluded from the prospective payment system are already paid for these costs on a reasonable cost basis to the full extent permitted by law and regulation.

Comment: Two commenters indicated that an enhanced amount of payment should be provided for outpatient surgery and longer stays because these would require more photocopying. Four comments noted that enhanced payment should be available when PROs misplace records and hospitals are required to replace the copies.

Response: We believe these concerns are resolved in this regulation because our payment of a hospital's PRO photocopying costs is being made on a per-page basis and not per medical record. Payment thus is made for each page, no matter how long the record. Furthermore, if records are misplaced, hospitals would be paid for making additional copies.

Comment: Twenty comments were received concerning the preamble language that stated that payment for photocopying costs would be retroactive only to April 1, 1987. They indicated that HHS' liability began when the program started on November 15, 1984, since that was when hospitals were faced with review requirements that differed from the preceding PRSO program.

Response: As indicated previously, retroactive payment of PRO photocopying costs for all Medicare hospitals from July 1, 1984 to July 1, 1991 is provided for in the settlement of the *Swedish Hospital* litigation. HCFA plans to provide for an additional retroactive payment of $.0202 per page for the period from July 1, 1991 to the effective date of this rule. This payment represents the difference between the proposed rate of $.0498 per page and the $.07 per page set forth in this final rule. Thus, the $.07 per page will be paid for photocopying for PRO review on July 1, 1991 and thereafter, until further revised by HCFA.

Comment: A total of 84 commenters stated that the proposed regulation omitted any mention of a payment schedule to pay hospitals for photocopying. Sixty-nine of the commenters suggested that HHS should require a maximum 60-day payment cycle from the date the medical record is received by the PRO. Nine commenters felt that a maximum 30-day payment cycle was more appropriate. The commenters suggested that this kind of requirement would be consistent with billing requirements for most contractors, allow a more accurate accounting system of payment, provide a reasonable cash flow for the hospital, and cause little disruption of current PRO responsibilities.

Response: We recognize that the issue of payment cycle is important to hospitals. For this reason, we will direct PROs to make payment no later than 30 days after receiving a request for payment from the hospital.

Comment: Thirty-five commenters suggested that the PRO should be required to state clearly which records the hospital is being paid for in order for hospitals to maintain accurate accounting systems.

Response: In addition to requiring that PROs pay hospitals no later than 30 days after receiving a payment request, we will also direct the PROs to indicate for which records the payment is being made.

Comment: One commenter stated that no consideration has been given to publishing the appropriate method of handling additional costs for cost reporting. Regulations for handling such costs would facilitate the settlement of cost reporting for both the intermediaries and the provider.

Response: As discussed previously, payment for PRO photocopy costs is to be made on the basis of a uniform per-page rate. To the extent there are disputes with regard to payment under that rate, they must be presented pursuant to section 1878 of the Social Security Act and subpart R of 42 CFR part 405, as would any other disputes regarding payments to hospitals under the Medicare statute.

Comment: Three commenters suggested that HCFA should clarify that the proposed rule was intended to include per page payment for all PRO copying, regardless of whether the copies were to be sent offsite or used onsite.

Response: We agree that when a hospital is responding to a request by a PRO for a photocopied record, it is irrelevant whether the PRO's request is for the use of the records offsite or onsite since the hospital's per-page copying costs would be the same. Accordingly, we have revised § 466.78(b)(2) to clarify that copying costs will be paid on a per-page basis regardless of whether the review is being done onsite or offsite.

Comment: Ninety-one commenters expressed dissatisfaction with the postage costs allowed under the proposed rule. The majority of commenters were concerned that first class postage does not ensure that records will arrive intact or timely and does not assure patient confidentiality. According to the commenters, time deadlines are a problem because PRO requests for records specify deadlines that often leave no alternative but the use of overnight delivery or express mail.

Response: As the proposed rule indicated, postage costs are to be paid as an item over and above the payment for copying costs. Under the proposed rule, first class postage would be paid, except for review of denial notices, for which overnight mail costs would be paid. In light of the fact that hospitals are to respond to PRO requests for records within 30 days, we believe that first class postage is reasonable and appropriate. Accordingly, we will not pay overnight mail or courier expenses except for reviews of denial notices. We also believe that the use of first class mail through the United States Postal Service assures confidentiality of medical records.

Comment: One commenter noted that the proposed rule erroneously characterized the process of paying hospitals for photocopying costs associated with the PRO program as "prenegotiated," and suggested that "predetermined" is a better word.

Response: In the proposed rule, the third sentence of § 466.78(b)(2) contained the phrase that use the word "prenegotiated." This sentence has been changed to indicate that the photocopying costs will be paid in accordance with the payment rate methodology provided in § 466.78(c) of this final rule.

Comment: A number of commenters raised the issue of photocopying costs for non-prospective payment system hospitals (including "waivered" hospitals) and distinct part units of hospitals that are not paid under the prospective payment system. Specifically, they urged us to include such hospitals and distinct parts within the scope of this rule.

Response: We disagree. Hospitals and distinct part units excluded from the prospective payment system are paid on a reasonable cost basis to the full extent permitted by law and regulation. Accordingly, to provide an additional per page payment amount under this regulation would result in impermissible double payments to the hospitals for these costs.

Comment: One commenter stated that the proposed rule does not make any reference to photocopying costs incurred by health maintenance organizations (HMOs) and competitive medical plans (CMPs) undergoing PRO review, and another made the same comment with regard to home health agencies (HHAs).

Response: Payment of photocopy costs under this rule is provided pursuant to section 1866(a)(1)(F)(i) of the Act, which deals with the costs of PRO review of hospitals. As a result, the payment of costs incurred by HMOs, CMPs, and HHAs is beyond the scope of this regulation.

Comment: One commenter indicated that costs under Medicaid should be included in this rule.

Response: Under section 1902(a)(13)(A) of the Act, States have a great deal of flexibility in setting payment rates for hospitals. To the extent that States require hospitals to incur costs under the State Medicaid program that are analogous to the costs incurred by hospitals for PRO photocopying under Medicare, it is the individual State that must address the issue of how these costs should be reflected in the hospital's payment rate under Medicaid.

III. Regulatory Impact Analysis

A. Executive Order 12291

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

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Since none of the provisions being implemented in this final rule are expected to generate effects meeting one or more the E.O. threshold criteria, we have not prepared a regulatory impact analysis.

In addition, 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. Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis also must conform to the provisions of section 603 of the RFA.

Since PROs are our contractors, they are not among the types of entities to which the RFA is primarily intended to apply. Nonetheless, when a rule would have a substantial effect on them, it is our practice to treat all PROs as small entities. This final rule will have no impact on payment to PROs.

We consider hospitals subject to the prospective payment system to be small entities. Under this final rule, we furnish PROs with funds to pay prospective payment Medicare hospitals directly for the costs of photocopying and mailing records related to PRO review. We anticipate that these costs will result in approximately $3.3 million yearly in hospital revenue.

Based on the foregoing, we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of substantial number of small rural hospitals. We have, therefore, not prepared a regulatory flexibility analysis.

IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511) requires that any information collection requirements included in a regulatory document must be submitted to and approved by the Executive Office of Management and Budget (EOMB) before the public is required to comply with those requirements. The requirements of this final regulation do not impose any information collection requirements that must be approved under the Paperwork Reduction Act. Therefore, it need not be reviewed by EOMB for that purpose.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 466

Grant programs—Health, Health care, Health facilities, Health professions, Peer review organizations.

42 CFR chapter IV is amended as follows:

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

Subchapter B—Medicare Program

I. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102, 1815(e), 1871 and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395hh, and 1395ww).

B. In subpart H, § 412.115 is amended by adding a new paragraph (c) to read as follows:

Subpart H—Payments to Hospitals Under the Prospective Payment System

§ 412.115 Additional payments.

* * * * *

(c) *PRO photocopy and mailing costs.* An additional payment is made to a hospital in accordance with § 466.78 of this chapter for the costs of photocopying and mailing medical records requested by a PRO.

II. Part 466 is amended as follows:

PART 466—UTILIZATION AND QUALITY CONTROL REVIEW

A. The authority citation for part 466 is revised to read as follows:

Authority: Secs. 1102 1154, 1159, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1320c–3, 1320c–8, 1395cc, and 1395hh).

B. In subpart C, § 466.78, the introductory text of paragraph (b) is republished, paragraph (b)(2) is revised, and new paragraphs (c) and (d) are added to read as follows:

Subpart C—Review Responsibilities of Utilization and Quality Control Peer Review Organizations (PROs)

§ 466.78 Responsibilities of health care facilities.

* * * * *

(b) *Cooperation with PROs.* Health care facilities that submit Medicare claims must cooperate in the assumption and conduct of PRO review. Facilities must—

* * * * *

(2) Provide patient care data and other pertinent data to the PRO at the time the PRO is collecting review information that is required for the PRO to make its determinations. The facility must photocopy and deliver to the PRO all required information within 30 days of a request. PROs pay hospitals paid under the prospective payment system for the costs of photocopying records requested by the PRO in accordance with the payment rate determined under the methodology described in paragraph (c) of this section and for first class postage for mailing the records to the PRO. When the PRO does post-admission, preprocedure review, the facility must provide the necessary information before the procedure is performed, unless it must be performed on an emergency basis.

* * * * *

(c) *Photocopying reimbursement methodology for prospective payment system hospitals.* Hospitals subject to the prospective payment system are paid for the photocopying costs that are directly attributable to the hospitals' responsibility to the PROs to provide photocopies of requested hospital records. The payment is in addition to payment already provided for these costs under other provisions of the Social Security Act and is based on a fixed amount per page as determined by HCFA as follows:

(1) *Step one.* HCFA adds the annual salary of a photocopy machine operator and the costs of fringe benefits as determined in accordance with the principles set forth in OMB Circular A–76.

(2) *Step two.* HCFA divides the amount determined in paragraph (c)(1) of this section by the number of pages that can be reasonably expected to be made annually by the photocopy machine operator to establish the labor cost per page.

(3) HCFA adds to the per-page labor cost determined in paragraph (c)(2) of this section the per-page costs of supplies.

(d) *Appeals.* Reimbursement for the costs of photocopying and mailing records for PRO review is an additional payment to hospitals under the prospective system, as specified in § 412.115 of this chapter. Thus, appeals concerning these costs are subject to the review process specified in part 405, subpart R of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare Hospital Insurance; No. 93.774, Medicare Supplementary Medical Insurance)

Dated: October 3, 1992.

William Toby,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: October 14, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–25327 Filed 10–19–92; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

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

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation

determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

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

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

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

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

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

National Environmental Policy Act

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

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regulatory Impact Analysis

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

State	County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
California	San Diego	Unincorporated Areas (Docket No. 7046).	June 19, 1992, June 26, 1992, San Diego Union Tribune.	The Honorable George F. Bailey, Chairman, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, California 92101.	June 12, 1992	060284
Nevada	Washoe	Unincorporated Areas (Docket No. 7046).	June 19, 1992, June 26, 1992, Reno Gazette-Journal.	The Honorable Gene McDowell, Chairman, Washoe County Board of Commissioners, P.O. Box 11130, Reno, Nevada 89520.	June 10, 1992	320019
Texas	Bexar	City of San Antonio (Docket No. 7051).	June 2, 1992, June 9, 1992, San Antonio Light.	The Honorable Nelson Wolff, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283.	May 8, 1992	480045

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

Issued: October 8, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-25385 Filed 10-19-92; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA-7052]

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Interim rule.

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

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

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

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

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

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

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

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

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regulatory Impact Analysis

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California:					
Mendocino	Unincorporated areas.	Sept. 4, 1992, Sept. 11, 1992, Ukiah Daily Journal.	The Honorable Liz Henry, Chairperson, Mendocino County, Board of Supervisors, Clerk of the Board, Courthouse, Ukiah, California 95482.	Aug. 25, 1992	060183
Monterey	City of Salinas	Sept. 23, 1992, Sept. 30, 1992, Salinas Californian.	The Honorable Alan Styles, Mayor, City of Salinas, 200 Lincoln Avenue, Salinas, California 93901.	Sept. 10, 1992	060202
Riverside	City of Palm Springs	Aug. 20, 1992, Aug. 27, 1992	The Honorable Lloyd Maryanov, Mayor, City of Palm Springs, P.O. Box 2743, Palm Springs, California 92263.	Jul. 30, 1992	060257
Sacramento	Unincorporated areas.	Aug. 19, 1992, Aug. 26, 1992, The Sacramento Bee.	Mr. Douglas M. Fraleigh, Director, Sacramento County, Department of Public Works, 827 Seventh Street, Room 304, Sacramento, California 95814.	Aug. 10, 1992	060262
Colorado:					
Boulder	City of Boulder	Sept. 29, 1992, Oct. 6, 1992, Daily Camera.	The Honorable Leslie Durgin, Mayor, City of Boulder, P.O. Box 791, Boulder, Colorado 80306.	Sept. 9, 1992	080024
Florida:					
Broward	City of Pompano Beach.	Oct. 1, 1992, Oct. 8, 1992, The Pompano Ledger.	The Honorable Nate Braverman, Mayor of the City of Pompano Beach, 100 West Atlantic Boulevard, Pompano Beach, Florida 33060.	Sept. 23, 1992	120055 F
Broward	City of Tamarac	Oct. 7, 1992, Oct. 14, 1992, Sun-Sentinel.	The Honorable Larry Bender, Mayor of the City of Tamarac, Broward County, 7525 Northwest 88th Avenue, Tamarac, Florida 33321.	Sept. 25, 1992	120058 F
Pinellas	City of St. Petersburg	Sept. 25, 1992, Oct. 2, 1992, St. Petersburg Times.	The Honorable David Fischer, Mayor of the City of St. Petersburg, Pinellas County, P.O. Box 2842, St. Petersburg, Florida 33731.	Sept. 16, 1992	125148 B
Idaho:					
Bingham	Unincorporated areas.	Jul. 2, 1992, Jul. 9, 1992, The Morning News.	The Honorable Dale Arave, Chairman, Bingham County, Board of Commissioners, P.O. Box 1028, Blackfoot, Idaho 83221.	Jun. 10, 1992	160018

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois:					
Cook	Village of Hoffman Estates.	Sept. 23, 1992, Sept. 30, 1992, Daily Herald.	The Honorable Michael J. O'Malley, Mayor of the Village of Hoffman Estates, Cook County, 1200 North Gannon Drive, Hoffman Estates, Illinois 60196.	Sept. 15, 1992	170107 B
Missouri:					
St. Louis	City of Richmond Heights.	Sept. 10, 1992, Sept. 17, 1992, St. Louis Post Dispatch.	The Honorable Carl Schwing, City Manager, City of Richmond Heights, 1330 S. Big Bend Boulevard, Richmond Heights, Missouri 63117.	Sept. 2, 1992	290280
Oklahoma:					
Canadian/ Cleveland.	City of Oklahoma	Sept. 23, 1992, Sept. 30, 1992, Journal Record.	The Honorable Ronald J. Norick, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	Sept. 10, 1992	405378
Cleveland	City of Norman	Sept. 29, 1992, Oct. 6, 1992	The Honorable Bill Nations, Mayor, City of Norman, P.O. Box 370, Norman, Oklahoma 73070.	Sept. 23, 1992	400046
Tulsa, Osage, & Rogers.	City of Tulsa	Sept. 17, 1992, Sept. 24, 1992, The Tulsa Tribune.	The Honorable M. Susan Savage, Mayor of the City of Tulsa, 200 Civic Center, Tulsa, Oklahoma 74103.	Sept. 10, 1992	405381 E&F
Oregon:					
Curry County	Unincorporated areas.	Sept. 9, 1992, Sept. 16, 1992, Curry County Reporter.	The Honorable Peg Reagan, Commissioner, Curry County Board of Commissioners, P.O. Box 746, Gold Beach, Oregon 97444.	Aug. 17, 1992	410052
Jackson	City of Phoenix	Oct. 22, 1992, Oct. 29, 1992, Medford Mail Tribune.	The Honorable Otto Carter, Mayor, City of Phoenix, P.O. Box 666, Phoenix, Oregon 97535.	Sept. 28, 1992	410097
Tennessee:					
Shelby	City of Memphis	Sept. 16, 1992, Sept. 23, 1992, The Commercial Appeal.	The Honorable W.W. Herenton, Mayor of the City of Memphis, Shelby County, 125 North Mid-America Mall, Memphis, Tennessee 38103.	Sept. 10, 1992	470117 C
Texas:					
Tarrant	City of Colleyville	Sept. 3, 1992, Sept. 10, 1992, Colleyville News and Times.	The Honorable Richard Newton, Mayor, City of Colleyville, P.O. Box 185, Colleyville, Texas 76034.	Aug. 3, 1992	480590

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

Issued: October 8, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-25386 Filed 10-19-92; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

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

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

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

FOR FURTHER INFORMATION: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register.**

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

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

National Environmental Policy Act

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

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial

number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Regulatory Impact Analysis

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

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

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.

§ 67.11 [Amended]

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

Source of flooding and location	Depth in feet above ground. *Elevation in feet (NGVD)
ARKANSAS	
Boone County (city of Harrison) (FEMA Docket No. 7047)	
Dry Jordan Creek:	
At the confluence with Crooked Creek	*1,054
Just downstream of East Ridge Avenue	*1,054
Dry Jordan Tributary:	
At the confluence with Dry Jordan Creek	*1,120
Approximately 1,800 feet upstream of U.S. Highway 65	*1,235
Crooked Creek:	
Just downstream of U.S. Highway 65	*1,046
Approximately 1,700 feet upstream of Old Stone Road	*1,070
Maps are available for review at the Public Works Building, 303 Third Avenue, Harrison, Arkansas.	
Logan County (city of Paris) (FEMA Docket No. 7048)	
Short Mountain Creek Tributary:	
Approximately 1,600 feet upstream of the confluence with Short Mountain Creek	*380
Just upstream of Walnut Street	*400
At Maple Street	*408
At Cherry Street	*424
Approximately 2,000 feet upstream of Cherry Street	*431
Maps are available for review at City Hall, 100 North Express, Paris, Arkansas.	
COLORADO	
Denver (city), Denver County (FEMA Docket No. 7047)	
Westerly Creek:	
At Montview Boulevard	*5,314
At Beeler Street	*5,319
At 6th Avenue	*5,324
At 14th Avenue	*5,331
At 11th Avenue	*5,339
Maps are available for review at Public Works Department, City and County of Denver, 2460 West 26th Avenue, Suite 300C, Denver, Colorado.	
Douglas County (Unincorporated Areas) (FEMA Docket No. 7042)	
Cherry Creek:	
At Douglas/Arapahoe County line, approximately 4,450 feet downstream of Cottonwood Drive	*5,710
Approximately 400 feet downstream of Lincoln Avenue	*5,776
Approximately 2,900 feet upstream of the confluence of KDA Tributary	*5,845
Approximately 3,440 feet downstream of the confluence with Oak Gulch	*5,860
Approximately 500 feet upstream of Stroh Avenue	*5,907
Approximately 400 feet upstream of the confluence with Lemon Gulch	*5,909
Maps are available for review at Douglas County Department of Public Works, 3030 North Industrial Way, Castle Rock, Colorado.	
Parker (town), Douglas County (FEMA Docket No. 7042)	
Cherry Creek:	
Approximately 2,880 feet downstream of Cottonwood Drive	*5,716
Approximately 260 feet upstream of Cottonwood Drive	*5,730
Approximately 320 feet upstream of State Highway East 470	*5,754
Just upstream of Lincoln Avenue	*5,785
Approximately 180 feet upstream of West Parker Road	*5,813
Approximately 1,120 feet upstream of the confluence with Sulphur Gulch	*5,819
Approximately 3,680 feet upstream of the confluence with Koa Tributary	*5,848
Just downstream of Stroh Avenue	*5,903
Maps are available for review at Town Hall, 20120 East Main Street, Parker, Colorado.	
ILLINOIS	
New Lenox (village), Will County (FEMA Docket No. 7047)	
Jackson Branch Creek:	
About 850 feet downstream of Jackson Branch Drive	*659
About 8,400 feet upstream of Nelson Street	*691
Maps available for inspection at the Building Inspector's Office, Village Hall, 701 W. Haven Avenue, New Lenox, Illinois.	
Will County (unincorporated areas) (FEMA Docket No. 7045)	
Marley Creek:	
At mouth	*636
At confluence of East Marley Creek	*654
East Marley Creek:	
At mouth	*654
Just downstream of 104th Street	*687
Hickory Creek:	
About 2000 feet downstream of Wolf Road	*661
Just downstream of Conrail	*692
Just upstream of Conrail	*700
At confluence of Hickory Creek Tributary A	*701
Hickory Creek Tributary A:	
At mouth	*701
Just downstream of Sauk Trail Road	*710
Rock Run South:	
Just upstream of U.S. Route 6	*517
About 2600 feet upstream of Chicago and North Western railroad	*521
Rock Run:	
At mouth	*529
About 1700 feet upstream of Essington Road	*581
Rock Run Tributary No. 1:	
About 600 feet downstream of Murphy Drive	*582
About 700 feet upstream of Barber Lane	*613
Rock Run Tributary No. 2:	
At mouth	*575
Just downstream of Essington Road	*611
Just upstream of Essington Road	*618
Rock Run Tributary No. 3:	
At mouth	*575
Just downstream of Cemetery Road	*592
Just upstream of Cemetery Road	*598
About 1600 feet upstream of Rebecca Road	*620
Kankakee River:	
At downstream county boundary	*511
About 2000 feet upstream of confluence of Ryans Creek	*556
Maps available for inspection at the Will County Land Use Department, 501 Ella Avenue, Joliet, Illinois.	
IOWA	
Scott County (unincorporated areas) (FEMA Docket No. 7045)	
Mississippi River:	
About 2.4 miles downstream of Interstate 280	*563
About 0.7 mile upstream of confluence of Wapsipinicon River	*586
Maps available for inspection at the Planning and Development Department, Scott County Administration, 416 West 4th Street, Davenport, Iowa.	
MAINE	
Cutler (town), Washington County (FEMA Docket No. 7045)	
Atlantic Ocean:	
Little Machias Bay	
At confluence of Eastern Marsh Brook and Western Marsh Brook	*14
Gulf of Maine	
Along southeastern shoreline at Spruce Point	*41
Maps available for inspection at the Cutler Town Office, Route 191, Cutler, Maine.	
Sangerville (town), Piscataquis County (FEMA Docket No. 7048)	
Piscataquis River:	
At downstream corporate limits	*360
At upstream corporate limits	*391
Black Stream:	
At confluence with Piscataquis River	*376
Approximately 200 feet upstream of Black Stream Road	*400
Carlton Stream:	
At confluence with Piscataquis River	*386
At upstream side of Manhanock Pond Dam	*450

Source of flooding and location	Depth in feet above ground. *Elevation in feet (NGVD)
French Mills Brook:	
Just downstream of Frenchs Mill Road	*402
At upstream side of Center Pond Dam	*505
Hanson Brook:	
At downstream corporate limits	*482
Upstream side of Fire Lane 2	*544
Alder Brook:	
Downstream side of Frenchs Mill Road	*436
Upstream side of South Sangerville Road	*511
Manhanock Pond: Entire shoreline within community	*450
Center Pond: Entire shoreline within community	*505
Maps available for inspection at the Sangerville Town Office, P.O. Box 188, Sangerville, Maine.	
Sebec (town), Piscataquis County (FEMA Docket No. 7048)	
Piscataquis River:	
At downstream corporate limits (confluence with Meadow Brook)	*294
Approximately 2.1 miles upstream of upstream corporate limits	*307
Sebec River:	
At downstream corporate limits	*293
Just upstream of Sebec Lake Dam at Sebec Lake	*329
Meadow Brook:	
Confluence with Piscataquis River	*294
About 90 feet upstream of culvert at State Routes 6 and 16	*474
Garland Pond: Entire shoreline within community	*567
Sebec Lake: Entire shoreline within community	*329
Maps available for inspection at Sebec Town Hall, Sebec Village, Maine.	
MICHIGAN	
Kawkawlin (township) Bay County (FEMA Docket No. 7042)	
Saginaw Bay:	
Along Saginaw Bay shoreline from just south of mouth of Railroad Drain, to intersection of Brissette Beach Road and Boutell Road	*589
At intersection of Cottage Grove Road and Brissette Beach Road	*586
Railroad Drain:	
Just upstream of Detroit and Mackinac Railroad	*586
Just upstream of Conrail	*586
Rosebush Drain:	
Within community	*586
Maps available for inspection at the Township of Kawkawlin, Administration Building, 1836 East Parish Road, Kawkawlin, Michigan.	
Standish (township), Arenac County (FEMA Docket No. 7047)	
Saginaw Bay:	
Along shoreline from 4,300 feet north of Knickerbocker Road to Sagatoo Road	*585
Along shoreline from Knickerbocker Road for 4,300 feet north	*586
Maps available for inspection at the Township Clerk's Office, Standish, Michigan.	
MISSOURI	
Bel-Ridge (village), St. Louis County (FEMA Docket No. 7045)	
Maline Creek:	
About 1,170 feet downstream of Natural Bridge Road	*527
Just downstream of Natural Bridge Road	*531
Just upstream of Natural Bridge Road	*531
Maps available for inspection at the Village Clerk's Office, Village Hall, 8765 Natural Bridge, Bel-Ridge, Missouri.	
Ferguson (city), St. Louis County (FEMA Docket No. 7045)	
Maline Creek:	
About 1,000 feet downstream of Glen Owen Drive	*458
About 1.15 miles upstream of Florissant Boulevard	*506
Ferguson Branch:	
At mouth	*487
Just downstream of Hereford Avenue	*507
Just upstream of Hereford Avenue	*518
Just downstream of Scott Drive	*535
Halls Ferry Creek:	
About 0.41 mile downstream of New Halls Ferry Road	*476
About 530 feet upstream of New Halls Ferry Road	*489
Ball Creek:	
At mouth	*486
Just upstream of Woodstock Road	*499
Ferguson Park Branch:	
At mouth	*474
About 940 feet upstream of mouth	*475
Maps available for inspection at the Department of Public Works, City Hall, 110 Church Street, Ferguson, Missouri.	
Gideon (city), New Madrid County (FEMA Docket No. 7045)	
Shallow flooding from Ditch No. 2:	
About 4,000 feet north of intersection of Fourth Street and Lunbeck Avenue	*271
About 1,200 feet west of intersection of South Main Avenue and South Anderson Avenue	*269
Maps available for inspection at the City Hall, 2nd Street, Gideon, Missouri.	
Lincoln County (unincorporated areas) (FEMA Docket No. 7047)	
Cuivre River (Upper Reach):	
At Burlington Northern Railroad	*458
Approximately 2.14 miles upstream of State Route 47	*478
Buchanan Creek:	
At confluence with Cuivre River	*471
Approximately 1.05 miles upstream of confluence with Cuivre River	*472
Big Creek:	
Approximately 3,950 feet downstream of County Route 729	*480
Approximately 1.13 mile upstream of County Route J	*515
Town Branch:	
Approximately 897 feet upstream of confluence with Buchanan Creek	*472
Approximately 1.01 miles upstream of State Route 47	*477
Brushy Fork:	
At confluence with Bobs Creek	*454
At County Route 691	*488
Bobs Creek:	
At Burlington Northern Railroad	*447
At State Route 47	*535
Lost Creek:	
At Burlington Northern Railroad	*454
Approximately 3.8 miles upstream of Burlington Northern Railroad	*516
Sandy Creek:	
Approximately 50 feet downstream of Burlington Northern Railroad	*447
Approximately 3.3 miles upstream of the confluence with Little Sandy Creek	*582
Maps available for inspection at the Lincoln County Surveyor's Office, 201 Main Street, Troy, Missouri.	
Moline Acres (city), St. Louis County (FEMA Docket No. 7045)	
Maline Creek:	
About 1,080 feet downstream of Lewis and Clark Boulevard	*445
About 840 feet upstream of Lewis and Clark Boulevard	*449
Black Jack Creek:	
About 2,650 feet downstream of Chambers Road	*451
Just upstream of Chambers Road	*459
Maps available for inspection at 9953 Lewis and Clark Boulevard, Moline Acres, Missouri.	
St. Louis (city) (FEMA Docket No. 7045)	
Maline Creek:	
Within community	*433
Maps available for inspection at the City Hall, Board of Public Services, 1200 Market Street, Room 301, St. Louis, Missouri.	
NEW HAMPSHIRE	
Atkinson (town), Rockingham County (FEMA Docket No. 7048)	
Hog Hill Brook:	
Just upstream of Haverhill Road	*137
Just upstream of Island Pond Road	*188
Byrant Brook:	
Approximately 620 feet upstream of the confluence with Little River	*47
Approximately 30 feet upstream of East Road	*82
Island Pond: Entire shoreline within community	*207
Maps available for inspection at the Atkinson Town Hall, 21 Academy Avenue, Atkinson, New Hampshire.	
NEW MEXICO	
Santa Fe (city), Santa Fe County (FEMA Docket No. 7047)	
Santa Fe River:	
Approximately 200 feet downstream of confluence of Arroyo Mascaras	*6,884
At downstream side of Delgado Street	*7,032
Rob Flowpath:	
At confluence with Santa Fe River	*6,938
At divergence from Santa Fe River	*7,017
Arroyo Saiz:	
Approximately 60 feet upstream of confluence with Santa Fe River	*7,034
Approximately 360 feet upstream of the most upstream crossing of Avenida Primavera	*7,185
Arroyo Mascaras:	
At confluence with Santa Fe River	*6,884
Approximately 80 feet upstream of West Alameda	*6,886
Maps available for inspection at the Santa Fe City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.	
NEW YORK	
Charlton (town), Saratoga County (FEMA Docket No. 7042)	
Alplaus Kill:	
Approximately 400 feet downstream of most downstream corporate limits	*340
At the confluence of Alplaus Kill Tributary	*505
Alplaus Kill Tributary:	
At the confluence with Alplaus Kill	*505
Approximately 800 feet upstream of Stone Dam	*556
La Rue Creek:	
At the most downstream corporate limits	*352
Approximately 25 feet upstream of County Route 51	*426
Maps available for inspection at the Charlton Town Hall, 784 Charlton Road, Charlton, New York.	
TEXAS	
Harris County (unincorporated areas) (FEMA Docket No. 7045)	
Willow Creek:	
Approximately 2.57 miles above confluence with Spring Creek	*121
Approximately 0.3 mile downstream of the confluence of Hughes Gully	*127
Tributary 2.44 to Willow Creek:	
At the confluence with Willow Creek	*123
Approximately .5 mile upstream of confluence with Willow Creek	*123
Faulkey Gully:	
Approximately 520 feet downstream of Malcomson Road	*125
Approximately 150 feet downstream of Addicks-Fairbanks Road	*133

Source of flooding and location	;Depth in feet above ground. ²Elevation in feet (NGVD)
Approximately 1,650 feet upstream of Addicks-Fairbanks Road	*135
Approximately 1,450 feet upstream of Spring Cypress Road	*146
Approximately 3,260 feet upstream of Spring Cypress Road	*148
Maps available for inspection at the Harris County Courthouse, 301 Main Street, Houston, Texas.	
VERMONT	
Fair Haven (town), Rutland County (FEMA Docket No. 7047)	
Castleton River:	
Upstream side of Adams Street	*318
Approximately 300 feet downstream of the upstream corporate limits	*370
Maps available for inspection at the Fair Haven Town Hall, 3 North Park Place, Fair Haven, Vermont.	

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

Issued: October 8, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92–25388 Filed 10–19–92; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 90–34; FCC No. 92–363]

Short-Spacing of Specialized Mobile Radio Systems Upon Concurrence From Co-Channel Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document amends the Memorandum Opinion and Order, 57 FR 43408 (September 21, 1992) FR Doc. 92–22743 to include a statement concerning compliance with the Regulatory Flexibility Act of 1980.

EFFECTIVE DATE: October 21, 1992.

FOR FURTHER INFORMATION CONTACT: Steve Sharkey, Land Mobile and Microwave Division, (202) 634–2443.

SUPPLEMENTARY INFORMATION: As published, the Memorandum Opinion and Order did not contain a statement concerning compliance with the Regulatory Flexibility Act of 1980. It may have, therefore, been unclear what effect the actions taken in this proceeding have on small businesses. Accordingly, in FR Doc 92–22743 Doc. No. 57 FR 43408 (September 21, 1992), the document is amended by adding the following statement regarding compliance with the Regulatory Flexibility Act of 1980 at the end of the **SUPPLEMENTARY INFORMATION.**

Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis was prepared for the Report and Order in this proceeding, 56 FR 41467 (August 21, 1991). None of the rules adopted in the Memorandum Opinion and Order modify the effect this proceeding has on small businesses and it is, therefore, unnecessary for us to modify our Final Regulatory Flexibility Analysis. The full text of the Final Regulatory Flexibility Analysis released in the Report and Order is available for inspection during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M St. NW., Washington, DC 20036, telephone (202) 452–1422.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–25369 Filed 10–19–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91–21; Notice 2]

RIN 2127–AD34

Federal Motor Vehicle Safety Standards; Hydraulic Brake Systems and Air Brake Systems; Automatic Brake Adjusters

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

ACTION: Final rule.

SUMMARY: This rule amends Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems,* to require automatic brake adjusters on all air-braked vehicles and adjustment indicators on air-braked vehicles with external adjustment mechanisms. This rule also amends Standard No. 105, *Hydraulic Brake Systems,* to require automatic brake adjusters on vehicles with hydraulic brake systems. However, the rule does not require adjustment indicators on hydraulically-braked vehicles because there do not appear to do significant problems with monitoring automatic brake adjusters on such vehicles. These amendments should improve the braking performance of vehicles by ensuring that their brakes are properly adjusted.

DATES: *Effective Dates:* The amendments to § 571.105 (Standard No. 105) become effective October 20, 1993.

The amendments to § 571.121 (Standard No. 121) become effective October 20, 1994.

Petitions for reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than November 19, 1992.

ADDRESSES: Any petition for reconsideration should refer to the docket and notice number set forth in the heading of this notice and be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard C. Carter, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–366–5274).

SUPPLEMENTARY INFORMATION:

I. Background

A. General Information

Proper brake adjustment is critical for maintaining safe stopping performance. Devices known as automatic brake adjusters automatically maintain proper brake adjustment, thus eliminating the need for frequent inspection and manual adjustment of the brakes. Automatic brake adjusters have been used on passenger cars and light trucks since the early 1960's and have been standard equipment on all such vehicles sold in recent years in the United States. In addition, the vast majority of medium and heavy duty vehicles with hydraulic brake systems have automatic brake adjusters. Automatic brake adjusters were introduced for use on heavy duty air-braked vehicles in the early 1960's and are widely used today. The installation rates of automatic brake adjusters by manufacturers of heavy duty air-braked vehicles range from 30 to 100 percent of their fleets.

B. Safety Need and Practicability of Automatic Adjustment Devices

Notwithstanding the importance of proper brake adjustment for maintaining safe stopping performance, numerous studies have shown that brake adjustment is not being maintained on some air braked medium and heavy duty vehicles that are not equipped with automatic brake adjusters. (See *Automatic Slack Adjusters for Heavy*

Vehicle Air Brake Systems, DOT HS 807 724, February 1991). When brakes are under-adjusted, stopping ability is reduced and the probability of a crash is increased. When brakes are over-adjusted, maintenance costs and the possibility of a crash are increased as a result of excessive lining wear, wheel lock, or brake drum cracking. Such improper brake adjustment contributes to a significant number of crashes, including those in which vehicles are unable to stop in time and those in which there are "runaways" on steep mountain grades.

As detailed in the notice of proposed rulemaking (NPRM) for this rulemaking (56 FR 20396, May 3, 1991), several studies highlight the problems associated with improper brake adjustment, especially on air-braked vehicles. These studies include the Office of Technology Assessment's (OTA's) September 1988 report *Gearing Up for Safety*, NHTSA's March 1987 Heavy Truck Safety Study Report to Congress, the National Transportation Safety Board's investigations of heavy truck crashes, and a Federal Highway Administration study.

Based on the above-mentioned concerns, the National Transportation Safety Board recommended that NHTSA develop a Federal Motor Vehicle Safety Standard requiring all newly manufactured commercial vehicles to have equipment ensuring that brakes are always properly adjusted.

Automatic brake adjusters are now used on approximately 60 percent of new medium and heavy duty vehicles with air brakes. However, one major, and a number of smaller vehicle manufacturers, do not provide automatic brake adjusters as standard equipment, and many purchasers do not order them as optional equipment. NHTSA believes that automatic brake adjuster use has stabilized at about the current 60 percent level.

NHTSA has conducted a large-scale fleet evaluation to assess the performance and reliability of automatic brake adjusters, as compared to manual adjusters on heavy commercial vehicles with S-cam air brakes. NHTSA collected brake adjustment data from several hundred fleet vehicles equipped with automatic and manual brake adjusters for approximately five years. The conclusions regarding the fleet examination are detailed in the NPRM. Among the principal conclusion were that:

- Automatic brake adjusters generally maintained brake adjustments within the limits specified by the vehicle manufacturer. The medium percentage of out-of-adjustment brakes for the fleet applications was about four percent. This represents a far lower out-of-adjustment rate than is commonly found in roadside check studies of brake adjustment for manually-adjusted air brakes.
- In the most successful applications, automatic brake adjusters consistently exhibited out-of-adjustment percentages of less than one percent. Thus, automatic brake adjusters demonstrated the potential for very effective performance levels.
- The incidence of brake over-adjustment with automatically-adjusted brakes was low. In the fleet test, there was no case of an automatic brake adjuster over adjusting a brake enough to cause brake over-heating, wheel lockup, or excessive brake lining wear.

C. Automatic Adjusters and Indicators on Air Brake Systems

There are three principal types of air-braked systems used in this country: (1) S-cam actuators, (2) wedge type actuators, and (3) disc brakes. For S-cam brakes, which comprise about 95 percent of air-brake systems, two major types of automatic brake adjusters are available. One adjusts on the basis of actual shoe-to-drum clearance. The other adjusts on the basis of the air chamber push rod stroke. All wedge type brakes, which comprise about three percent of the market, have an internal automatic adjustment mechanism. As for disc brakes which comprise about two percent of air-brake systems, some have external self-adjusting mechanisms, while others have internal adjustment features. The external adjustment mechanism of an air disc brake system operates similarly to those on S-cam brakes.

Brake adjustment indicators improve brake adjustment by increasing the convenience of checking brake adjusters and their proper functioning. Without brake adjustment indicators, measuring brake adjustment requires following a laborious and time-consuming manual procedure in which the push rod length must be measured before and during brake application. The procedure is especially difficult for brake chambers located at positions under the vehicle that are difficult to reach. Also, a person checking brake adjustment must know the specific adjustment data for each chamber because some manufacturers have slightly different stroke lengths for the same size chamber. The procedure is also complicated because the chamber's make and model may be difficult to identify when it is covered with road dirt and corrosion.

Several types of brake adjustment indicators are currently available. One type involves air brake chambers with paint markings on push rods that indicate the level of adjustment. However, such markings may not be useful in certain applications (e.g., with wedge brakes when the push rod is enclosed in a sleeve and with S-cam brakes having push rods with protective rubber boots). A second type of brake adjustment indicator is installed by inserting a guide arm and sliding stem assembly into a small hole in the air booster can. A third method involves attaching a hose clamp to the air chamber push rode to mark the fully adjusted brake position relative to the chamber housing. To check the brake adjustment, the space between the air chamber housing and hose clamp is compared with a bar gauge.

II. Notice of Proposed Rulemaking

On May 3, 1991, NHTSA published an NPRM in which the agency proposed to amend Standard No. 121 to require automatic brake adjusters and adjustment indicators on vehicles with air brake systems. (56 FR 20396) The NPRM also proposed to amend Standard No. 105 to require automatic brake adjusters on vehicles with hydraulic brake systems. NHTSA decided not to propose requiring adjustment indicators on hydraulically-braked vehicles because the agency believed that there were no significant problems with automatic brake adjusters for these vehicles or with checking the adjustment of such systems.

Among the issues discussed in the NPRM were (1) the need to require automatic brake adjusters in passenger cars and other hydraulically braked vehicles, (2) specific provisions in the proposed language to require automatic brake adjusters on passenger cars, (3) the need for automatic brake adjusters on air-braked vehicles to correct for both under and over-adjustment, (4) the apparent absence of a need for automatic adjustment indicators for hydraulically braked vehicles, (5) visibility requirements for adjustment indicators on air-braked vehicles, (6) the necessary leadtime for the proposal, and (7) the costs associated with the rulemaking.

III. Comments to the NPRM and the Agency's Response

NHTSA received about 35 comments in response to the NPRM. These were from vehicle manufacturers, brake manufacturers, manufacturers of brake adjusters and adjustment indicators, heavy vehicle users, trade associations, and others. The majority of commenters generally agreed with the proposal to

require brake adjusters on both hydraulic and air-braked vehicles and to require adjustment indicators on air-braked vehicles. In addition, commenters addressed specific matters in the proposed regulation, including the issues of over-adjustment, visibility requirements, and other provisions in the proposed regulatory text.

The agency has considered the points raised by the commenters in developing the final rule. The agency's discussion of the more significant comments and other relevant information is set forth below. The notice first addresses issues about automatic adjusters and indicators on vehicles equipped with air brakes because the safety problem primarily involves, and consequently the agency's rulemaking efforts focus on, these vehicles. The notice then discusses adjustment devices on hydraulically-braked vehicles.

A. Air-Braked Vehicles

1. General Considerations

As explained above, the safety problem with out-of-adjustment brakes primarily involves air-braked vehicles. Accordingly, the agency's rulemaking efforts have focused on requiring automatic adjusters and adjustment indicators on such vehicles.

In response to the NPRM's proposal to require automatic adjusters on air-braked vehicles, all but one commenter addressing this issue supported requiring automatic adjusters on air-braked vehicles. Those supporting the rulemaking included the American Trucking Associations (ATA), Truck Trailer Manufacturers Association (TTMA), General Motors (GM), Ford, and Advocates for Highway and Auto Safety (AHAS). AHAS stated that the amendments would mitigate the extent and severity of fatal and injury producing accidents. Only one commenter, Mr. Robert Crail, a brake consultant, disputed the need for and effectiveness of automatic adjusters on air-braked vehicles. Mr. Crail stated that automatic adjusters are not accurate enough to be mandated, citing raw data about automatic slack adjusters.

Based on the comments and other available information, NHTSA has determined that requiring automatic adjusters on air-braked vehicles will improve the brake performance of these vehicles. As the NPRM explained, out-of-adjustment brakes pose a significant safety problem that could be alleviated by requiring automatic brake adjusters. The agency notes that Mr. Crail's critical comments were based, in part, on raw data gathered from unscreened sources and uncontrolled test conditions. Therefore, his conclusions based on the data are questionable. While NHTSA acknowledges that older brake adjuster designs may not perform as well as properly maintained manual adjusters, the new generation of currently produced automatic adjusters provide superior brake adjustment. In addition, even the previous generation of automatic brake adjusters are often superior to manual adjusters because some owners of vehicles with manual adjusters do not take the time to properly adjust or otherwise properly maintain their brakes.

2. Proposed Regulatory Text

The NPRM proposed amending Standard No. 121 to require all vehicles with air brakes to be equipped with automatic adjusters. Specifically, the NPRM proposed that the Standard be amended to require these devices on trucks, buses, and trailers, as follows:

> Each vehicle shall be equipped with a service brake system acting on all wheels. Wear of the service brakes shall be compensated for by means of a system of automatic adjustment, which maintains brake adjustment within the manufacturer's recommended adjustment limits. The condition of service brake adjustment shall be provided by a brake adjustment indicator that is discernible when viewed with 20/40 vision, using an ordinary flashlight with two D-cell batteries from a position 8 feet away on the adjacent pavement surface. The brake adjustment indicator shall be capable of displaying the service brake adjustment conditions of: Under-adjustment, over-adjustment, and fully adjusted within the manufacturer's specified limits.

Commenters addressed various aspects of the proposed regulatory text, including specifying that brake adjustment be maintained within the manufacturer's recommended adjustment limits, having adjusters correct for under and over adjustment, having indicators display the conditions of under, over, and full adjustment, and having visibility requirements. Along with the comments addressing each of these considerations, the agency's response to the comments is presented below.

a. Brake adjustment within manufacturer's recommended adjustment limits. As explained above, the NPRM proposed that brake adjustment would have to be maintained "within the manufacturer's recommended adjustment limits." The agency had tentatively believed that requiring adjustment within the manufacturer's recommended adjustment limits would provide a more specific performance requirement.

Several commenters, including White GMC/Volvo, GM, Ford, Midland-Grau, and a brake indicator manufacturer, criticized the proposal to require maintaining brake adjustment within the manufacturer's recommended adjustment limits. These commenters believed that the proposal was unnecessary, ambiguous, and would unreasonably burden manufacturers. GM and Ford stated that the proposal was potentially ambiguous since determining what "maintaining brake adjustment" means could be interpreted several ways. Accordingly, these commenters believed that some compliance test would be necessary if the agency adopted this provision. White GMC/Volvo, GM, and Ford believed that the proposal might be interpreted as requiring the manufacturer to be responsible for brake adjustment throughout the vehicle's life, even though the manufacturer is typically responsible for compliance only until the first consumer purchase. In addition, some commenters were concerned that the proposal did not specify an objective measure about the proper level of adjustment. This consideration led Midland-Grau to recommend that the standard incorporate the Federal Highway Administration's requirements in appendix G to subchapter B of chapter III, title 49, Code of Federal Regulations. FHWA, based on input from the Commercial Vehicle Safety Alliance and brake chamber manufacturers, has established a set of brake adjustment tables that are published in the North American Uniform Vehicle Out-of-Service Criteria. The States rely on these roadside inspection tables to place a vehicle out of service if the adjustment limits are exceeded.

After reviewing the comments and the available information, NHTSA has determined that the final rule should not include a reference to maintaining adjustment within the manufacturer's recommended limits. The agency agrees with commenters that such a provision would not provide any significant safety benefits but might cause unnecessary complications and confusion. In terms of safety benefits, the final rule addresses the most important issue by requiring each vehicle to be equipped with a service brake system including means for automatic adjustment to compensate for wear of the system. The reference to the manufacturer's adjustment limits would have been superfluous and potentially confusing. Nevertheless, as explained below, the agency has decided to reference the FHWA's regulations about "Vehicle Out-of-Service Criteria." By not including reference to maintaining adjustment

based on the manufacturer's recommendations, this amendment is consistent with the proposed requirement about brake adjustment in Standard No. 135, *Passenger Car Brake Systems.* (56 FR 30528, July 3, 1991). Accordingly, the final rule specifies that "Wear of the service brakes shall be compensated for by means of a system of automatic adjustment," without reference to a manufacturer's adjustment limits. The agency notes that there is no objective criteria as to what constitutes "maintains adjustment." In addition, as a general rule, the agency does not establish extended durability testing. The agency believes that to require that the adjustment be maintained throughout the lifetime of the vehicle is unrealistic, dependent upon the vehicle's exposure, and beyond the scope of NHTSA's authority.

As for Midland-Grau's recommendation to use FHWA's regulations for "Driver Out-of-Service Criteria" for brake adjustment, NHTSA has decided to reference these provisions in Standard No. 121 because they are relevant to in-use heavy truck operation regulated by FHWA. Because amendments to Standard No. 121 require the use of brake adjustment indicators which require the display of underadjustment, a reference to adjustment limits is necessary. Those limits are specified in appendix G to subchapter B of chapter III, 49 CFR parts 200 to 399.

b. Brake over-adjustment and under-adjustment. The NPRM tentatively concluded that automatic brake adjusters should have the capability of correcting for both under and over-adjustment. The NPRM also proposed that a brake adjustment indicator be capable of displaying the brake adjustment conditions of under-adjustment, over-adjustment, and fully adjusted. The notice requested comments about whether these requirements were feasible and whether they should be specified in the regulatory text.

Twelve commenters, primarily heavy brake and vehicle manufacturers, opposed requiring brake adjusters to correct for over-adjustment. These commenters also opposed requiring the brake adjustment indicators to identify the over-adjusted and fully adjusted conditions. User groups, such as the Owner-Operator Independent Drivers Association supported these proposals. Navistar, Haldex, Bendix, Midland-Grau, Rockwell, Ford, the MVMA, Chrysler, Eaton, and the ATA believed that requiring the device to control for over-adjustment and having the adjustment indicator identify this condition were unnecessary and impracticable. MVMA stated that the incidence of over-adjustment is very infrequent and poses a minimal risk to safety. In addition, several manufacturers explained that the condition of over-adjustment can be ascertained by excessive wear, abuse of the equipment, and in extreme cases, smoke. The commenters also stated that the proposal was impracticable because there was no current technology that reliably indicates the over-adjusted condition. After reviewing the comments and available information, NHTSA concludes that requiring brake adjusters to correct for over-adjustment and having adjustment indicators show the over-adjusted and fully-adjusted conditions are unnecessary for safety and would be impracticable. In terms of the safety need, the fleet evaluation cited in the NPRM concluded that the incidence of brake over-adjustment was extremely low. NHTSA further notes that potential problems associated with over-adjustment will not be significant. The driver typically will be aware of over-adjustment because the brake system will drag and may begin to smoke. In terms of practicability, the NPRM's tentative determination about the availability of automatic brake adjusters to correct for over-adjustment appears to be inconsistent with the current state of brake technology. The agency now agrees with the comments that regulating over-adjustment would be impracticable given that such devices are not readily available. Based on the above, the final rule does not require brake adjusters to correct for over-adjustment and does not require the adjustment indicators to show the over-adjusted and fully-adjusted conditions.

As for the condition of under-adjustment, most commenters, including Rockwell, MVMA, Ford, and GM believed that the agency should introduce requirements to prevent this brake condition. MVMA stated that the primary motivation and safety benefit underlying automatic brake adjusters is to minimize the incidence of under-adjustment.

After reviewing the comments and the available information, NHTSA has decided to adopt provisions requiring brake adjusters to correct for the condition of service brake under-adjustment and have a device that indicates the under-adjusted condition. The agency agrees with the commenters that under adjustment poses a significant risk to safety. In addition, NHTSA believes that this requirement is practicable since there currently are several devices that are capable of indicating the under-adjusted condition. Accordingly, §§ 5.1.8 and 5.2.2 are amended to read, in relevant part, "(b) Brake indicator. * * * the condition of service brake under-adjustment shall be provided by a brake adjustment indicator . . . "

c. Visibility requirements for brake adjusters. The NPRM proposed that the brake adjustment indicator be discernible when viewed with 20/40 vision, using an ordinary flashlight with two D-cell batteries from a position at least eight feet away on the adjacent pavement surface. The agency believed that these visibility requirements would allow a person to check brake adjustment without having to crawl under the vehicle.

Commenters offered various views about the proposed visibility requirements. Manufacturers of aftermarket add-on indicators favored the proposal, while vehicle manufacturers and custom builders objected. Users of brake equipment offered mixed views.

Several commenters, including Mack, Navistar, GM, the National Truck Equipment Association (NTEA), Haldex, the Truck Trailer Manufacturers Association (TTMA), and Flexible stated that the proposed visibility requirements were impracticable, especially for those vehicle configurations in which the line of sight to the air brake chambers is obscured. In many vehicles, including buses, beverage haulers, walk-in vans, ambulances, low-bed trucks, utility trailers, and tank-trucks, the brake adjustment indicator may only be inspected by crawling under a vehicle. Mack explained that many vehicle configurations make it difficult or impossible to view the chamber from eight feet away because brake chambers are frequently located in positions that are obscured by tires, hoods, and other vehicle components. In addition, Rockwell stated that in-service environmental factors such as mud, salt, and grease would prevent the reading of the adjustment indicator unless the chamber were wiped off.

These practicability concerns with the proposed visibility requirements led commenters to recommend modifying the proposal. GM recommended a simplified requirement in which the indicator would have to be discernible when viewed with 20/40 vision from outside or the underside of the vehicle. Ford suggested that the visibility requirement allow inspection from either side of or under the vehicle.

After reviewing the comments, NHTSA has decided not to adopt the detailed visibility proposal because the requirement would raise significant practicability problems. The agency notes that the proposed eight foot requirement would necessitate extensive redesign of certain vehicle configurations such as drop floor and moving vans. In addition, the proposed visibility requirement would be impracticable for evaluating brake adjusters that have been covered by road contaminants such as dirt, grime, and snow. NHTSA believes that by not adopting the eight foot viewing requirement, the standard will encourage closer hands-on inspection of the equipment. Based on the above considerations, the agency has decided not to require that the adjustment indicator be readable at a distance of eight feet. The visibility provision now states that "the condition of service brake under-adjustment shall be provided by a brake adjustment indicator that is discernible when viewed with 20/40 vision from a location adjacent to or underneath the vehicle."

d. Vehicle type. The NPRM proposed that all air-braked vehicles be equipped with an adjustment indicator, regardless of brake system type. The NPRM explained that there were three principal types of air brake systems: S cam brakes which account for 95 percent of the brake market; wedge type brakes, three percent of the market; and disc brakes, two percent of the market. While S cam brakes have external adjustment mechanisms, wedge brakes and some disc brakes have internal mechanisms.

Several commenters, including Volvo GM Heavy Truck, Navistar, GM, Bendix, Rockwell, and MVMA, stated that adjustment indicators are only practicable with external adjustment designs such as S cam brakes with exposed push rods. MVMA stated that there was little if any need to require adjustment indicators on internally adjusted brakes. Like hydraulic brakes, air-brake systems with internal adjustment designs would have to be significantly redesigned to incorporate an adjustment indicator. Rockwell believed that the nominal benefits from having wedge brakes and internally adjusted disc brakes equipped with indicators did not warrant the significant costs that would be needed to redesign these systems. Bendix and Lear Siegler explained that some external actuators are equipped with a protective boot or a scraper seal.

After reviewing the comments and the available information, NHTSA has determined that although all air brakes should have a system of automatic adjustment, it is not necessary to require adjustment indicators on internally adjusted brakes. The agency is not aware of any significant adjustment problems with internally adjusted brakes. In addition, such a requirement for these designs would not be practicable given the significant feasibility concerns and redesign costs to require an adjustment indicator on internally adjusted brake systems. The agency notes that S cam brakes, except the approximately one percent that have protective pushrod boots, have exposed air chamber pushrods which easily can be marked to indicate brake adjustment.

S cam brakes whose pushrods are covered by protective boots cannot be simply marked, since the markings would not be visible to outside inspection. The NPRM did not propose to exempt booted systems from having to have adjustment indicators, describing two designs that have the potential to indicate adjustment of such systems. In commenting to the docket, Lear Siegler, a major air chamber manufacturer, stated that air brake actuators equipped with protective boots should be exempt from adjustment indication in its current technological form. Bendix commented that brake actuators with pushrod boots or scraper seals should be exempted.

After a review of the comments to the docket and other information on this issue, the agency has decided not to require adjustment indicators on service brake systems that have pushrod boots. Systems having scraper seals and exposed pushrods will be required to have adjustment indicators, since the pushrods can be easily marked and inspected. Brake actuators with pushrod boots are made to provide performance and reliability under severe operating conditions, such as corrosive or hazardous material handling and refuse collection and disposal. The heavy-duty, durable adjustment indicators, adequately integrated into the actuator system, that would be necessary to withstand these severe operating environments, would cost substantially more than indicators on exposed pushrods. Brake systems with pushrod boots account for perhaps one percent of the brake actuator market, as previously noted. These systems are being required to have automatic brake adjusters. Further, many booted systems are used with rolling diaphragm brake chambers (roto chambers) that have longer strokes than conventional chambers and thus provide a greater operating range for automatic slack adjusters and a longer period of use before the under-adjustment condition is reached. While the agency is not requiring brake systems with booted pushrods to have adjustment indicators, it would revisit this issue if the number of these systems increase substantially in the future. Thus, the agency is only requiring externally adjusted brakes with exposed pushrods to be equipped with adjustment indicators. The agency estimates that about 94 percent of air brakes will be equipped with indicators.

3. Miscellaneous Concerns

Several commenters, including brake indicator manufacturers and user groups, requested that the agency require air-braked vehicles that are currently in use to be retrofitted with automatic adjusters and adjustment indicators. NHTSA notes that the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381) authorizes the agency to promulgate safety standards for new vehicles only. The Act does not provide the agency with out authority to require the retrofitting of in-use vehicles. Therefore, the agency cannot require in-use vehicles to be equipped with automatic brake adjusters or adjustment indicators.

Flxible commented that it should be allowed the option of using manual slack adjusters during its certification testing. NHTSA notes that Flxible can do whatever it wants in its compliance testing, if it can establish, should it become necessary to do so, that use of its test procedure constitutes due care. Nevertheless, NHTSA believes that Flxible may have difficulty establishing due care if it uses manual adjusters during its certification testing, because an earlier rulemaking prohibited the disconnecting of automatic adjusters during agency compliance testing. (54 FR 40080, September 28, 1989). That notice explained that an important purpose behind the test conditions and procedures is to test vehicles as they will perform when used on the road. Since automatic brake adjusters are operational during normal use, specifying that they be operational during agency compliance testing helps approximate real-world conditions and provides a better test of real-world performance.

Advocates for Highway and Auto Safety asked whether dollies are required to be equipped with automatic adjusters and adjustment indicators under the proposals. The requirement for automatic adjusters and adjustment

indicators is applicable to dollies since § 571.3 defines a "trailer converter dolly" as "a trailer chassis equipped with one or more axles, a lower half of a fifth wheel and a drawbar." Since trailer chassis are trailers and trailers are subject to the requirement, trailer converter dollies also are subject to the requirement.

The ATA requested an exclusion from the automatic adjuster requirements for vehicles involved in "permit" operations such as transporting hazardous waste and explosives. While NHTSA has the authority to set standards based on vehicle type, it does not typically have the authority to set standards based on end use (aside from school buses). Even if it had such authority, vehicle manufacturers could not predict, in many instances, which vehicles were ultimately going to be used for permit operations and thus could not identify which vehicles were excluded. Many vehicles used in permit operations are standard trucks and trailers with no special features. If the agency were to attempt to exclude the permit operation vehicles by excluding whole vehicle types, the exclusion would be overbroad. The agency notes that a variety of vehicle types are used for these permit operations, and if NHTSA were to exclude all of these types, it would be excluding many vehicles not used for permit operations. In addition, the professed reason to exclude vehicles in permit operations (i.e., the presumed frequency of manual brake adjustments) can be accomplished with brakes equipped with automatic adjusters. Some truckers involved in dangerous activities adjust their brakes every day instead of relying on their automatic adjusters, because automatic adjusters are equipped with external adjusting mechanisms similar to the manual adjusters. Therefore, if a permit hauler desires to adjust its brakes manually, it can do so. Based on the above, the agency believes that heavy haulers involved in permit operations should be required to comply with the automatic adjustment requirements.

International Transquip recommended a salt spray test and a stroke cycle test for accuracy, performance, and readability. NHTSA notes that these tests were not proposed in the NPRM and does not believe they are necessary at this time. The agency believes that a safety need for these additional requirements could not be established. In addition, the existing SAE Recommended Practice on automatic adjusters already requires environmental chamber tests along with cycle testing. If additional information indicated that these tests would provide significant safety benefits at reasonable costs, the agency would consider proposing them.

MGM Brakes commented that the SAE Truck and Bus Brake Actuator Sub-Committee has written and approved a recommended practice for cam or disc brake actuators. However, the SAE has withheld this document from publication because its policy is to not publish any recommended practice that will require another manufacturer to infringe a patent. Apparently, one air brake actuator manufacturer was recently issued a patent on a stroke indicator marking system. Notwithstanding the SAE's concern about patent infringement, NHTSA notes that this rule specifies a general performance standard. Therefore, the agency does not anticipate that restrictions caused by patents will be a problem because there are many different indicator designs and air chamber push rods may be marked in many ways.

B. Hydraulically-Braked Systems

1. Brake Adjusters

The NPRM discussed the need for automatic brake adjusters on hydraulically-braked vehicles, including passenger cars. The notice explained that all new passenger cars have been manufactured with automatic adjusters for several years. The agency stated that such a requirement would be consistent with the agency's proposal in Standard No. 135 about international brake harmonization (52 FR 1474, January 14, 1987, 56 FR 30528, July 3, 1991). The proposal requested comments on whether passenger cars should be covered by this amendment to Standard No. 105. The proposal also requested comment about whether other hydraulically-braked vehicles should be required to have automatic brake adjusters.

No commenter expressly supported equipping passenger cars and other hydraulic braked vehicles with automatic brake adjusters. However, several commenters, including General Motors and the Motor Vehicle Manufacturers Association (MVMA), implicitly supported this requirement by commenting that an immediate effective date for such vehicles was feasible, provided that the requirements did not require the development of new designs. Chrysler and Toyota questioned the need for such a requirement, claiming that hydraulically-braked vehicles are already equipped with such devices.

In addition, Ford and GM commented that, in the interests of international brake harmonization, the requirements about brake adjusters in Standard No. 105 and 135 should be identical. This consideration led Ford to state that the proposal in Standard No. 105 about automatic correction for over-adjustment was not needed.

After reviewing these comments, NHTSA has determined that Standard No. 105 should be amended to require automatic brake adjusters. Because vehicles subject to Standard No. 105 typically are equipped with these devices, the agency does not anticipate that the requirement would pose a burden on manufacturers. In addition, amending Standard No. 105 to require these devices will result in consistency between that Standard and Standard No. 135. The agency notes that such consistency is important because under the Standard No. 135 proposal, a manufacturer could comply with either standard during the five-year phase in period for Standard No. 135.

2. Adjustment Indicators

The NPRM stated that even though brake adjusters would be required on hydraulically-braked vehicles, automatic adjustment indicators would not be required on these vehicles. The notice explained that the agency believed that there were no significant problems with automatic brake adjusters for hydraulically-braked vehicles or with checking the adjustment of the brakes on such vehicles. Nevertheless, the agency requested comments about whether adjustment indicators should be required on hydraulically-braked vehicles.

Chrysler believed that allowing continued voluntary compliance would be more appropriate than mandating installation through rulemaking. GM and MVMA stated that indicators should not be required on hydraulic brakes because no safety need for such a requirement has been demonstrated.

NHTSA continues to believe that there is no significant safety problem with automatic adjusters for hydraulically-braked vehicles or with checking the adjustment of such vehicles. Accordingly, the agency has decided not to require adjustment indicators on hydraulically-braked vehicles.

C. Effective Date

The NPRM proposed that the amendments become effective two years after promulgation of the final rule. The agency proposed the same leadtime for both air-braked and hydraulically-braked vehicles.

With respect to automatic brake adjusters on air-braked vehicles, the

notice explained that most truck and bus manufacturers already offer automatic brake adjusters as standard equipment. The agency acknowledged that most truck trailer manufacturers do not offer automatic brake adjusters as standard equipment; about 30 percent of all new trailers are presently ordered with automatic brake adjusters. In addition, the agency estimated that about 60 percent of all new medium and heavy trucks, buses, and trailers already have automatic brake adjusters. NHTSA believed that a switch from manual to automatic brake adjusters would not require major redesigns of more than a few, if any, vehicles because automatic brake adjusters are already available for most vehicles with manual adjusters and the overall brake system is about the same size, with or without automatic adjusters. The NPRM further stated that manufacturers of automatic brake adjusters could easily supply enough adjusters to equip all new air-braked trucks, buses, and trailers within two years.

The NPRM also stated that two years was sufficient leadtime for the brake adjustment indicator requirement, noting that two major air brake manufacturers, with over 75 percent of the market, already mark their push rods with a visual indicator for under-adjustment. The notice stated that other manufacturers should be able to develop a brake adjustment indicator within two years. The agency requested comments on the adequacy of the leadtime generally and specifically for any particular types of vehicles or brake systems which would require extensive redesign. The notice explained that the agency would consider providing longer leadtime for vehicles or brake systems which needed additional leadtime.

Thirteen commenters addressed the proposed leadtime for requiring brake adjusters and adjustment indicators on air-braked vehicles. The International Brotherhood of Teamsters and a brake consultant believed that a leadtime of one year or less was appropriate, claiming that the equipment is already available. Haldex stated that a one year lead time would be possible provided that the issue of adjustment indicators was separated. Several commenters, including Ford, the National School Transportation Association (NSTA), the American Petroleum Institute, the Owner-Operator Independent Drivers Association, TTMA, GM, and MVMA believed that the proposed two year leadtime was appropriate for requirements similar to those being adopted in this final rule. Chrysler believed that leadtime of three years would be necessary for some manufacturers to develop automatic adjusters and indicators.

NHTSA continues to believe that a two year leadtime will provide manufacturers adequate time to equip air-braked vehicles with brake adjusters and adjustment indicators. The agency notes that the final rule omits several provisions that would have raised significant practicability concerns for some vehicle and brake designs. NHTSA further notes that although some manufacturers already comply or could quickly bring their vehicles into compliance with the requirements, a significant number of small trailer manufacturers would have difficulty complying with the amendments unless a two year leadtime is provided.

As for hydraulically-braked vehicles, the notice also proposed that the amendment become effective two years after publication of the final rule. The NPRM requested comment on whether a shorter leadtime for hydraulically-braked vehicles was appropriate since these vehicles are typically produced with automatic brake adjusters.

GM and MVMA stated that an immediate effective date for hydraulically-braked vehicles would be acceptable, provided that the amendments did not require the development of new designs. Ford stated that the two year time period was more than adequate. No commenter requested a leadtime for hydraulically-braked vehicles longer than two years.

Based on the comments and available information, NHTSA has determined that a one year leadtime is appropriate for requiring automatic adjusters on hydraulically-braked vehicles. Those commenters that addressed the issue indicated that an immediate effective date would be acceptable. No commenter stated that an effective date longer than one year was necessary or that a one year leadtime would pose an unreasonable burden. Based on its review of hydraulically-braked vehicles, NHTSA believes that all such passenger cars and light trucks are equipped with an automatic adjuster. As for hydraulically-braked medium and heavy duty vehicles, the agency notes that these vehicles are typically manufactured by specialty manufacturers that purchase the axle sets and brake components from major manufacturers. The agency believes that the major manufacturers or trade groups representing the specialty manufacturers would have expressed their concern if a shorter leadtime had posed a hardship.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

IV. Regulatory Impacts

A. Executive Order 12291

NHTSA has analyzed this rulemaking and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. NHTSA estimates that the cost to install automatic brake adjusters and adjustment indicators will average $204 per vehicle and will affect approximately 136,800 air-braked vehicles. The estimated annual cost of this regulatory change to those who will now have to involuntarily install automatic brake adjusters and adjustment indicators is about $27.9 million yearly.

NHTSA estimates that this rule has the potential to prevent at least 20 fatalities, 310 injuries, and 1,418 crashes per year that are caused by out-of-adjustment air brakes. In addition, the lifetime savings from a reduced number of brake inspections and adjustments will exceed the cost of the requirement by a factor of 6 to 8. A Final Regulatory Evaluation discussing these costs and benefits in more detail is available in the docket.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Therefore, NHTSA has not prepared a regulatory flexibility analysis.

While all medium and heavy duty vehicle manufacturers and their suppliers of brake parts will be affected by NHTSA's rule, any economic impact is not expected to be significant. The added cost of automatic brake adjusters, approximately $200, is small in comparison to the cost of the entire

brake system, and very small in comparison to the overall cost of the vehicle. Therefore, NHTSA does not believe that this additional equipment will affect purchasing decisions by small entities acquiring such vehicles.

C. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this rule. The agency has determined that this rule will not have a significant impact on the quality of the human environment. While there will be an increase of up to one pound vehicle weight per automatic brake adjuster, NHTSA does not believe that such a small weight increase will have any significant impact on fuel consumption. In addition, NHTSA does not believe that production and disposal processes connected with the production of automatic brake adjusters will have any significant harmful impact on the environment.

D. Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. No state laws will be affected.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.105 [Amended]

2. S5.1 of § 571.105 is amended by adding the following after the current heading "Service brake systems":

§ 571.105 Standard No. 105; Hydraulic brake systems.

* * * Each vehicle shall be equipped with a service brake system acting on all wheels. Wear of the service brake shall be compensated for by means of a system of automatic adjustment.* * *

* * * * *

§ 571.121 [Amended]

3. S5.1.8 of § 571.121 is revised to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5.1.8 *Brake distribution and automatic adjustment.* Each vehicle shall be equipped with a service brake system acting on all wheels.

(a) *Brake adjuster.* Wear of the service brakes shall be compensated for by means of a system of automatic adjustment. The readjustment limits shall be in accordance with those specified in appendix G to subchapter B of Chapter III—"Minimum Periodic Inspection Standards," 49 CFR parts 200 to 399.

(b) *Brake indicator.* For each brake equipped with an external automatic adjustment mechanism and having an exposed pushrod, the condition of service brake under-adjustment shall be displayed by a brake adjustment indicator that is discernible when viewed with 20/40 vision from a location adjacent to or underneath the vehicle.

* * * * *

4. S5.2.2 of § 571.121 is revised to read as follows:

* * * * *

S5.2.2 *Brake distribution and automatic adjustment.* Each vehicle shall be equipped with a service brake system acting on all wheels.

(a) *Brake Adjuster.* Wear of the service brakes shall be compensated for by means of a system of automatic adjustment. The readjustment limits shall be in accordance with those specified in appendix G to subchapter B of chapter III—"Minimum Periodic Inspection Standards," 49 CFR parts 200 to 399.

(b) *Brake Indicator.* For each brake equipped with an external automatic adjustment mechanism and having an exposed pushrod, the condition of service brake under-adjustment shall be displayed by a brake adjustment indicator in a manner that is discernible when viewed with 20/40 vision from a location adjacent to or underneath the vehicle.

* * * * *

Issued on October 14, 1992.

Marion C. Blakey,

Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 603

[Docket No. 911220-2226]

RIN 0648-AD77

Confidentiality of Statistics

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

ACTION: Final rule.

SUMMARY: NMFS issues this rule finalizing the regulations regarding access to confidential statistics obtained under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Secretary of Commerce (Secretary) is required by the Magnuson Act to prescribe regulations that will prevent the disclosure of data submitted in compliance with requirements of a fishery management plan (FMP). In November 1990, Public Law 101-627 amended the Magnuson Act's confidentiality provisions. As a result, this action prescribes NMFS policies and procedures regarding: (1) Persons having access to confidential statistics, and (2) circumstances under which such data may or may not be disclosed. The intended effect is to prevent unauthorized disclosure of confidential statistics.

EFFECTIVE DATE: October 20, 1992.

FOR FURTHER INFORMATION CONTACT: Mark C. Holliday (Chief, Fisheries Statistics Division), 301-713-2328.

SUPPLEMENTARY INFORMATION:

Background

Section 303(d) of the Magnuson Act requires the Secretary to issue regulations governing the preservation of confidentiality for statistics submitted to the Secretary pursuant to requirements of an FMP (but does not govern statistics obtained by an observer as defined by the Magnuson Act). On July 9, 1992, NOAA published a proposed rule (57 FR 30458) to amend regulations as required by Public Law 101-627. Public comments were invited until August 10, 1992.

No comments were received. This action makes final the requirement as published in the Notice of Proposed Ruie Making.

Classification

The Assistant Administrator has determined that this rule is not a "major rule" under Executive Order 12291 and does not require preparation of a

regulatory impact analysis. It prescribes agency policies and procedures and will have no economic impact on the public. For the same reasons, the General Counsel of the Department of Commerce certified to the Small Business Administration when this rule was proposed, that it would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act because it does not create any additional burden. As a result, a regulatory flexibility analysis was not prepared.

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

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

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

Lists of Subjects in 50 CFR Part 603

Confidential business information, Fisheries, Statistics.

Dated: October 14, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 603 is amended as follows:

PART 603—CONFIDENTIALITY OF STATISTICS

1. The authority citation for part 603 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 1853(d).

2. Section 603.1 is revised to read as follows:

§ 603.1 Purpose.

The purpose of this part is to prescribe procedures to protect the confidentiality of statistics required to be submitted to the Secretary by any person in compliance with an FMP.

3. In § 603.2, the definition of "PMP" is removed, the definitions of "Assistant Administrator" and "confidential statistics" are revised, and a new definition for "state employee" is added, in alphabetical order, to read as follows:

§ 603.2 Definitions.

* * * * *

Assistant Administrator means the Assistant Administrator for Fisheries, NOAA, or a designee authorized to have access to confidential data under § 603.5(b).

Confidential statistics are those submitted as a requirement of an FMP and that reveal the business or identity of the submitter.

* * * * *

State employee means any member of the state agency responsible for developing and monitoring the state's program for marine and/or anadromous fisheries.

§ 603.3 [Amended]

4. In § 603.3, the words "PMP or" are removed.

5. In § 603.5 is revised to read as follows:

§ 603.5 Access to statistics.

(a) *General.* In determining whether to grant a request for access to confidential data the following information will be taken into consideration:

(1) The specific types of data required;

(2) The relevance of the data to conservation and management issues;

(3) The duration of time access will be required: continuous, infrequent, or one-time; and

(4) An explanation of why the availability of aggregate or non-confidential summaries of data from other sources would not satisfy the requested needs.

(b) *Federal employees.* Statistics submitted as a requirement of an FMP and that reveal the identity of the submitter will only be accessible to the following:

(1) Personnel within NMFS responsible for the collection, processing, and storage of the statistics;

(2) Federal employees who are responsible for FMP development, monitoring, and enforcement;

(3) Personnel within NMFS performing research that requires confidential statistics;

(4) Other NOAA personnel on a demonstrable need-to-know basis; and

(5) NOAA/NMFS contractors or grantees who require access to confidential statistics to perform functions authorized by a Federal contract or grant.

(c) *State personnel.* Upon written request confidential statistics will only be accessible if:

(1) State employees demonstrate a need for confidential statistics for use in fishery conservation and management; and

(2) The state has entered into a written agreement between the Assistant Administrator and the head of the state's agency that manages marine and/or anadromous fisheries. The agreement shall contain a finding by the Assistant Administrator that the state has confidentiality protection authority comparable to the Magnuson Act's, and that the state will exercise this authority to limit subsequent access and use of the data to fishery management and monitoring purposes.

(d) *Regional Fishery Management Councils.* Upon written request by the Council Executive Director, access to confidential data will be granted to:

(1) Council employees who are responsible for FMP development and monitoring;

(2) A Council for use by the Council for conservation and management purposes, with the approval of the Assistant Administrator. In addition to the information described in § 603.5(a), the Assistant Administrator will consider the following in deciding whether to grant access:

(i) The possibility that Council members might gain personal or competitive advantage from access to the data; and

(ii) The possibility that the suppliers of the data would be placed at a competitive disadvantage by public disclosure of the data at Council meetings or hearings.

(e) *Prohibitions.* Persons having access to these data are prohibited from unauthorized use or disclosure, and are subject to the provisions of 18 U.S.C. 1905, 16 U.S.C. 1857, and NOAA/NMFS internal procedures, including NOAA Directive 88–30.

§ 603.6 [Amended]

6. In § 603.6, in the introductory text to paragraph (a), the words "a PMP or FMP" are removed and the words "an FMP" are added in their place.

§ 603.7 [Amended]

7. In § 603.7, the words "a PMP or FMP" are removed and the words "an FMP" are added in their place, wherever they occur.

[FR Doc. 92–25436 Filed 10–19–92; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 203
Tuesday, October 20, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 52, and 100

RIN 3150-AD93

Reactor Site Criteria; Including Seismic and Earthquake Engineering Criteria for Nuclear Power Plants and Proposed Denial of Petition for Rulemaking From Free Environment, Inc. et al.

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule and proposed denial of petition for rulemaking from Free Environment, Inc. et al.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to update the criteria used in decisions regarding power reactor siting, including geologic, seismic, and earthquake engineering considerations for future nuclear power plants. The proposed rule would allow NRC to benefit from experience gained in the application of the procedures and methods set forth in the current regulation and to incorporate the rapid advancements in the earth sciences and earthquake engineering. The proposed rule primarily consists of two separate changes, namely, the source term and dose considerations, and the seismic and earthquake engineering considerations of reactor siting. The Commission is also proposing to deny the remaining issue in petition (PRM-50-20) filed by Free Environment, Inc. et al.

DATES: Comment period expires February 17, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m., Federal workdays.

Copies of the regulatory analysis, the environmental assessment and finding of no significant impact, and comments received may be examined at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew J. Murphy, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3860, concerning the seismic and earthquake engineering aspects and Mr. Leonard Soffer, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3916, concerning other siting aspects.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Objectives.
III. Genesis.
IV. Alternatives.
V. Major Changes.
A. Reactor Siting Criteria (Nonseismic).
B. Seismic and Earthquake Engineering Criteria.
VI. Siting Policy Task Force Recommendations.
VII. Related Regulatory Guides and Standard Review Plan Section.
VIII. Future Regulatory Action.
IX. Referenced Documents.
X. Submission of Comments in Electronic Format.
XI. Questions.
A. Reactor Siting Criteria (Nonseismic).
B. Seismic and Earthquake Engineering Criteria.
XII. Finding of No Significant Environmental Impact: Availability.
XIII. Paperwork Reduction Act Statement.
XIV. Regulatory Analysis.
XV. Regulatory Flexibility Certification.
XVI. Backfit Analysis.

I. Background

The present regulation regarding reactor site criteria (10 CFR part 100) was promulgated April 12, 1962 (27 FR 3509). Staff guidance on exclusion area and low population zone sizes as well as population density was issued in Regulatory Guide 4.7, "General Site Suitability Criteria for Nuclear Power Stations," published for comment in September 1974. Revision 1 to this guide was issued in November 1975. On June 1, 1976, the Public Interest Research Group (PIRG) filed a petition for rulemaking (PRM-100-2) requesting that the NRC incorporate minimum exclusion area and low population zone distances and population density limits into the regulations. On April 28, 1977, Free Environment, Inc. et al., filed a petition for rulemaking (PRM-50-20). The remaining issue of this petition requests that the central Iowa nuclear project and other reactors be sited at least 40 miles from major population centers. In August 1978, the Commission directed the NRC staff to develop a general policy statement on nuclear power reactor siting. The "Report of the Siting Policy Task Force" (NUREG-0625) was issued in August 1979 and provided recommendations regarding siting of future nuclear power reactors. In the 1980 Authorization Act for the NRC, the Congress directed the NRC to decouple siting from design and to specify demographic criteria for siting. On July 29, 1980 (45 FR 50350), the NRC issued an Advance Notice of Proposed Rulemaking (ANPRM) regarding revision of the reactor site criteria, which discussed the recommendations of the Siting Policy Task Force and sought public comments. The proposed rulemaking was deferred by the Commission in December 1981 to await development of a Safety Goal and improved research on accident source terms. On August 4, 1986 (51 FR 23044), the NRC issued its Policy Statement on Safety Goals that stated quantitative health objectives with regard to both prompt and latent cancer fatality risks. On December 14, 1988 (53 FR 50232), the NRC denied PRM-100-2 on the basis that it would unnecessarily restrict NRC's regulatory siting policies and would not result in a substantial increase in the overall protection of the public health and safety. Because of possible renewed interest in power reactor siting, the NRC is proceeding with a rulemaking in this area. Because the proposed regulations would include population density criteria for future nuclear power reactor sites, the Commission concludes that the remaining issue in PRM-50-20 is being addressed as part of this rulemaking action.

Appendix A to 10 CFR part 100, "Seismic and Geologic Siting Criteria for Nuclear Power Plants," was originally issued as a proposed regulation on November 25, 1971 (36 FR 22601), published as a final regulation on November 13, 1973 (38 FR 31279), and

became effective on December 13, 1973. There have been two amendments to 10 CFR part 100, appendix A. The first amendment, issued November 27, 1973 (38 FR 32575), corrected the final regulation by adding the legend under the diagram. The second amendment resulted from a petition for rulemaking (PRM 100–1) requesting that an opinion be issued that would interpret and clarify appendix A with respect to the determination of the Safe Shutdown Earthquake. A notice of filing of the petition was published on May 14, 1975 (40 FR 20983). The substance of the petitioner's proposal was accepted and published as an immediately effective final regulation on January 10, 1977 (42 FR 2052).

II. Objectives

The objectives of this proposed regulatory action are to—

1. State the criteria for future sites that, based upon experience and importance to risk, have been shown as key to protecting public health and safety;

2. Provide a stable regulatory basis for seismic and geologic siting and applicable earthquake engineering design of future nuclear powerplants that will update and clarify regulatory requirements and provide a flexible structure to permit consideration of new technical understandings; and

3. Relocate the requirements that apply to plant design into 10 CFR part 50 thereby effectively decoupling siting from plant design.

III. Genesis

The proposed regulatory action reflects changes that are intended to: (1) Benefit from the experience gained in applying the existing regulation and from research; (2) resolve interpretive questions; (3) provide needed regulatory flexibility to incorporate state-of-the-art improvements in the geosciences and earthquake engineering; and (4) simplify the language to a more "plain English" text

The proposed regulatory action would apply to applicants who apply for a construction permit, operating license, preliminary design approval, final design approval, manufacturing license, early site permit, design certification, or combined license on or after the effective date of the final regulations.

Criteria not associated with the selection of the site or establishment of the Safe Shutdown Earthquake Ground Motion (SSE) have been placed into 10 CFR part 50. This action is consistent with the location of other design requirements in 10 CFR part 50.

Because the revised criteria presented in the proposed regulation would not be applied to existing plants, the licensing bases for existing nuclear power plants must remain part of the regulations. Therefore, the proposed revised reactor siting criteria would be added as subpart B in 10 CFR part 100 and would apply to site applications received on or after the effective date of the final regulations. The criteria on seismic and geologic siting would be added as a new appendix B to 10 CFR part 100. The dose calculations and the earthquake engineering criteria will be located in 10 CFR part 50 (§ 50.34(a) and appendix S, respectively). Because appendix S is not self executing, applicable sections of part 50 (§ 50.34 and § 50.54) are revised to reference appendix S. The proposed regulation would also make conforming amendments to 10 CFR parts 52 and 100. Sections 52.17(a)(1)(vi), and 100.20(c)(1) would be amended to note appendix B to part 100.

IV. Alternatives

The first alternative considered by the Commission was to continue using current regulations for site suitability determinations. This is not considered an acceptable alternative. Accident source terms and dose calculations currently influence plant design requirements rather than siting. It is desirable to state directly those siting criteria which, through importance to risk, have been shown to be key to assuring public health and safety. Further, significant advances in the earth sciences and in earthquake engineering have taken place since the promulgation of the present regulation and deserve to be reflected in the regulations.

The second alternative considered was replacement of the existing regulation with an entirely new regulation. This is not an acceptable alternative because the provisions of the existing regulations form part of the licensing bases for many of the operating nuclear power plants and others that are in various stages of obtaining operating licenses. Therefore, these provisions must remain in force and effect.

The approach of establishing the revised requirements in new sections and an appendix to 10 CFR part 100 and relocating plant design requirements to 10 CFR part 50 while retaining the existing regulation was chosen as the best alternative. The public will benefit from a clearer, more uniform, and more consistent licensing process that incorporates updated information and is subject to fewer interpretations. The NRC staff will benefit from improved regulatory implementation (both technical and legal), fewer interpretive debates, and increased regulatory flexibility. Applicants will derive the same benefits in addition to avoiding licensing delays caused by unclear regulatory requirements.

V. Major Changes

A. Reactor Siting Criteria (Nonseismic)

Since promulgation of the reactor site criteria in 1962, the Commission has approved more than 75 sites for nuclear power reactors and has had an opportunity to review a number of others. As a result of these reviews, a great deal of experience has been gained regarding the site factors that influence risk and their range of acceptability. Much of the experience gained by the NRC staff in these reviews has been reflected in the issuance of Regulatory Guide 4.7, "General Site Suitability Criteria for Nuclear Power Stations," which was issued for comment in 1974, and revised in 1975. It also reflects the Commission's policy of keeping reactors away from densely populated centers. A review of the Regulatory Guidelines implementation has shown that its application is expected to result in low risk to the public while allowing a good selection of potential reactor sites in all regions of the nation.

The site criteria presented in the proposed regulation are based on those contained primarily in Regulatory Guide 4.7, and represent current NRC practice. In addition, numerous risk studies on radioactive material releases to the environment under severe accident conditions have all confirmed that the present siting practice is expected to effectively limit risk to the public. These studies include the early "Reactor Safety Study" (WASH–1400), published in 1975, many Probabilistic Risk Assessment (PRA) studies conducted on individual plants as well as several specialized studies, and the recent "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants," (NUREG–1150), issued in 1990.

The proposed criteria basically decouple siting from accident source term and dose calculations. Experience has shown that these factors have tended to influence plant design aspects rather than siting. Accident source term and dose considerations are proposed to be applied to plant design aspects and would be relocated to part 50. The Commission considers it appropriate, based on the extensive experience and confirmatory studies noted above, to state directly those site criteria that

have been shown to be key to protecting public health and safety. These reactor site criteria are expected to be independent of plant design and, as such, are independent of the plant type to be built at the site. The Commission considers this appropriate because it expects that future reactors licensed under part 50 or part 52 will reflect, through their design, construction, and operation, risk characteristics that are equal to or better than existing plants. Therefore, there would be an extremely low probability for accidents that could result in release of significant quantities of radioactive fission products. In addition, the recommendations of the Siting Policy Task Force were considered in making these changes as discussed in Section XII of this proposed rule.

Rationale for Individual Criteria

1. Exclusion Area

An exclusion area surrounding the immediate vicinity of the plant has been a requirement for siting power reactors from the very beginning. This area provides a high degree of protection to the public from a variety of potential plant accidents and also affords protection to the plant from potential man-related hazards.

The present regulation has no numerical size requirement, in terms of distance, for the exclusion area. The present regulations assesses the consequences of a postulated radioactive fission product release within containment, coupled with assumptions regarding containment leakage, performance of certain fission product mitigation systems, and atmospheric dispersion factors for a hypothetical individual located at any point on the exclusion area boundary. The plant and site combination is considered to be acceptable if the calculated consequences do not exceed the dose values given in the present regulation. Regulatory Guide 4.7 suggests an exclusion area distance of 0.4 miles (640 meters). This distance has been found, in conjunction with typical engineered safety features, to meet the dose values in the existing regulation. Future reactors would be expected to be as good or better in meeting the dose criteria at this distance.

The Commission considers an exclusion area to be an essential feature of a reactor site and is retaining this requirement for future reactors. However, in keeping with the recommendation of the Siting Policy Task Force to decouple site requirements from reactor design, the proposed regulation would eliminate the use of a postulated source term, assumptions regarding mitigation systems and dispersion factors, and the calculation of radiological consequences to determine the sizes of the exclusion area and low population zone. It would instead require a minimum exclusion area distance of 0.4 miles (640 meters) for power reactors.

This distance, together with typical engineered safety features previously reviewed by the staff, has been found to satisfy the dose guidelines in the present regulation. An exclusion area of this size or larger is fairly common for most power reactors in the U.S. It has not been unduly difficult for most prospective applicants to find and obtain a suitable site.

Finally, this distance has also been found to readily satisfy the prompt fatality quantitative health objective of the Commission's Safety Boards Policy, when coupled with plant designs as reflected by those in NUREG–1150, and for a reactor power level of 3800 Megawatts (thermal). Therefore, the minimum exclusion area distance proposed would assure a very low level of risk to individuals, even for those located very close to the plant.

Although an exclusion area size of about 0.4 miles is considered appropriate for reactor power levels of current design, the Commission is also considering whether or not this size unduly penalizes potential reactors that have significantly lower power levels and is therefore requesting comments on this subject.

2. Low Population Zone

The present regulation requires that a low population zone (LPZ) be defined immediately beyond the exclusion area. Residents are permitted in this area, but the number and density must be such that there is a reasonable probability that appropriate protective measures could be taken in their belief in the event of a serious accident. In addition, the nearest densely populated center containing more than about 25,000 residents must be located no closer than one and one-third times the outer radius of the LPZ. Finally, the dose to a hypothetical individual located at the outer radius of the LPZ over the entire course of the accident must not be in excess of the dose values given in the regulation. Regulatory Guide 4.7 suggests that an outer radius of about 3 miles (4.8 km) for the LPZ has been found to satisfy the dose values in the present regulation.

Several practical problems have arisen in connection with the LPZ. Before 1980, the LPZ generally defined the distance over which public protective actions were contemplated in the event of a serious accident. The regulations in 10 CFR 50.47 now requires plume exposure Emergency Planning Zones (EPZ) of about 10 miles for each plant.

The LPZ also places restrictions on the proximity of the nearest densely populated center of 25,000 or more residents. However, without numerical requirements for the outer radius of the LPZ, this requirement has little practical effect. Typical LPZs for existing power reactors have several thousand residents. If Regulatory Guide 4.7 were followed and a distance of 3 miles were selected as the LPZ outer radius, a maximum population within the LPZ at the time of site approval would be about 14,000 residents. Finally, the staff has sometimes experienced difficulty in defining a "densely populated center."

The Commission considers that the functions intended for the LPZ, namely, a low density of residents and the feasibility of taking protective actions, have been accomplished by other regulations or can be accomplished by other means. Protective action requirements are defined via the use of the EPZ, while restrictions on population close to the plant can be assured via proposed population density criteria. For these reasons, the Commission is proposing to eliminate the requirement of an LPZ for future power reactor sites for purposes of determining site suitability.

3. Population Density Criteria

The present regulation contains no population density requirements other than the requirement, noted above, that the distance to the nearest population center containing more than about 25,000 residents must be no closer than one and one-third times the outer radius of the LPZ. This was recognized as a potential concern when the present regulation was promulgated. As the Commission noted in its Statement of Considerations on April 12, 1962 (27 FR 3509), accompanying the issuance of the regulation, " * * * in some cases where very large cities are involved, the population center distance may have to be greater than those suggested by these guides."

As a result of the significant experience gained in the siting of power reactors, the staff issued Regulatory Guide 4.7 in 1974. With respect to population density this guide states as follows:

"Areas of low population density are preferred for nuclear power station sites. High population densities projected for any time during the lifetime of a station are

considered during both the NRC staff review and the public hearing phases of the licensing process. If the population density at the proposed site is not acceptably low, then the applicant will be required to give special attention to alternative sites with lower population densities.

If the population density, including weighted transient population, projected at the time of initial operation of a nuclear power station exceeds 500 persons per square mile averaged over any radial distance out to 30 miles (cumulative population at a distance divided by the area at that distance), or the projected population density over the lifetime of the facility exceeds 1000 persons per square mile averaged over any radial distance out to 30 miles, special attention should be given to the consideration of alternative sites with lower population densities."

The basis for this guide was that it provided for reasonable separation of reactor sites from large population centers while also assuring an adequate selection of sites in all regions of the nation. However, no comparisons with explicit risk criteria were provided at that time.

On April 28, 1977, Free Environment, Inc. et. al., filed a petition for rulemaking (PRM–50–20) requesting, among other things, that "the central Iowa nuclear project and other reactors be sited at least 40 miles from major population centers." The petitioner also stated that "locating reactors in sparsely-populated areas * * * has been endorsed in non-binding NRC guidelines for reactor siting." However, the petitioner did not specify what constituted a major population center. The only NRC guidelines concerning population density in regard to reactor siting are in Regulatory Guide 4.7, issued in 1974, and revised in 1975, prior to the date of the petition. This guide provides population density criteria out of a distance of 30 miles from the reactor, not 40 miles.

An illustration of the degree of separation distance provided for in this guide from population centers of various sizes may be useful. Under this guide, a population center of about 25,000 or more residents should be no closer than 4 miles (6.4 km) from a reactor because a density of 500 persons per square mile within this distance would yield a total population of about 25,000 persons. Similarly, a city of 100,000 or more residents should be no closer than about 10 miles (16 km); a city of 500,000 or more persons should be no closer than about 20 miles (32 km), and a city of 1,000,000 or more persons should be no closer than about 30 miles (50 km) from the reactor.

The Commission has examined these guidelines with regard to the Safety Goal. The Safety Goal quantitative health objective in regard to latent cancer fatality states that, within a distance of ten miles (16 km) from the reactor, the risk to the population of latent cancer fatality from nuclear power plant operation, including accidents, should not exceed one-tenth of one percent of the likelihood of latent cancer fatalities from all other causes. In addition to the risks of latent cancer fatalities, the Commission has also investigated the likelihood and extent of land contamination arising from the release of long-lived radioactive species, such as cesium-137, in the event of a severe reactor accident.

The results of these analyses indicate that the latent cancer fatality quantitative health objective noted above is met for current plant designs. From analysis done in support of this proposed change in regulation, the likelihood of land contamination from a severe accident sufficient to require long term condemnation of land beyond 30 miles (50 km) is very low. Other analyses indicate that population density restrictions out to 40 miles could make it difficult to obtain suitable reactor sites in some regions of the nation.

Because the population density values of Regulatory Guide 4.7 have been in use since 1975, and these values afford an adequate supply of potential reactor sites in every region of the nation while providing assurance of low risk of latent cancer fatality as well as land contamination, the Commission considers it prudent to maintain these population density values for future power reactor sites. The Commission wishes to emphasize, however, that nuclear power plants meeting current safety standards could be safely located at sites significantly more dense than 500 people per square mile.

For these reasons, the Commission is proposing that, at the time of initial site approval or early site permit renewal, population density values of no more than 500 people per square mile averaged over any radial distance out to 30 miles be used for judging the acceptability of future nuclear power plant sites. Similarly, in keeping with Regulatory Guide 4.7, the projected population density 40 years after initial site approval should not exceed 1000 people per square mile.

With regard to the petition by Free Environment, Inc. (PRM–50–20), the Commission concludes that the criteria in Regulatory Guide 4.7 provide a reasonable degree of separation for a range of population centers, including "major" population centers, depending upon their size. Further, codifying the population density criteria of this guide is expected to ensure a low level of risk, including the risk of latent cancer fatality as well as long-term land contamination. Finally, the Commission concludes that granting of the petitioner's request to specify population criteria out to 40 miles rather than 30 miles would not substantially reduce the risks to the public, but could significantly increase the difficulty of obtaining suitable reactor sites in some regions of the nation. For these reasons, the Commission is proposing not to adopt the proposal by Free Environment, Incorporated.

An important point regarding population projections and their application should be made. Because the validity and reliability of population projections, particularly for relatively small regions, decreases markedly as the projection time period increases, population projections for the purpose of assessing site suitability are to be limited to 40 years. Population projections beyond this time period become unreliable and speculative. The 40 year period for population projections is to be distinguished from the 60 year or more plant lifetime.

Because analyses have shown that current plan designs can meet the Commission's Safety Goals and that other risks can be kept at a very low level at sites that have significantly higher population densities than those being proposed, the Commission wishes to emphasize that these population density levels do not indicate the upper limits of acceptability. These levels represent preferred values, that, if exceeded, require that an applicant provide justification or not locating a reactor at an alternative site having a lower population density. Therefore, the population density limits proposed in the regulation are intended to be used only in the siting decision process to be applied at the time of initial site approval or early site permit renewal to determine whether alternative sites that have lower population densities should be considered. The Commission does not intend to consider license conditions or operating restrictions upon an operating reactor solely upon the basis that the population density around it may reach or exceed the proposed siting decision values given above during the plant lifetime. Because of the possibility for confusion resulting from numerical values being cited in the regulation, the Commission is also requesting comments on whether numerical population density values should be cited in the regulation or whether these should be stated in a regulatory guide only. The Commission is also requesting

comments on whether the values of 500 and 1000 persons per square mile are appropriate, and whether population density criteria need be specified out to 30 miles, or whether another distance is more appropriate.

4. Meteorological Factors

Radiological doses that incorporate site meteorological data need no longer be calculated for the purpose of determining site suitability. Meteorological data will still be needed for safety analysis and for assessing the adequacy of certain plant features, as well as to determine plant adequacy in regard to meteorological extremes, such as tornados and maximum probable precipitation. Therefore, the proposed regulation maintains the requirement to collect and characterize meteorological data representative of the site.

The Commission has examined the variations in site meteorology that have influenced dose calculations in past licensing reviews. Individual site meteorology characteristics have been used primarily to determine atmospheric dispersion or dilution factors in order to evaluate does to hypothetical individuals at the exclusion area and LPZ outer radius. The degree of dilution increases with increasing distance between the release point and any hypothetically exposed individual, but it also is affected by other factors, including the time of day. In this regard, the dispersion factor could vary significantly at a given site and show a pronounced diurnal variation. However, when the time-averaged dispersion factor of a given site is compare with that of other sites, the variation between one site and another is much less. Analyses reported in NUREG/CR-2239, "Technical Guidance for Siting Criteria Development," dated December 1982, for example, show that calculated average individual consequences for an identical postulated release of radioactivity to the environment using data from weather stations throughout the United States yielded results that varied only by about a factor of two. Based upon these considerations, the Commission has determined that the average meteorological characteristics between one site and another are sufficiently similar that characterization of individual site meteorology is not a significant discriminator in determining site suitability when compared to the uncertainties in other areas of the determination of risk to the health and safety to the public. However, site meteorological characteristics are needed in safety analysis and for assessing the adequacy of certain plant design features.

5. Hydrological Factors

These factors are important in establishing the magnitude of external hazards from ground-water contamination, such as by containment basemat melt through, which could contaminate aquifers and thereby affect large populations. The proposed regulation adds or modifies existing requirements for obtaining information to characterize hydrological factors at a site important to risk. This information will be reviewed by the staff and used as interface criteria in matching a proposed design to the site.

6. Nearby Industrial and Transportation Facilities

This area of review would be incorporated into the regulations for determining site suitability. This area of review has, in fact, been a part of the NRC review for many years. The proposed regulation involves no substantive changes in this area and merely codifies what has been NRC practice for a number of years.

7. Feasibility of Carrying out Protective Actions

The proposed regulation would require that important site factors such as population distribution, topography, and transportation routes be considered and examined in order to determine whether there are any site characteristics that could pose a significant impediment to the development of an emergency plan.

Planning for emergencies is part of the Commission's defense-in-depth approach. The Commission has concluded that site characteristics that may represent an impediment to the development of adequate emergency plans, such as limitations of access or egress in the immediate vicinity of a nuclear power plant, should be identified at the site approval phase. This is consistent with the approach the Commission has taken in early site reviews under 10 CFR part 52.

8. Periodic Reporting of Man-Related Activities

Conditions around a site may change and significant changes in the nature of the industrial, military, and transportation facilities may occur. Early identification of activities or facilities that are potentially hazardous could permit timely changes in the procedures or plant features to minimize the change in the risk to the health and safety of the public. Man-related activities potentially hazardous to a plant are typically major industrial or transport facilities such as major highways, large pipelines, major airports, etc. Relatively minor changes in industrial activity have been shown to be of little concern.

The Commission is considering whether periodic reporting of significant offsite activities should be required and is requesting comments on whether significant offsite facilities within five miles of the reactor should be periodically updated every five years.

Interim Change to 10 CFR Part 50

The proposed change to 10 CFR part 50 would simply relocate from 10 CFR part 100 the requirements for each applicant to calculate a whole body and a thyroid dose at specified distances. Because these requirements affect reactor design rather then siting, they are more appropriately located in 10 CFR part 50. For this proposed revision, the source term and methodology for performing the dose calculations would remain unchanged from the current requirements.

These requirements would continue to apply to future applicants for a construction permit, design certification, or an operating license, but are intended to be interim requirements until such time as more specific requirements are developed regarding revised accident source terms and severe accident insights.

B. Seismic and Earthquake Engineering Criteria

The following major changes in the proposed revision to appendix A, "Seismic and Geologic Siting Criteria for Nuclear Power Plants," to part 100, are associated with the proposed seismic and earthquake engineering criteria rulemaking:

1. Separate Siting from Design

Criteria not associated with site suitability or establishment of the Safe Shutdown Earthquake Ground Motion (SSE) have been placed into 10 CFR part 50. This action is consistent with the location of other design requirements in 10 CFR part 50. Because the revised criteria presented in the proposed regulation will not be applied to existing plants, the licensing basis for existing nuclear power plants must remain part of the regulations. The criteria on seismic and geologic siting would be designated as a new appendix B, "Criteria for the Seismic and Geologic Siting of Nuclear Power Plants on or After [Effective Date of this Regulation]," to 10 CFR part 100. Criteria on earthquake engineering would be designated as a new appendix S,

"Earthquake Engineering Criteria for Nuclear Power Plants," to CFR part 50.

2. Remove Detailed Guidance from the Regulation

The current regulation contains both requirements and guidance on how to satisfy the requirements. For example, section IV, "Required Investigations," of appendix A, states that investigations are required for vibratory ground motion, surface faulting, and seismically induced floods and water waves. Appendix A then provides detailed guidance on what constitutes an acceptable investigation. A similar situation exists in Section V, "Seismic and Geologic Design Bases," of appendix A.

Geoscience assessments require considerable latitude in judgment. This latitude in judgment is needed because of limitations in data and the state-of-the-art of geologic and seismic analyses and because of the rapid evolution taking place in the geosciences in terms of accumulating knowledge and in modifying concepts. This need appears to have been recognized when the existing regulation was developed. The existing regulation states that it is based on limited geophysical and geological information and will be revised as necessary when more complete information becomes available.

However, having geoscience assessments detailed and cast in a regulation has created difficulty for applicants and the staff in terms of inhibiting the use of needed latitude in judgment. Also, it has inhibited flexibility in applying basic principles to new situations and the use of evolving methods of analyses (for instance, probabilistic) in the licensing process.

The level of detail presented in the proposed regulation would be reduced considerably. The proposed regulation would identify and establish basic requirements. Detailed guidance, that is, the procedures acceptable to the NRC for meeting the requirements, would be contained in a draft regulatory guide to be issued for public comment as Draft Regulatory Guide, DG–1015, "Identification and Characterization of Seismic Sources, Deterministic Source Earthquakes, and Ground Motion."

3. Use of Both Deterministic and Probabilistic Evaluations

The proposed regulation would require the use of both probabilistic and deterministic evaluations. The existing approach for determining a Safe Shutdown Earthquake Ground Motion (SSE) for a nuclear reactor site, embodied in appendix A to 10 CFR part 100, relies on a "deterministic" approach. Using this deterministic approach, an applicant develops a single set of earthquake sources, develops for each source a postulated earthquake to be used as the source of ground motion that can affect the site, locates the postulated earthquake according to prescribed rules, and then calculates ground motions at the site. Although this approach has worked reasonably well for the past two decades, in the sense that SSEs for plants sited with this approach are judged to be suitably conservative, the approach has not explicitly recognized uncertainty in geoscience parameter. Because so little is known about earthquake phenomena (especially in the eastern United States), there have always been differences of opinion among experts as to how the prescribed process in Appendix A is to be carried out. Experts often delineate very different estimates of the largest earthquakes to be considered and different ground-motion models.

Over the past decade, analysis methods for encompassing these differences have been developed and used. These "probabilistic" methods have been designed to allow explicit incorporation of different models for zonation, earthquake size, ground motion, and other parameters. The advantage of using these probabilistic methods is their ability to not only incorporate different models and different data sets, but also to weight them using judgments as to the validity of the different models and data sets, and thereby to provide an explicit expression for the overall uncertainty in the ground motion estimates and a means of assessing sensitivity to various input parameters.

Probabilistic methods have been used by many groups, not only in the seismic-hazard area but in many other areas. In the seismic-hazard area, many of the practitioners participated in either the NRC-Lawrence Livermore National Laboratory (LLNL) or the Electric Power Research Institute (EPRI) seismic-hazard projects over the past decade.

The advantages of these probabilistic methods are manifest. However, their limitations are important too. In the seismic-hazard area, the most important limitation is that the "bottom-line" results from these analyses tend to be dominated by the tails rather than the central tendencies of the distributions of knowledge and expert opinion.

For these reasons, the proposed revision of appendix A to 10 CFR part 100 has adopted an approach using both probabilistic and deterministic evaluations. The staff proposes to use both the deterministic (currently being used) and the probabilistic evaluations together and compare the results of each to provide insights unavailable if either method were used alone. The principal limitations of the deterministic evaluation—its ability to incorporate only one model and one data set at a time and its inability to allow weighted incorporation of numerous models—can be assessed by comparing its results with the results of a probabilistic evaluation accomplished in parallel. Similarly, the principal limitation of the probabilistic evaluation—its tendency to allow its results to be dominated by the tails rather than the central tendency of distributions of uncertain knowledge or expert opinion—can be assessed by comparing its results with the results of one or more deterministic evaluations.

The NRC believes that taken together, this approach can allow more informed judgments as to what the appropriate Safe Shutdown Earthquake Ground Motion should be for a given site. Both the applicant's judgments and those of the NRC will be improved. Therefore, the NRC believes that this approach is the best way to accomplish the objective of this aspect of the revised regulation and arrive, through analysis, at a site-specific ground motion that appropriately captures what is known about the seismic regime. Using both probabilistic and deterministic evaluations to complement each other should lead to a more stable and predictable licensing process than in the past.

In order to implement this approach, the NRC has proposed a requirement that the annual probability of exceeding the Safe Shutdown Earthquake Ground Motion at a site be lower than the median annual probability of exceedance computed for the current population of the operating plants. This requirement assures that the design levels at new sites will be comparable to those at many existing sites, particularly more recently licensed sites. This criterion is also used to identify significant seismic sources, in terms of magnitude and distance, affecting the estimates of ground motions at a site.

The Commission is specifically requesting comments on the questions contained in section XI.B pertaining to the use of probabilistic seismic hazard analysis and the balance between the deterministic and probabilistic evaluations. The position(s) stated in the final regulation, supporting regulatory guide and Standard Review Plan Section will be based on Commission consideration of responses to these questions and comments on all aspects of this rulemaking.

4. Safe Shutdown Earthquake

The existing regulation (10 CFR part 100, appendix A, section V(a)(1)(iv)) states "The maximum vibratory accelerations of the Safe Shutdown Earthquake at each of the various foundation locations of the nuclear power plant structures at a given site shall be determined * * *". The location of the seismic input motion control point as stated in the existing regulation has led to confrontations with many applicants that believe this stipulation is inconsistent with good engineering fundamentals.

The proposed regulation would move the location of the seismic input motion control point from the foundation-level to free-field, at the free ground surface or hypothetical rock outcrop, as appropriate. The 1975 version of the Standard Review Plan placed the control motion in the free-field. The proposed regulation is also consistent with the resolution of Unresolved Safety Issue (USI) A–40, "Seismic Design Criteria" (August 1989), that resulted in the revision of Standard Review Plan sections 2.5.2, 3.7.1, 3.7.2, and 3.7.3. However, the proposed regulation requires that at a minimum, the horizontal Safe Shutdown Earthquake Ground Motion at the foundation level of the structures must be an appropriate response spectrum with a peak ground acceleration of at least 0.1g.

5. Value of the Operating Basis Earthquake Ground Motion (OBE) and Required OBE Analyses

The existing regulation (10 CFR, appendix A, section V(a)(2)) states that the maximum vibratory ground motion of the OBE is one-half the maximum vibratory ground motion of the Safe Shutdown Earthquake ground motion. Also, the existing regulation (10 CFR, appendix A, section VI(a)(2)) states that the engineering method used to insure that structures, systems, and components are capable of withstanding the effects of the OBE shall involve the use of either a suitable dynamic analysis or a suitable qualification test. In some cases, for instance piping, these multi-facets of the OBE in the existing regulation made it possible for the OBE to have more design significance than the SSE. A decoupling of the OBE and SSE has been suggested in several documents. For instance, the NRC staff, SECY–79–300, suggested that design for a single limiting event and inspection and evaluation for earthquakes in excess of some specified limit may be the most sound regulatory approach. NUREG–1061, "Report of the U.S. Nuclear Regulatory Commission Piping Review Committee," Vol. 5, April 1985, (Table 10.1) ranked a decoupling of the OBE and SSE as third out of six high priority changes. In SECY–90–016, "Evolutionary Light Water Reactor (LWR) Certification Issues and Their Relationship to Current Regulatory Requirements," the NRC staff states that it agrees that the OBE should not control the design of safety systems. For the evolutionary reactors, the NRC will consider requests to decouple the OBE from the SSE on a design-specific basis.

Activities equivalent to OBE–SSE decoupling are also being done in foreign countries. For instance, in Germany their new design standard requires only one design basis earthquake (equivalent to the SSE). They require an inspection-level earthquake (for shutdown) of 0.4 SSE. This level was set so that the vibratory ground motion should not induce stresses exceeding the allowable stress limits originally required for the OBE design.

The proposed regulation would allow the value of the OBE to be set at: (i) One-third or less of the SSE, where OBE requirements are satisfied without an explicit response or design analyses being performed, or (ii) a value greater than one-third of the SSE, where analysis and design are required. There are two issues the applicant should consider in selecting the value of the OBE: first, plant shutdown is required if vibratory ground motion exceeding that of the OBE occurs (discussed below in Item 6, Required Plant Shutdown), and second, the amount of analyses associated with the OBE. An applicant may determine that at one-third of the SSE level, the probability of exceeding the OBE vibratory ground motion is too high, and the cost associated with plant shutdown for inspections and testing of equipment and structures prior to restarting the plant is unacceptable. Therefore, the applicant may voluntarily select an OBE value at some higher fraction of the SSE to avoid plant shutdowns. However, if an applicant selects an OBE value at a fraction of the SSE higher than one-third, a suitable analysis shall be performed to demonstrate that the requirements associated with the OBE are satisfied. The design shall take into account soil-structure interaction effects and the expected duration of the vibratory ground motion. The requirement associated with the OBE is that all structures, systems, and components of the nuclear power plant necessary for continued operation without undue risk to the health and safety of the public shall remain functional and within applicable stress and deformation limits when subjected to the effects of the OBE in combination with normal operating loads.

As stated above, subject to further confirmation, it is determined that if an OBE of one-third of the SSE is used, the requirements of the OBE can be satisfied without the applicant performing any explicit response analyses (some minimal design checks and the applicability of this position to seismic base isolation of buildings are discussed below). There is high confidence that, at this ground-motion level with other postulated concurrent loads, most critical structures, systems, and components will not exceed currently used design limits. In this case, the OBE serves the function of an inspection and shutdown earthquake. There are situations associated with current analyses where only OBE is associated with the design requirements, for example, the ultimate heat sink (see Regulatory Guide 1.27, "Ultimate Heat Sink for Nuclear Power Plants"). In these situations, a value expressed as a fraction of the SSE response would be used in the analyses. Section VIII of this Proposed rule identifies existing guides that would be revised technically to maintain the existing design philosophy. With regard to piping analyses, positions on fatigue ratcheting and seismic anchor motion are being developed and will be issued for public comment in a draft regulatory guide separate from this rulemaking. More than one earthquake response analysis for a seismic base isolated nuclear power plant design may be necessary to ensure adequate performance at all earthquake levels. Decisions pertaining to the response analyses associated with base isolated facilities will be handled on a case by case basis.

6. Required Plant Shutdown

The current regulation (Section V(a)(2)) states that if vibratory ground motion exceeding that of the OBE occurs, shutdown of the nuclear power plant is required. The supplementary information to the final regulation (published November 13, 1973, 38 FR 31279, Item 6e) includes the following statement: "A footnote has been added to § 50.36(c)(2) of 10 CFR part 50 to assure that each power plant is aware of the limiting condition of operation which is imposed under section V(2) of appendix A to 10 CFR part 100. This limitation requires that if vibratory ground motion exceeding that of the OBE occurs, shutdown of the nuclear power plant will be required. Prior to resuming operations, the licensee will be

required to demonstrate to the Commission that no functional damage has occurred to those features necessary for continued operation without undue risk to the health and safety of the public." At that time, it was the intention of the Commission to treat the Operating Basis Earthquake as a limiting condition of operation. From the statement in the Supplementary Information, the Commission directed applicants to specifically review 10 CFR part 100 to be aware of this intention in complying with the requirements of 10 CFR 50.36. Thus, the requirement to shut down if an OBE occurs was expected to be implemented by being included among the technical specifications submitted by applicants after the adoption of appendix A. In fact, applicants did not include OBE shutdown requirements in their technical specifications.

The proposed regulation would treat plant shutdown associated with vibratory ground motion exceeding the OBE or significant plant damage as a condition in every operating license. The shutdown requirement would be a condition of the license (10 CFR 50.54) rather than a limiting condition of operation (10 CFR 50.36), because the necessary judgments associated with exceedance of the vibratory ground motion or significant plant damage can not be adequately characterized in a technical specification. A new paragraph § 50.54(ee) would be added to the regulations to require plant shutdown for licensees of nuclear power plants that comply with the earthquake engineering criteria in paragraph IV(a)(3) of Proposed Appendix S, "Earthquake Engineering Criteria for Nuclear Power Plants," to 10 CFR part 50.

Draft Regulatory Guide DG–1017, "Pre-Earthquake Planning and Immediate Nuclear Power Plant Operator Post-Earthquake Actions," is being developed to provide guidance acceptable to the NRC staff for determining whether or not vibratory ground motion exceeding the OBE ground motion or significant plant damage had occurred and nuclear power plant shutdown is required. The guidance is based on criteria developed by the Electric Power Research Institute (EPRI). The decision to shut down the plant should be made within eight hours after the earthquake. The data from the seismic instrumentation, coupled with information obtained from a plant walkdown, are used to make the determination of whether the plant should be shut down, if it has not already been shut down by operational perturbations resulting from the seismic event. The guidance being developed in Draft Regulatory Guide DG–1017 is based on two assumptions, first, that the nuclear power plant has operable seismic instrumentation, including the equipment and software required to process the data within four hours after an earthquake, and second, that the operator walkdown inspections can be performed in approximately four to eight hours depending on the number of personnel conducting the inspection. If vibratory ground motion exceeding that of the Operating Basis Earthquake Ground Motion or if significant plant damage occurs, the licensee must shut down the nuclear power plant. If the licensee determines that plant shutdown is required by the Commission's regulations, but the licensee does not think it prudent to do so, the licensee may ask for an emergency exemption from the requirements of the regulation pursuant to § 50.12 to 10 CFR part 50 so that the plant need not shut down if the exemption is granted.

Draft Regulatory Guide DG–1018, "Restart of a Nuclear Power Plant Shut Down by a Seismic Event," is being developed to provide guidelines that are acceptable to the NRC staff for performing inspections and tests of nuclear power plant equipment and structures prior to plant restart. This guidance is also based on EPRI reports. Prior to resuming operations, the licensee must demonstrate to the Commission that no functional damage has occurred to those features necessary for continued operation without undue risk to the health and safety of the public. The results of post-shutdown inspections, operability checks, and surveillance tests shall be documented in written reports and submitted to the Director, Office of Nuclear Reactor Regulation. The licensee shall not resume operation until authorized to do so by the Director, Office of Nuclear Reactor Regulation.

7. Clarify Interpretations

In appendix B to 10 CFR part 100, changes have been made to resolve questions of interpretation. As an example, definitions and required investigations stated in the proposed regulation would be significantly changed to eliminate or modify phrases that were more applicable to only the western part of the United States.

VI. Siting Policy Task Force Recommendations

The Siting Policy Task Force made nine recommendations with regard to revision of the reactor siting criteria in NUREG–0625, "Report of the Siting Policy Task Force," August 1979. The individual recommendations and the proposed disposition and actions being taken in regard to each of these are discussed below.

Recommendation 1

Revise part 100 to change the way protection is provided for accidents by incorporating a fixed exclusion area and protection action distance and population density and distribution criteria.

1. Specify a fixed minimum exclusion distance based on limiting the individual risk from design basis accidents. Furthermore, the regulations should clarify the required control by the utility over activities taking place in land and water portions of the exclusion area.

2. Specify a fixed minimum emergency planning distance of 10 miles. The physical characteristics of the emergency planning zone should provide reasonable assurance that evacuation of persons, including transients, would be feasible if needed to mitigate the consequences of accidents.

3. Incorporate specific population density and distribution limits outside the exclusion area that are dependent on the average population of the region.

4. Remove the requirement to calculate radiation doses as a means of establishing minimum exclusion distances and low population zones.

Disposition and Action

Recommendation 1 has been or is largely proposed to be adopted by the Commission. With regard to item 1, a fixed minimum exclusion area distance of 0.4 mile, commensurate with past NRC experience in the review of design basis accidents, is being proposed. The Commission believes that the existing requirements regarding control over any land portion of the exclusion area together with current emergency planning requirements make any new requirements on exclusion area control unnecessary. The recommendations in item 2 were adopted by the Commission shortly after the Three Mile Island accident and are contained in 10 CFR 50.47. The recommendations in item 3 are proposed to be adopted except that the population density and distribution limits are proposed to be applicable nationwide. The recommendation of Item 4 is proposed to be adopted.

Recommendation 2

Revise 10 CFR part 100 to require consideration of the potential hazards posed by man-made activities and natural characteristics of sites by

establishing minimum standoff distances for:

1. Major or commercial airports,
2. Liquid Natural Gas (LNG) terminals,
3. Large propane pipelines,
4. Large natural gas pipelines,
5. Large quantities of explosive or toxic materials,
6. Major dams, and
7. Capable faults.

Disposition and Action

Recommendation 2 is proposed to be adopted in part and rejected in part. 10 CFR part 100 is to be revised to include consideration of man-related hazards. However, establishing minimum standoff distances by regulation for the hazards cited is not feasible. NRC review has found that acceptable separation distances are not readily quantified and can depend upon many other factors such as the topography, size, and operational aspects of the facilities, in addition to the distance from the reactor. Accordingly, the proposed regulation will require that the hazards be identified and evaluated so that they can be adequately considered in the design of the reactor to be located on the site. Present NRC review criteria, as given in the Standard Review Plan (SRP), Section 2.2.3, are considered adequate.

Recommendation 3

Revise 10 CFR part 100 by requiring a reasonable assurance that interdictive measures are possible to limit groundwater contamination resulting from Class 9 accidents within the immediate vicinity of the site.

Disposition and Action

The Commission is not proposing to adopt this recommendation. However, requirements on future reactor designs will address the need to consider and minimize containment failure under severe accident conditions. Future reactor designs will need to address the potential for ground water contamination as part of their environmental review under 10 CFR part 51.

Recommendation 4

Revise appendix A to 10 CFR part 100 to better reflect the evolving technology in assessing seismic hazards.

Disposition and Action

The Commission is proposing to adopt this recommendation in this rulemaking.

Recommendation 5

Revise 10 CFR part 100 to include consideration of post-licensing changes in offsite activities.

1. The NRC staff shall inform local authorities (planning commission, country commissions, etc.) that control activities within the emergency planning zone (EPZ) of the basis for determining the acceptability of a site.

2. The NRC staff shall notify those Federal agencies as in item 1 above that may reasonably initiate a future Federal action that may influence the nuclear power plant.

3. The NRC staff shall require applicants to monitor and report potentially adverse offsite developments.

4. If, in spite of the actions described in items 1 through 3, there are offsite developments that have the potential for significantly increasing the risk to the public, the NRC staff will consider restrictions on a case-by-case basis.

Disposition and Action

This recommendation is already in effect or is proposed to be adopted. Item 1 is already covered by existing emergency planning requirements. Item 2 is being accomplished by issuance of a Significant Hazard Consideration statement by the NRC staff. The Commission is requesting comments on Item 3. With regard to item 4, the Commission retains the right to order restrictions on a case-by-case basis.

Recommendation 6

Continue the current approach relative to site selection from a safety viewpoint, but select sites so that there are no unfavorable characteristics requiring unique or unusual design to compensate for site inadequacies.

Disposition and Action

The Commission is not proposing to adopt this recommendation. In the current and proposed part 100 regulations, applicants may provide specific plant design features to compensate for site inadequacies. As long as these design features adequately account for the conditions at the site, public health and safety will be protected. These specific design features may involve added costs. However, the Commission has concluded that any economic consideration should be left to the applicant.

Recommendation 7

Revise part 100 to specify that site approval be established at the earliest decision point in the review and to provide criteria that would have to be satisfied for this approach to be subsequently reopened in the licensing process.

Disposition and Action

The Commission considers that the early site permit provisions of 10 CFR part 52 accomplish this recommendation.

Recommendation 8

Revise 10 CFR part 51 to provide that a final decision disapproving a proposed site by a state agency whose approval is fundamental to the project would be a sufficient basis for NRC to terminate review. The termination of a review would then be reviewed by the Commission.

Disposition and Action

The Commission is not proposing to adopt this recommendation because it is considered inappropriate. This recommendation would give a State the authority to grant issuance of a construction permit for a nuclear facility. Only the Federal Government has this authority. States do have an independent right to deny site approval as long as it is not a radiological health and safety, common defense, or security concern.

Recommendation 9

Develop common bases for comparing the risks for all external events.

Disposition and Action

The Siting Policy Task Force's primary recommendation in this area was that an interdisciplinary effort should be undertaken with the objective of developing quantitative risk comparisons of all external events and natural phenomena. The Commission considers this to be a desirable objective but notes that the Siting Policy Task Force made no specific recommendations with regard to siting criteria or rulemaking. The Commission therefore considers this recommendation inapplicable in the present context of examination of siting criteria, but notes that recent developments in probabilistic risk analysis (PRA) have considered examination of the risk from external events in detail.

VII. Related Regulatory Guides and Standard Review Plan Section

The NRC is developing the following draft regulatory guides and standard review plan section to provide prospective licensees with the necessary guidance for implementing the proposed regulation. The notice of availability for these materials is published elsewhere in this issue of the **Federal Register.**

1. DG–1015, "Identification and Characterization of Seismic Sources,

Deterministic Source Earthquakes, and Ground Motion." The draft guide provides general guidance and recommendations, describes acceptable procedures and provides a list of references that present acceptable methodologies to identify and characterize capable tectonic sources and seismogenic sources.

2. DG–1016, Second Proposed Revision 2 to Regulatory Guide 1.12, "Nuclear Power Plant Instrumentation for Earthquakes." The draft guide describes seismic instrumentation type and location, operability, characteristics, installation, actuation, and maintenance that are acceptable to the NRC staff.

3. DG–1017, "Pre-Earthquake Planning and Immediate Nuclear Power Plant Operator Post-Earthquake Actions." The draft guide provides guidelines that are acceptable to the NRC staff for a timely evaluation of the recorded seismic instrumentation data and to determine whether or not plant shutdown is required.

4. DG–1018, "Restart of a Nuclear Power Plant Shut Down by a Seismic Event." The draft guide provides guidelines that are acceptable to the NRC staff for performing inspections and tests of nuclear power plant equipment and structures prior to restart of a plant that has been shut down because of a seismic event.

5. Draft Standard Review Plan Section 2.5.2, Proposed Revision 3 "Vibratory Ground Motion." The draft describes procedures to assess the ground motion potential of seismic sources at the site and to assess the adequacy of the SSE.

6. Draft Regulatory Guide 4.7, Revision 2, dated December 1991, "General Site Suitability Criteria for Nuclear Power Plants." This guide discusses the major site characteristics related to public health and safety and environmental issues that the NRC staff considers in determining the suitability of sites.

VIII. Future Regulatory Action

Several existing regulatory guides will be revised to incorporate editorial changes or maintain the existing design or analysis philosophy. These guides will be issued to coincide with the publication of the final regulations that would implement this proposed action.

The following regulatory guides will be revised to incorporate editorial changes, for example to reference new paragraphs in appendix B to part 100 or appendix S to part 50. No technical changes will be made in these regulatory guides.

1. 1.57, "Design Limits and Loading Combinations for Metal Primary Reactor Containment System Components."

2. 1.59, "Design Basis Floods for Nuclear Power Plants."

3. 1.60, "Design Response Spectra for Seismic Design of Nuclear Power Plants."

4. 1.83, "Inservice Inspection of Pressurized Water Reactor Steam Generator Tubes."

5. 1.92, "Combining Modal Responses and Spatial Components in Seismic Response Analysis."

6. 1.102, "Flood Protection for Nuclear Power Plants."

7. 1.121, "Bases for Plugging Degraded PWR Steam Generator Tubes."

8. 1.122, "Development of Floor Design Response Spectra for Seismic Design of Floor-Supported Equipment or Components."

The following regulatory guides will be revised to update the design or analysis philosophy, for example, to change OBE to a fraction of the SSE:

1. 1.27, "Ultimate Heat Sink for Nuclear Power Plants."

2. 1.100, "Seismic Qualification of Electric and Mechanical Equipment for Nuclear Power Plants."

3. 1.124, "Service Limits and Loading Combinations for Class 1 Linear-Type Component Supports."

4. 1.130, "Service Limits and Loading Combinations for Class 1 Plate-and-Shell-Type Component Supports."

5. 1.132, "Site Investigations for Foundations of Nuclear Power Plants."

6. 1.138, "Laboratory Investigations of Soils for Engineering Analysis and Design of Nuclear Power Plants."

7. 1.142, "Safety-Related Concrete Structures for Nuclear Power Plants (Other than Reactor Vessels and Containments)."

8. 1.143, "Design Guidance for Radioactive Waste Management Systems, Structures, and Components Installed in Light-Water-Cooled Nuclear Power Plants."

Minor and conforming changes to other Regulatory Guides and standard review plan sections as a result of proposed changes in the nonseismic criteria are also planned. If substantive changes are made during the revisions, the applicable guides will be issued for public comment as draft guides.

IX. Referenced Documents

An interested person may examine or obtain copies for the documents referenced in this proposed rule as set out below.

Copies of NUREG–0625, NUREG–1150, and NUREG/CR–2239 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37802, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Copies of issued regulatory guides may be purchased from the Government Printing Office (GPO) at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5826 Port Royal Road, Springfield, VA 22161.

SECY 79–300, SECY 90–016, and WASH–1400 are available for inspection and copying for a fee at the Commission's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

X. Submission of Comments in Electronic Format

The comment process will be improved if each comment is identified with the document title, section heading, and paragraph number addressed. Commenters are encouraged to submit, in addition to the original paper copy, a copy of the letter in electronic format on 5.25 or 3.5 inch computer diskette; IBM PC/DOC or MS/DOS format. Data files should be provided in one of the following formats: WordPerfect, IBM Document Content Architecture/ Revisable-Form-Text (DCA/RFT), or unformatted ASCII code. The format and version should be identified on the diskette's external label.

XI. Questions

In addition to soliciting comments on all aspects of this rulemaking, the Commission specifically requests comments on the following questions.

A. Reactor Siting Criteria (Nonseismic)

1. Should the Commission grandfather existing reactor sites having an exclusion area distance less than 0.4 miles (640 meters) for the possible placement of additional units, if those sites are found suitable from safety consideration?

2. Should the exclusion area distance be smaller than 0.4 mile (640 meters) for plants having reactor power levels significantly less than 3800 Megawatts (thermal) and should the exclusion area

distance be allowed to vary according to power level with a minimum value (for example, 0.25 miles or 400 meters)?

3. The Commission proposes to codify the population density guidelines in Regulatory Guide 4.7 which states that the population density should not exceed 500 people per square mile out to a distance of 30 miles at the time of site approval and 1000 people per square mile 40 years thereafter. Comments are specifically requested on questions 3A, 3B, and 3C given below.

A. Should numerical values of population density appear in the regulation or should the regulation provide merely general guidance, with numerical values provided in a regulatory guide?

B. Assuming numerical values are to be codified, are the values of 500 persons per square mile at the time of site approval and 1000 persons per square mile 40 years thereafter appropriate? If not, what other numerical values should be codified and what is the basis for these values?

C. Should population density criteria be specified out to a distance other than 30 miles (50 km), for example, 20 miles (32 km)? If a different distance is recommended, what is its basis?

4. Should the Commission approve sites that exceed the proposed population values of 10 CFR 100.21, and if so, under what conditions?

5. Should holders of early site permits, construction permits, and operating license permits be required to periodically report changes in potential offsite hazards (for example, every 5 years within 5 miles)? If so, what regulatory purpose would such reporting requirements serve?

6. What continuing regulatory significance should the safety requirements in 10 CFR part 100 have after granting the initial operating license or combined operating license under 10 CFR part 52?

7. Are there certain site meteorological conditions that should preclude the siting of a nuclear power plant? If so, what are the conditions that can not be adequately compensated for by design features?

8. In the description of the disposition of the recommendations of the Siting Policy Task Force report (NUREG–0625), it was noted that the Commission was not adopting every element of each recommendation. Are there compelling reasons to reconsider any recommendation not adopted and, if so, what are the bases for reconsideration?

B. Seismic and Earthquake Engineering Criteria

The proposed guide, DG–1015, outlines concepts and procedures to be used in conjunction with the probabilistic/deterministic seismic hazard evaluations. Rationale for the approach is discussed in section V.B(3) of this Proposed Rule.

The staff is currently performing confirmatory studies to evaluate and refine these proposed procedures. A limited study has been completed demonstrating the feasibility of procedures and the validity of the concepts. However, the staff would like to solicit comments on the concepts outlined in the proposed guide at this time. To facilitate the review, results of the application of the proposed procedure to four test sites are published separately (Letter report from D. Bernreuter of LLNL to A. Murphy of NRC dated September 24, 1992, available in the NRC Public Document Room at 2120 L Street NW., (Lower Level), Washington, DC.).

There are divergent views on the role probabilistic seismic hazard analysis should play in the licensing arena. There is a general consensus within the NRC staff that the revised seismic and geological siting criteria should allow consideration for a probabilistic hazard analysis. There is also a general belief that the outcome of a probabilistic analysis should be compared with the results of past practices for siting and licensing the current generation of nuclear power plants. There is a general consensus that ground motions should be calculated using deterministic methods once the controlling earthquakes are determined. With regard to the role of the probabilistic analysis, views range from an advocacy of a predominantly probabilistic analysis to the probabilistic/deterministic proposed here to a predominantly deterministic approach as used currently. Given these divergent views, the NRC staff would like to invite comments regarding the use of probabilistic seismic hazard analysis and the balance between the deterministic and probabilistic evaluations. This and other associated issues are itemized below. (As the detailed technical studies are completed some of the staff positions may be confirmed, but specific comments would be helpful at this time.)

1. In making use of both deterministic and probabilistic evaluations, how should they be combined or weighted, that is, should one dominate over the other? (The NRC staff feels strongly that deterministic investigations and their use in the development and evaluation of the Safe Shutdown Earthquake Ground Motion should remain an important aspect of the siting regulations for nuclear power plants for the foreseeable future. The NRC staff also feels that probabilistic seismic hazard assessment methodologies have reached a level of maturity to warrant a specific role in siting regulations.)

2. In making use of the probabilistic and deterministic evaluations as proposed in Draft Regulatory Guide DG–1015, is the proposed procedures in appendix C to DG–1015, adequate to determine controlling earthquakes from the probabilistic analysis?

3. In determining the controlling earthquakes, should be median values of the seismic hazard analysis, as described in appendix C to Draft Regulatory Guide DG–1015, be used to the exclusion of other statistical measures, such as, mean or 85th percentile? (The staff has selected probability of exceedance levels associated with the median hazard analysis estimates as they provide more stable estimates of controlling earthquakes.)

4. The proposed Appendix B to 10 CFR part 100 has included in Paragraph V(c) a criterion that states: "The annual probability of exceeding the Safe Shutdown Earthquake Ground Motion is considered acceptably low if it is less than the median annual probability computed from the current [EFFECTIVE DATE OF THE FINAL RULE] population of nuclear power plants." This is a relative criterion without any specific numerical value of the annual probability of exceedance because of the current status of the probabilistic seismic hazard analysis. However, this requirement assures that the design levels at new sites will be comparable to those at many existing sites, particularly more recently licensed sites. Method dependent annual probabilities or target levels (e.g., 1E–4 for LLNL or 3E–5 for EPRI) are identified in the proposed regulatory guide. Sensitivity studies addressing the effects of different target probabilities are discussed in the Bernreuter to Murphy letter report. Comments are solicited as to: (a) whether the above criterion, as stated, needs to be included in the regulation? and, (b) if not, should it be included in the regulation in a different form (e.g., a specific numerical value, a level other than the median annual probability computed for the current plants)?

5. For the probabilistic analysis, how many controlling earthquakes should be generated to cover the frequency band of concern for nuclear power plants?

(For the four trial plants used to develop the criteria presented in Draft Regulatory Guide DG–1015, the average of results for the 5 Hz and 10 Hz spectral velocities was used to establish the probability of exceedance level. Controlling earthquakes were evaluated for this frequency band, for the average of 1 and 2.5 Hz spectral responses, and for peak ground acceleration.)

XII. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this proposed regulation, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required.

The revisions associated with the reactor siting criteria in 10 CFR part 100 and the relocation of the plant design requirements from 10 CFR part 100 to 10 CFR part 50 have been evaluated against the current requirements. The Commission has concluded that relocating the requirement for a dose calculation to part 50 and adding more specific site criteria to part 100 does not decrease the protection of the public health and safety over the current regulations. The proposed amendments do not affect nonradiological plant effluents and have no other environmental impact.

The addition of appendix B to 10 CFR part 100, and the addition of appendix S to 10 CFR part 50, will not change the radiological environmental impact offsite. Onsite occupational radiation exposure associated with inspection and maintenance will not change. These activities are principally associated with base line inspections of structures, equipment, and piping, and with maintenance of seismic instrumentation. Base line inspections are needed to differentiate between pre-existing conditions at the nuclear power plant and earthquake related damage. The structures, equipment and piping selected for these inspections are those routinely examined by plant operators during normal plant walkdowns and inspections. Routine maintenance of seismic instrumentation ensures its operability during earthquakes. The location of the seismic instrumentation is similar to that in the existing nuclear power plants. The proposed amendments do not affect nonradiological plant effluents and have no other environmental impact.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Mr. Leonard Soffer, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3916, or Dr. Andrew Murphy, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3860.

XIII. Paperwork Reduction Act Statement

This proposed regulation amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This proposed regulation has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

There is no public reporting burden related to the nonseismic siting criteria. Public reporting burden for the collection of information related to the seismic and earthquake engineering criteria is estimated to average 800,000 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB 7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0011 and 3150–0093), Office of Management and Budget, Washington, DC 20503.

XIV. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis are available from Mr. Leonard Soffer, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3916, or Dr. Andrew J. Murphy, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3860.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the "ADDRESSES" heading.

XV. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed regulation affects only the licensing and operation of nuclear power plants. Nuclear power plant site applicants do not fall within the definition of small businesses as defined in Section 3 of the Small Business Act (15 U.S.C. 632), the Small Business Size Standards of the Small Business Administrator (13 CFR part 121), or the Commission's Size Standards (56 FR 56671; November 6, 1991).

XVI. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed regulation, and therefore, a backfit analysis is not required for this proposed regulation because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1). The proposed regulation would apply only to applicants for future nuclear power plant construction permits, preliminary design approval, final design approval, manufacturing licenses, early site reviews, operating licenses, and combined operating licenses.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor

siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 100

Nuclear power plants and reactors, Reactor siting criteria.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 50, 52 and 100.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd) and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91 and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239).

Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.5, 50.46 (a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.5, 50.7(a), 50.10(a)–(c), 50.34 (a) and (e), 50.44(a)–(c), 50.46 (a) and (b), 50.47(b), 50.48(a), (c), (d), and (e), 50.49(a), 50.54(a)(i), (i)(1), (1)–(n), (p) (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(b), 50.64(b), 50.65 and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49(d), (h), and (j), 50.54(w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71(a)–(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.2, add in alphabetical order the definitions for exclusion area, low population zone, and population center distance to read to read as follows:

§ 50.2 Definitions.

As used in this part,

* * * * *

Exclusion area means that area surrounding the reactor, in which the reactor licensee has the authority to determine all activities including exclusion or removal of personnel and property from the area. This area may be traversed by a highway, railroad, or waterway, provided these are not so close to the facility as to interfere with normal operations of the facility and provided appropriate and effective arrangements are made to control traffic on the highway, railroad, or waterway, in case of emergency, to protect the public health and safety. Residence within the exclusion area shall normally be prohibited. In any event, residents shall be subject to ready removal in case of necessity. Activities unrelated to operation of the reactor may be permitted in an exclusion area under appropriate limitations, provided that no significant hazards to the public health and safety will result.

* * * * *

Low population zone means the area immediately surrounding the exclusion area which contain residents, the total number and density of which are such that there is a reasonable probability that appropriate protective measures could be taken in their behalf in the event of a serious accident. These guides do not specify a permissible population density of total population within this zone because the situation may vary from case to case. Whether a specific number of people can, for example, be evacuated from a specific area, or instructed to take shelter, on a timely basis will depend on many factors such as location, number and size of highways, scope and extent of advance planning, and actual distribution of residents within the area.

* * * * *

Population center distance means the distance from the reactor to the nearest boundary of a densely populated center containing more then 25,000 residents.

* * * * *

3. In § 50.8, paragraph (b) is revised to read as follows:

§ 50.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.33a, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.48, 50.49, 50.54, 50.55, 50.55a. 50.59, 50.60, 50.61, 50.63, 50.64, 50.65, 50.71, 50.72, 50.80, 50.82, 50.90, 50.91, and Appendices A, B, E, G, H, I, J, K, M, N, O, Q, R, and S.

* * * * *

4. In § 50.34, footnotes 6, 7, and 8 are redesignated as footnotes 8, 9 and 10, paragraph (a)(1) is revised and paragraphs (a)(12) and (b)(10) are added to read as follows:

§ 50.34 Contents of applications; technical information.

(a) * * *

(1) A description and safety assessment of the site and a safety assessment of the facility. Site characteristics must comply with part 100 of this chapter. Special attention must be directed to plant design features intended to mitigate the radiological consequences of accidents. In performing this assessment, an applicant shall assume a fission product release [6] from the core into the containment assuming that the facility is operated at the ultimate power level contemplated. The applicant shall perform an evaluation and analysis of the postulated fission product release, using the expected demonstrable containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents, together with applicable site characteristics, including site meteorology, to evaluate the offsite radiological consequences. The evaluation must determine that:

(i) An individual located at any point on the boundary of the exclusion area for two hours immediately following the onset of the postulated fission product release would not receive a total radiation dose to the whole body in excess of 25 rem [7] or a total radiation

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[6] The fission product release assumed for this evaluation should be based upon a major accident, hypothesized or determined from considerations of possible accidental events, that would result in potential hazards not exceeded by those from any accident considered credible. Such accidents have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products.

[7] The whole body dose of 24 rem referred to above has been stated to correspond numerically to the once in a lifetime accidental or emergency dose for radiation workers which, according to NCRP recommendations may be disregarded in the determination of their radiation exposure status (see NBS handbook 69 dated June 5, 1959). More recently, this whole body dose value has also been provided as guidance for radiation workers performing emergency services involving life saving activities or protection of large populations where lower doses are not practicable (see EPA, Manual of Protective Action Guides and Protective Actions for Nuclear Incidents, Draft, September 1990). However, neither its use nor that of the 300 rem value for

Continued

dose in excess of 300 rem to the thyroid from iodine exposure.

(ii) An individual located at any point on the outer radius of a low population zone who is exposed to the radioactive cloud resulting from the postulated fission product release (during the entire period of its passage) would not receive a total radiation dose to the whole body in excess of 25 rem or a total radiation dose in excess of 300 rem to the thyroid from iodine exposure. For purposes of this evaluation, a low population zone boundary of 3.0 miles (measured from the reactor center point) is assumed.

(iii) With respect to operation at the projected initial power level, the applicant is required to submit information prescribed in paragraphs (a)(2) through (a)(8) of this section, as well as the information required by this paragraph, in support of the application for a construction permit.

Note: Reference is made to Technical Information Document (TID) 14844, dated March 23, 1962, which contains a fission product release into containment which has been used in past evaluations. The fission product release given in TID–14844 may be used as a point of departure upon consideration of severe accident research insights available since its issuance, upon consideration of plant design features intended to mitigate the consequences of accidents, or upon characteristics of a particular reactor. Copies of Technical Information Document 14844 may be obtained from the Commission's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC., or by writing the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

* * * * *

(12) On or after [EFFECTIVE DATE OF THE FINAL RULE], applicants who apply for a construction permit pursuant to this part, or a design certification or combined license pursuant to part 52 of this chapter, as partial conformance to General Design Criterion 2 of Appendix A to this part, shall comply with the earthquake engineering criteria in Appendix S of this part.

(b) * * *

(10) On or after [EFFECTIVE DATE OF THE FINAL RULE], applicants who apply for an operating license pursuant to this part, or a design certification or combined license pursuant to part 52 of this chapter, as partial conformance to General Design Criterion 2 of appendix A to this part, shall comply with the earthquake engineering criteria of appendix S to this part. However, if the construction permit was issued prior to [EFFECTIVE DATE OF THE FINAL RULE], the applicant shall comply with the earthquake engineering criteria in Section VI of Appendix A to part 100 of this chapter.

* * * * *

5. In § 50.54, paragraph (ee) is added to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(ee) For licensees of nuclear power plants that have implemented the earthquake engineering criteria in Appendix S of this part, plant shutdown is required if the criteria in Paragraph IV(a)(3) of Appendix S are exceeded. Prior to resuming operations, the licensee shall demonstrate to the Commission that no functional damage has occurred to those features necessary for continued operation without undue risk to the health and safety of the public.

6. Appendix S to part 50 is added to read as follows:

Appendix S to Part 50—Earthquake Engineering Criteria for Nuclear Power Plants

General Information

This appendix applies to applicants who apply for a design certification or combined license pursuant to part 52 of this chapter or a construction permit or operating license pursuant to part 50 of this chapter on or after [EFFECTIVE DATE OF THE FINAL RULE]. However, if the construction permit was issued prior to [EFFECTIVE DATE OF THE FINAL RULE], the operating license applicant shall comply with the earthquake engineering criteria in Section VI of Appendix A to 10 CFR part 100.

I. Introduction

Each applicant for a construction permit, operating license, design certification, or combined license is required by § 50.34(a)(12), § 50.34(b)(10), and General Design Criterion 2 of Appendix A to this part to design nuclear power plant structures, systems, and components important to safety to withstand the effects of natural phenomena, such as earthquakes, without loss of capability to perform their safety functions. Also, a condition of all operating licenses for nuclear power plants, as specified in § 50.54(ee), is plant shutdown if the criteria in Paragraph IV(a)(3) of this appendix are exceeded.

These criteria implement General Design Criterion 2 insofar as it requires structures, systems, and components important to safety to withstand the effects of earthquakes.

II. Scope

The evaluations described in this appendix are within the scope of investigations permitted by § 50.10(c)(1) of this chapter.

III. Definitions

As used in these criteria:

Combined license means a combined construction permit and operating license with conditions for a nuclear power facility issued pursuant to subpart C of part 52 of this chapter.

Design Certification means a Commission approval, issued pursuant to subpart B of part 52 of this chapter, of a standard design for a nuclear power facility. A design so approved may be referred to as a "certified standards design."

The *Operating Basis Earthquake Ground Motion (OBE)* is the vibratory ground motion for which those features of the nuclear power plant necessary for continued operation without undue risk to the health and safety of the public will remain functional. The Operating Basis Earthquake Ground Motion is only associated with plant shutdown and inspection unless specifically selected by the applicant as a design input.

A *response spectrum* is a plot of the maximum responses (acceleration, velocity, or displacement) of a family of idealized single-degree-of-freedom oscillators as a function of the natural frequencies of the oscillators for a given damping value. The response spectrum is calculated for a specified vibratory motion input at the oscillators' supports.

The *Safe Shutdown Earthquake Ground Motion* (SSE) is the vibratory ground motion for which certain structures, systems, and components must be designed to remain functional.

The *structures, systems, and components required to withstand the effects of the Safe Shutdown Earthquake Ground Motion or surface deformation* are those necessary to assure:

(1) The integrity of the reactor coolant pressure boundary,

(2) The capability to shut down the reactor and maintain it in a safe shutdown condition, or

(3) The capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposures comparable to the guideline exposures of § 50.34(a)(1) of this chapter.

Surface deformation is distortion of soils or rocks at or near the ground surface by the processes of folding, faulting, compression, or extension as a result of various earth forces. Tectonic surface deformation is associated with earthquake processes.

IV. Application To Engineering Design

The following are pursuant to the seismic and geologic design basis requirements of paragraphs V (a) through (f) of appendix B to part 100 of this chapter:

(a) Vibratory Ground Motion.

(1) Safe Shutdown Earthquake Ground Motion. The Safe Shutdown Earthquake Ground Motion must be characterized by free-field ground motion response spectra at the free ground surface or hypothetical rock

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thyroid exposure as set forth in this section are intended to imply that these numbers constitute acceptable limits for emergency doses to the public under accident conditions. Rather, this 25 rem whole body value and the 300 rem thyroid value have been set forth in this section as reference values, which can be used in the evaluation of plant design features with respect to postulated reactor accidents, in order to assure that such designs provide assurance of low risk of public exposure to radiation, in the event of such accidents.

outcrop, as appropriate. In view of the limited data available on vibratory ground motions of strong earthquakes, it usually will be appropriate that the design response spectra be smoothed spectra developed from an ensemble of response spectra related to the vibratory motions caused by more than one earthquake. At a minimum, the horizontal Safe Shutdown Earthquake Ground Motion at the foundation level of the structures must be an appropriate response spectrum with a peak ground acceleration of at least 0.1g.

The nuclear power plant must be designed so that, if the Safe Shutdown Earthquake Ground Motion occurs, certain structures, systems, and components will remain functional and within applicable stress and deformation limits. In addition to seismic loads, applicable concurrent normal operating, functional, and accident-induced loads must be taken into account in the design of these safety-related structures, systems, and components. The design of the nuclear power plant must also take into account the possible effects of the Safe Shutdown Earthquake Ground Motion on the facility foundations by ground disruption, such as fissuring, lateral spreads, differential settlement, liquefaction, and landsliding, as required in paragraph V(f) of appendix B to part 100 of this chapter.

The required safety functions of structures, systems, and components must be assured during and after the vibratory ground motion associated with the Safe Shutdown Earthquake Ground Motion through design, testing, or qualification methods.

The evaluation must take into account soil-structure interaction effects and the expected duration of vibratory motion. It is permissible to design for strain limits in excess of yield strain in some of these safety-related structures, systems, and components during the Safe Shutdown Earthquake Ground Motion and under the postulated concurrent loads, provided the necessary safety functions are maintained.

(2) Operating Basis Earthquake Ground Motion.

(i) The Operating Basis Earthquake Ground Motion must be characterized by response spectra. The value of the Operating Basis Earthquake Ground Motion must be set to one of the following choices:

(A) One-third or less of the Safe Shutdown Earthquake Ground Motion. The requirements associated with this Operating Basis Earthquake Ground Motion in paragraph (a)(2)(i)(B)(*l*) can be satisfied without the applicant performing explicit response or design analyses, or

(B) A value greater than one-third of the Safe Shutdown Earthquake Ground Motion. Analysis and design must be performed to demonstrate that the requirements associated with this Operating Basis Earthquake Ground Motion in Paragraph (a)(2)(i)(B)(*l*) are satisfied. The design must take into account soil-structure interaction effects and the expected duration of vibratory ground motion.

(*l*) When subjected to the effects of the Operating Basis Earthquake Ground Motion in combination with normal operating loads, all structures, systems, and components of the nuclear power plant necessary for continued operation without undue risk to the health and safety of the public must remain functional and within applicable stress and deformation limits.

(3) Required Plant Shutdown.[1] If vibratory ground motion exceeding that of the Operating Basis Earthquake Ground Motion or if significant plant damage occurs, the licensee must shut down the nuclear power plant. Prior to resuming operations, the licensee must demonstrate to the Commission that no functional damage has occurred to those features necessary for continued operation without undue risk to the health and safety of the public.

(4) Required Seismic Instrumentation. Suitable instrumentation must be provided so that the seismic response of nuclear power plant features important to safety can be evaluated promptly after an earthquake.

(b) Surface Deformation. The potential for surface deformation must be taken into account in the design of the nuclear power plant by providing reasonable assurance that in the event of deformation, certain structures, systems, and components will remain functional. In addition to surface deformation induced loads, the design of safety features must take into account seismic loads, including aftershocks, and applicable concurrent functional and accident-induced loads. The design provisions for surface deformation must be based on its postulated occurrence in any direction and azimuth and under any part of the nuclear power plant, unless evidence indicates this assumption is not appropriate, and must take into account the estimated rate at which the surface deformation may occur.

(c) Seismically Induced Floods and Water Waves and Other Design Conditions. Seismically induced floods and water waves from either locally or distantly generated seismic activity and other design conditions determined pursuant to paragraphs V (e) and (f) of appendix B to Part 100 of this chapter must be taken into account in the design of the nuclear power plant so as to prevent undue risk to the health and safety of the public.

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

7. The authority citation for part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

8. In § 52.17, the introductory text of paragraph (a)(1) and paragraph (a)(1)(vi) are revised to read as follows:

[1] Guidance is being developed in Draft Regulatory Guide DG-1017, "Pre-Earthquake Planning and Immediate Nuclear Power Plant Operator Post-Earthquake Actions."

§ 52.17 Contents of applications.

(a)(1) The application must contain the information required by 50.33(a)–(d), the information required by § 50.34 (a)(12) and (b)(10), and, to the extent approval of emergency plans is sought under paragraph (b)(2)(ii) of this section, the information required by § 50.33 (g) and (j), and § 50.34(b)(6)(v). The application must also contain a description and safety assessment of the site on which the facility is to be located, with appropriate attention to features affecting facility design. The assessment must contain an analysis and evaluation of the major structures, systems, and components of the facility that bear significantly on the acceptability of the site under the radiological consequence evaluation factors identified in § 50.34(a)(1) of this chapter. Site characteristics must comply with part 100 of this chapter. In addition, the application should describe the following:

* * * * *

(vi) The seismic, meteorological, hydrologic, and geologic characteristics of the proposed site;

* * * * *

9. In 10 CFR part 52, appendix Q, paragraph 8 is added to read as follows:

Appendix Q to Part 52—Pre-Application Early Review of Site Suitability Issues

* * * * *

8. Notwithstanding paragraph 7, any application for renewal of an early site permit is subject to a full early site permit review.

PART 100—REACTOR SITE CRITERIA

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

Authority: Secs. 103, 104, 161, 182, 68 Stat. 936, 397, 948, 953, as amended (42 U.S.C. 2133, 2134, 2201, 2232); sec. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

11. The table of contents for Part 100 is revised to read as follows:

PART 100—REACTOR SITE CRITERIA

Sec.

100.1 Purpose.
100.2 Scope.
100.3 Definitions.
100.4 Communications.
100.8 Information collection requirements: OMB approval.

Subpart A—Evaluation Factors for Stationary Power Reactor Site Applications Before [Effective Date of the Final Rule] and for Test Reactors

100.10 Factors to be considered when evaluating sites.

100.11 Determination of exclusion area, low population zone, and population center distance.

Subpart B—Evaluation Factors for Stationary Power Reactor Site Applications on or After [Effective Date of the Final Rule].

100.20 Factors to be considered when evaluating sites.
100.21 Determination of exclusion area and population distribution.
100.22 Evaluation of potential man-related hazards.

Appendix A—Seismic and Geologic Siting Criteria for Nuclear Power Plants

Appendix B—Criteria for the Seismic and Geologic Siting of Nuclear Power Plants on or After [Effective Date of the Final Rule]

12. Section 100.1 is revised to read as follows:

§ 100.1 Purpose.

(a) This part sets forth standards for evaluation of the suitability of proposed sites for stationary power and testing reactors subject to part 50 or part 52 of this chapter.

(b) This part identifies the factors considered by the Commission in the evaluation of reactor sites and the standards used in approving or disapproving proposed sites.

13. Section 100.2 is revised to read as follows:

§ 100.2 Scope.

(a) This part applies to applications filed under part 50 or part 52 of this chapter for early site permit, construction permit, operating license, or combined license (construction permit and operating license) for power and testing reactors.

(b) The site criteria contained in this part apply primarily to reactors for which there is significant operating experience. These site criteria can also be applied to other reactor types, such as for reactors that are novel in design and unproven as prototypes or pilot plants. For plants without significant operating experience, it is expected that these basic criteria will be applied in a manner that takes into account the lack of experience. In the application of these criteria which are deliberately flexible, the safeguards provided, either site isolation or engineered features, should reflect the lack of certainty that only experience can provide.

14. Section 100.3 is revised to read as follows:

§ 100.3 Definitions.

As used in this part:

Exclusion area means that area surrounding the reactor, in which the reactor licensee has the authority to determine all activities including exclusion or removal of personnel and property from the area. This area may be traversed by a highway, railroad, or waterway, provided these are not so close to the facility as to interfere with normal operations of the facility and provided appropriate and effective arrangements are made to control traffic on the highway, railroad, or waterway, in case of emergency, to protect the public health and safety. Residence within the exclusion area shall normally be prohibited. In any event, residents shall be subject to ready removal in case of necessity. Activities unrelated to operation of the reactor may be permitted in an exclusion area under appropriate limitations, provided that no significant hazards to the public health and safety will result.

Low population zone means the area immediately surrounding the exclusion area which contains residents, the total number and density of which are such that there is a reasonable probability that appropriate protective measures could be taken in their behalf in the event of a serious accident. These guides do not specify a permissible population density or total population within this zone because the situation may vary from case to case. Whether a specific number of people can, for example, be evacuated from a specific area, or instructed to take shelter, on a timely basis will depend on many factors such as location, number and size of highways, scope and extent of advance planning, and actual distribution of residents within the area.

Population center distance means the distance from the reactor to the nearest boundary of a densely populated center containing more than about 25,000 residents.

Power reactor means a nuclear reactor of a type described in § 50.21(b) or § 50.22 of this chapter designed to produce electrical or heat energy.

Testing reactor means a *testing facility* as defined in § 50.2 of this chapter.

15. Section 100.4 is added to read as follows:

§ 100.4 Communications.

Except where otherwise specified in this part, all correspondence, reports, applications, and other written communications submitted pursuant to 10 CFR 100 should be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, and copies sent to the appropriate Regional Office and Resident Inspector. Communications and reports may be delivered in person at the Commission's offices at 2120 L Street, NW., Washington, DC, or at 11555 Rockville Pike, Rockville, Maryland.

16. Section 100.8 is revised to read as follows:

§ 100.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). OMB has approved the information collection requirements contained in this part under control number 3150–0093.

(b) The approved information collection requirements contained in this part appear in appendix A and appendix B.

17. A heading for subpart A is added directly before § 100.10 to read as follows:

Subpart A—Evaluation Factors for Stationary Power Reactor Site Applications Before [Effective Date of the Final Rule] and for Test Reactors.

18. Section 100.10 is revised to read as follows:

§ 100.10 Factors to be considered when evaluating sites.

Factors considered in the evaluation of sites include those relating both to the proposed reactor design and the characteristics peculiar to the site. It is expected that reactors will reflect through their design, construction and operation an extremely low probability for accidents that could result in release of significant quantities of radioactive fission products. In addition, the site location and the engineered features included as safeguards against the hazardous consequences of an accident, should one occur, should insure a low risk of public exposure. In particular, the Commission will take the following factors into consideration in determining the acceptability of a site for a power or testing reactor:

(a) Characteristics of reactor design and proposed operation including—

(1) Intended use of the reactor including the proposed maximum power level and the nature and inventory of contained radioactive materials;

(2) The extent to which generally accepted engineering standards are applied to the design of the reactor;

(3) The extent to which the reactor incorporates unique or unusual features having a significant bearing on the probability or consequences of

accidental release of radioactive materials;

(4) The safety features that are to be engineered into the facility and those barriers that must be breached as a result of an accident before a release of radioactive material to the environment can occur.

(b) Population density and use characteristics of the site environs, including the exclusion area, low population zone, and the population center distance.

(c) Physical characteristics of the site, including seismology, meteorology, geology, and hydrology.

(1) Appendix A to part 100, "Seismic and Geologic Siting Criteria for Nuclear Power Plants," describes the nature of investigations required to obtain the geologic and seismic data necessary to determine site suitability and to provide reasonable assurance that a nuclear power plant can be constructed and operated at a proposed site without undue risk to the health and safety of the public. It describes procedures for determining the quantitative vibratory ground motion design basis at a site due to earthquakes and describes information needed to determine whether and to what extent a nuclear power plant need be designed to withstand the effects of surface faulting.

(2) Meteorological conditions at the site and in the surrounding area should be considered.

(3) Geological and hydrological characteristics of the proposed site may have a bearing on the consequences of an escape of radioactive material from the facility. Special precautions should be planned if a reactor is to be located at a site where a significant quantity of radioactive effluent might accidentally flow into nearby streams or rivers or might find ready access to underground water tables.

(d) Where unfavorable physical characteristics of the site exist, the proposed site may nevertheless be found to be acceptable if the design of the facility includes appropriate and adequate compensating engineering safeguards.

19. Section 100.11 is revised to read as follows:

§ 100.11 Determination of exclusion area, low population zone, and population center distance.

(a) As an aid in evaluating a proposed site, an applicant should assume a fission product release [1] from the core, the expected demonstrable leak rate from the containment and the meteorological conditions pertinent to his site to derive an exclusion area, a low population zone and population center distance. For the purpose of this analysis, which shall set forth the basis for the numerical values used, the applicant should determine the following:

(1) An exclusion area of such size that an individual located at any point on its boundary for two hours immediately following onset of the postulated fission product release would not receive a total radiation dose to the whole body in excess of 25 rem [2] or a total radiation dose in excess of 300 rem to the thyroid from iodine exposure.

(2) A low population zone of such size that an individual located at any point on its outer boundary who is exposed to the radioactive cloud resulting from the postulated fission product release (during the entire period of its passage) would not receive a total radiation dose to the whole body in excess of 25 rem or a total radiation dose in excess of 300 rem to the thyroid from iodine exposure.

(3) A population center distance of at least one and one-third times the distance from the reactor to the outer boundary of the low population zone. In applying this guide, the boundary of the population center shall be determined upon consideration of population distribution. Political boundaries are not controlling in the application of this guide. Where very large cities are involved, a greater distance may be necessary because of total integrated population dose consideration.

(b) For sites for multiple reactor facilities consideration should be given to the following:

(1) If the reactors are independent to the extent that an accident in one reactor would not initiate an accident in another, the size of the exclusion area, low population zone and population center distance shall be fulfilled with respect to each reactor individually. The envelopes of the plan overlay of the areas so calculated shall then be taken as their respective boundaries.

(2) If the reactors are interconnected to the extent that an accident in one reactor could affect the safety of operation of any other, the size of the exclusion area, low population zone and population center distance shall be based upon the assumption that all interconnected reactors emit their postulated fission product releases simultaneously. This requirement may be reduced in relation to the degree of coupling between reactors, the probability of concomitant accidents and the probability that an individual would not be exposed to the radiation effects from simultaneous releases. The applicant would be expected to justify to the satisfaction of the Commission the basis for such a reduction in the source term.

(3) The applicant is expected to show that the simultaneous operation of multiple reactors at a site will not result in total radioactive effluent releases beyond the allowable limits of applicable regulations.

Note: For further guidance in developing the exclusion area, the low population zone, and the population center distance, reference is made to Technical Information Document 14844, dated March 23, 1962, which contains a procedural method and a sample calculation that result in distances roughly reflecting current siting practices of the Commission. The calculations described in Technical Information Document 14844 may be used as a point of departure for consideration of particular site requirements which may result from evaluation of the characteristics of a particular reactor, its purpose and method of operation. Copies of Technical Information Document 14844 may be obtained from the Commission's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC, or by writing the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC. 20555.

20. Subpart B (§§ 100.20–100.22) is added to read as follows:

Subpart B—Evaluation Factors for Stationary Power Reactor Site Applications On or After [Effective Date of the Final Rule]

§ 100.20 Factors to be considered when evaluating sites.

The Commission will take the following factors into consideration in determining the acceptability of a site for a stationary power reactor:

[1] The fission product release assumed for these calculations should be based upon a major accident, hypothesized for purposes of site analysis or postulated from considerations of possible accidental events, that would result in potential hazards not exceeded by those from any accident considered credible. Such accidents have generally been assumed to result in substantial meltdown of the core with subsequent release of appreciable quantities of fission products.

[2] The whole body dose of 25 rem referred to above corresponds numerically to the once in a lifetime accidental or emergency dose for radiation workers which, according to NCRP recommendations may be disregarded in the determination of their radiation exposure status (see NBS Handbook 69 dated June 5, 1959). However, neither its use nor that of the 300 rem value for thyroid exposure as set forth in these site criteria guides are intended to imply that these numbers constitute acceptable limits for emergency doses to the public under accident conditions. Rather, this 25 rem whole body value and the 300 rem thyroid value have been set forth in these guides as reference values, which can be used in the evaluation of reactor sites with respect to potential reactor accidents of exceedingly low probability of occurrence, and low risk of public exposure to radiation.

(a) Population density and use characteristics of the site environs, including the exclusion area, the population distribution, and site-related characteristics must be evaluated to determine whether individual as well as societal risk of potential plant accidents is low, and that site-related characteristics would not prevent the development of a plan to carry out suitable protective actions for members of the public in the event of emergency.

(b) The nature and proximity of man-related hazards (e.g., airports, dams, transportation routes, military and chemical facilities) must be evaluated to determine whether the plant design can accommodate commonly occurring hazards, and whether the risk of other hazards is very low.

(c) Physical characteristics of the site, including seismology, meteorology, geology, and hydrology.

(1) Appendix B, "Criteria for the Seismic and Geologic Siting of Nuclear Power Plants on or After [EFFECTIVE DATE OF THE FINAL RULE]," describes the criteria and nature of investigations required to obtain the geologic and seismic data necessary to determine site suitability.

(2) Meteorological characteristics of the site that are necessary for safety analysis or that may have an impact upon plant design (such as maximum probable wind speed and precipitation) must be identified and characterized.

(3) Factors important to hydrological radionuclide transport (such as soil, sediment, and rock characteristics, adsorption and retention coefficients, ground water velocity, and distances to the nearest surface body of water) must be obtained from on-site measurements. The maximum probable flood along with the potential for seismic induced floods discussed in Appendix B must be estimated using historical data.

§ 100.21 Determination of exclusion area and population distribution.

(a) Each reactor facility must have an exclusion area, as defined in § 100.3(a) of this part.

(1) For sites with a single reactor facility, the distance to the exclusion area boundary at any point (as measured from the reactor center point) shall be at least 0.4 miles (640 meters).

(2) For sites with multiple reactor facilities, consideration must be given to the following: If the reactors are independent to the extent that an accident in one reactor would not initiate an accident in another, the size of each exclusion area must be determined with respect to each reactor individually. The exclusion area for the site must then be taken as the plan overlay of the sum of the exclusion areas for each reactor. If the reactors are interconnected to the extent that an accident in one reactor would initiate an accident in another, the size of the exclusion area for each reactor must be determined on a case by case basis.

(b)(1) If the offsite population density at the proposed site exceeds the values given in paragraph (b)(2) of this section, the site will not be approved by the Commission unless the applicant demonstrates either:

(i) That there are no reasonably available alternative sites with significantly lower population densities, or

(ii) That the proposed site is preferred over an alternative site with significantly lower population density on the basis of other considerations.

(2) The population density, including weighted transient population, projected at the time of initial site approval or early site permit renewal should not exceed 500 people per square mile averaged over any radial distance out to 30 miles (cumulative population at a distance divided by the total circular area at that distance). The projected population density, including weighted transient population, 40 years after the time of initial site approval or early site permit renewal should not exceed 1000 people per square mile averaged over any radial distance out to 30 miles.

(3) Transient population must be included for those sites where a significant number of people (other than those just passing through the area) work, reside part-time, or engage in recreational activities and are not permanent residents of the area. The transient population should be considered for siting purposes by weighting the transient population according to the fraction of the time the transients are in the area.

(c) Physical characteristics of the proposed site, such as egress limitations from the area surrounding the site, that could pose a significant impediment to the development of emergency plans, must be identified.

§ 100.22 Evaluation of potential man-related hazards.

(a) Potential hazards to the plant from man-related activities associated with nearby transportation routes, military, and industrial facilities must be identified and their potential effects evaluated. Potential hazards to the plant include such effects as explosions, fires, toxic and/or flammable chemical releases, dams (both upstream and downstream), pipeline accidents, and aircraft crashes and impacts.

(b) The effects of offsite hazards must have a very low probability of affecting the safety of the plant. The likelihood and consequences of offsite hazards must be estimated using data and assumptions that are as realistic and representative of the site as is practical. The design bases for which the plant is designed must be specified.

21. Appendix B to part 100 is added to read as follows:

Appendix B to Part 100—Criteria for the Seismic and Geologic Siting of Nuclear Power Plants On or After [Effective Date of the Final Rule]

General Information

This appendix applies to applicants who apply for an early site permit or combined license pursuant to part 52 of this chapter, or a construction permit or operating license pursuant to part 50 of this chapter on or after [EFFECTIVE DATE OF THE FINAL RULE]. However, if the construction permit was issued prior to [EFFECTIVE DATE OF THE FINAL RULE], the operating license applicant shall comply with the seismic and geologic siting criteria in Appendix A to Part 100 of this chapter.

I. Purpose

General Design Criterion 2 of appendix A to part 50 of this chapter requires that nuclear power plant structures, systems, and components important to safety be designed to withstand the effects of natural phenomena such as earthquakes, tornadoes, hurricanes, floods, tsunami, and seiches without loss of capability to perform their safety functions. It is the purpose of these criteria to set forth the principal seismic and geologic considerations that guide the Commission in its evaluation of the suitability of proposed sites for nuclear power plants and the suitability of the plant design bases established in consideration of the seismic and geologic characteristics of the proposed sites.[1]

These criteria are based on the current geophysical, geological, and seismological information concerning faults and earthquake occurrences and effects. They will be revised as necessary when more complete information becomes available.

II. Scope

These criteria, which apply to nuclear power plants, describe the nature of the investigations required to obtain the geologic and seismic data necessary to determine site suitability and provide reasonable assurance that a nuclear power plant can be constructed and operated at a proposed site without undue risk to the health and safety of the public. Geologic and seismic factors required to be taken into account in the siting and design of nuclear power plants are identified.

[1] Considerations presented in this regulation are general. Acceptable methods and additional discussion are provided in regulatory guides and standard review plan sections.

The investigations described in this appendix are within the scope of investigations permitted by § 50.10(c)(1) of this chapter.

Each applicant for a construction permit, operating license, early site permit, or combined license shall investigate all seismic and geologic factors that may affect the design and operation of the proposed nuclear power plant irrespective of whether such factors are explicitly included in these criteria. Both deterministic and probabilistic evaluations must be conducted to determine site suitability and seismic design requirements for the site. Additional investigations or more conservative determinations than those included in these criteria may be required for sites located in areas with complex geology, recent tectonic deformation, or in areas of high seismicity. If an applicant believes that the particular seismic and geologic characteristics of a site indicate that some of these criteria, or portions thereof, need not be satisfied, the applicant shall identify the specific sections of these criteria in the license application and present supporting data to clearly justify such departures. The Director, Office of Nuclear Reactor Regulation approves any deviations.

III. Definitions

As used in these criteria:

A *capable tectonic source* is a tectonic structure that can generate both earthquakes and tectonic surface deformation such as faulting or folding at or near the surface in the present seismotectonic regime. It is characterized by at least one of the following characteristics:

(1) The presence of surface or near-surface deformation of landforms or geologic deposits of recurring nature within the last approximately 500,000 years or at least once in the last approximately 50,000 years.

(2) A reasonable association with one or more large earthquakes or sustained earthquake activity that is usually accompanied by significant surface deformation.

(3) A structural association with a capable tectonic source having characteristics in paragraph III (1) of this definition so that movement on one could be reasonably expected to be accompanied by movement on the other.

In some cases, the geologic evidence of past activity at or near the ground surface along a particular capable tectonic source may be obscured at a particular site. This might occur, for example, at a site having a deep overburden. For these cases, evidence may exist elsewhere along the structure from which an evaluation of its characteristics in the vicinity of the site can be reasonably based. This evidence must be used in determining whether the structure is a capable tectonic source within this definition.

Notwithstanding paragraph (1), (2) and (3) of this definition, structural association of a structure with geologic structural features that are geologically old (at least pre-Quaternary) such as many of those found in the Eastern region of the United States must, in the absence of conflicting evidence, demonstrate that the structure is not a capable tectonic source within this definition.

Combined license means a combined construction permit and operating license with conditions for a nuclear power facility issued pursuant to subpart C of part 52 of this chapter.

A *deterministic source earthquake (DSE)* is the largest earthquake that can reasonably be expected to occur in a given seismic source in the current tectonic regime, and is to be used in a deterministic analysis. It is generally based on the maximum historical earthquake associated with that seismic source, unless recent geological evidence warrants a larger earthquake, or where the rate of occurrence of earthquakes indicates the likelihood of larger than the largest historical event.

Early Site Permit means a Commission approval, issued pursuant to subpart A of part 52 of this chapter, for a site or sites for one or more nuclear power facilities.

A *fault* is a tectonic structure along which differential slippage of the adjacent earth materials has occurred parallel to the fracture plane. A fault may have gouge or breccia between its two walls and includes any associated monoclinal flexure or other similar geologic structural feature.

The *magnitude* of an earthquake is a measure of the size of an earthquake and is related to the energy released in the form of seismic waves. Magnitude means the numerical value on a standardized scale such as, but not limited to, Moment Magnitude, Surface Wave Magnitude, Body Wave Magnitude, or Richter Magnitude scales.

A *response spectrum* is a plot of the maximum responses (acceleration, velocity, or displacement) of a family of idealized single-degree-of-freedom oscillators as a function of the natural frequencies of the oscillators for a given damping value. The response spectrum is calculated for a specified vibratory motion input at the oscillators' supports.

The *Safe Shutdown Earthquake Ground Motion (SSE)* is the vibratory ground motion for which certain structures, systems, and components must be designed to remain functional.

A *seismic source* is a general term referring to both seismogenic sources and capable tectonic sources.

A *seismogenic source* is a portion of the earth that has uniform earthquake potential (same deterministic source earthquake and frequency of recurrence) distinct from the surrounding area. A seismogenic source will not cause surface displacements. Seismogenic sources cover a wide range of possibilities from a well-defined tectonic structure to simply a large region of diffuse seismicity (seismotectonic province) thought to be characterized by the same earthquake recurrence model. A seismogenic source is also characterized by its involvement in the current tectonic regime as reflected in the Quaternary (approximately the last 2 million years) geologic history.

Surface deformation is distortion of soils or rocks at or near the ground surface by the processes of folding, faulting, compression, or extension as a result of various earth forces. Tectonic surface deformation is associated with earthquake processes.

Surface faulting is differential ground displacement at or near the surface caused directly by fault movement and is distinct from nontectonic types of ground disruptions, such as landslides, fissures, and craters.

IV. Required Investigations

The geological, seismological, and engineering characteristics of a site and its environs must be investigated in sufficient scope and detail to permit an adequate evaluation of the proposed site, to provide sufficient information to support both probabilistic and deterministic evaluations required by these criteria, and to permit adequate engineering solutions to actual or potential geologic and seismic effects at the proposed site. The size of the region to be investigated and the type of data pertinent to the investigations must be determined by the nature of the region surrounding the proposed site. The investigations must be carried out by a review of the pertinent literature and field investigations as identified in paragraph IV (a) through (e) of this appendix.

(a) Vibratory Ground Motion.

The purpose of these investigations is to obtain information needed to assess the Safe Shutdown Earthquake ground motion. The seismic sources (capable tectonic sources and seismogenic sources) in the site region must be identified and evaluated. The deterministic source earthquakes must be evaluated for each seismic source.

(b) Tectonic Surface Deformation.

The purpose of these investigations is to assess the potential for tectonic surface deformation near the site and, if any, to what extent the nuclear power plant needs to be designed for these occurrences.

(c) Nontectonic Deformation.

The purpose of these investigations is to assess the potential for surface deformations not directly attributable to tectonics, such as those associated with subsidence or collapse as in karst terrain, glacially induced offsets, and growth faulting. Paragraph IV(b) concerns investigations required for tectonic surface deformation that can occur coseismically. Nontectonic phenomena can represent significant surface displacement hazards to a site, but can in many cases be monitored, controlled, or mitigated by engineering, or it can be demonstrated that conditions that were the cause of the displacements no longer exist. Geological and geophysical investigations must be carried out to identify and define nontectonic deformation features and, where possible, distinguish them from tectonic surface displacements. If such distinction is not possible, the questionable features must be treated as tectonic deformation.

(d) Seismically Induced Floods and Water Waves.

The purpose of these investigations is to assess the potential for nearby and distant tsunamis and other waves that could affect coastal sites. Included in this assessment is the determination of the potential for slides of earth material that could generate waves. Information regarding distant and locally generated waves or tsunamis that have affected the site, and available evidence of runup and drawdown associated with these events, shall be analyzed. Local features of coastal or undersea topography which could

modify wave runup or drawdown must be considered. For sites located near lakes or rivers, analyses must include the potential for seismically induced floods or water waves, as, for example, from the failure during an earthquake of a dam upstream or from slides of earth or debris into a nearby lake.

(e) Volcanic Activity.

The purpose of these investigations is to assess the potential volcanic hazards that would adversely affect the site.

V. Seismic and Geologic Design Bases

(a) Determination of Deterministic Source Earthquakes.

For each seismogenic and capable tectonic source identified in paragraph IV(a), the deterministic source earthquake must be evaluated. At a minimum, the deterministic source earthquake must be the largest historical earthquake in each source. The uncertainty in determining the deterministic source earthquakes must be accounted for in the probabilistic analysis.

(b) Determination of the Ground Motion at the Site.

The ground motion at the site must be estimated from all earthquakes, including the deterministic source earthquake associated with each source, which could potentially affect the site using both probabilistic and deterministic approaches. In the deterministic approach, the deterministic source earthquake associated with each source must be assumed to occur at the part of the source which is closest to the site. Appropriate models, including local site conditions, must be used to account for uncertainty in estimating the ground motion for the site. The ground motion is defined by both horizontal and vertical free-field ground motion response spectra the free ground surface or hypothetical rock outcrop, as appropriate.

(c) Determination of Safe Shutdown Earthquake Ground Motion.

The Safe Shutdown Earthquake Ground Motion is characterized by free-field ground motion response spectra at the free ground surface or hypothetical rock outcrop, as appropriate. These spectra are developed from or compared to the ground motions determined in paragraph V(b). Deterministic and probabilistic seismic hazard evaluations must be used to assess the adequacy of the Safe Shutdown Earthquake Ground Motion. The annual probability of exceeding the Safe Shutdown Earthquake Ground Motion is considered acceptably low if it is less than the median annual probability computed from the current [EFFECTIVE DATE OF THE FINAL RULE] population of nuclear power plants.

At a minimum, the horizontal Safe Shutdown Earthquake Ground Motion at the foundation level of the structures must be an appropriate response spectrum with a peak ground acceleration of at least 0.1g.

(d) Determination of Need To Design for Surface Tectonic and Nontectonic Deformations.

Sufficient geological, seismological, and geophysical data must be provided to clearly establish that surface deformation need not be taken into account in the design of a nuclear power plant. When surface deformation is likely, an assessment of the extent and nature of surface deformations must be characterized.

(e) Determination of Design Bases for Seismically Induced Floods and Water Waves.

The size of seismically induced floods and water waves that could affect a site from either locally or distantly generated seismic activity must be determined, taking into consideration that results of the investigation required by paragraph IV (d) of this appendix.

(f) Determination of Other Design Conditions.

(1) Soil Stability. Vibratory ground motions determined in paragraph V(b) can cause soil instability from ground disruption such as fissuring, lateral spreads, differential settlement, and liquefaction, which is not directly related to surface faulting. Geological features that could affect the foundations of the proposed nuclear power plant structures must be evaluated, taking into account the information concerning the physical properties of materials underlying the site and the effects of the vibratory ground motion determined in paragraph V(b).

(2) Slope stability. Stability of all slopes, both natural and artificial, must be considered, the failure of which could adversely affect the nuclear power plant. An assessment must be made of the potential effects of erosion or deposition and of combinations of erosion or deposition with seismic activity, taking into account information concerning the physical properties of the materials underlying the site and the effects of the vibratory ground motion determined in paragraph V(b).

(3) Cooling water supply. Assurance of an adequate cooling water supply for emergency and long-term shutdown decay heat removal shall be considered in the design of the nuclear power plant, taking into account information concerning the physical properties of the materials underlying the site, the effects of the Safe Shutdown Earthquake Ground Motion, and the design basis for tectonic and nontectonic surface deformation. Consideration of river blockage or diversion or other failures that may block the flow of cooling water, coastal uplift or subsidence, tsunami runup and drawdown, and the failure of dams and intake structures must be included in the evaluation where appropriate.

(4) Distant structures. Those structures that are not located in the immediate vicinity of the site but are safety-related must be designed to withstand the effect of the Safe Shutdown Earthquake Ground Motion. The design basis for surface faulting must be determined on a basis comparable to that of the nuclear power plant, taking into account the material underlying the structures and the different location with respect to that of the site.

VI. Application To Engineering Design

Pursuant to the seismic and geologic design basis requirements of paragraphs V(a) through (f), applications to engineering design are contained in Appendix S to part 50 of this chapter for the following areas:

(a) Vibratory ground motion.

(1) Safe Shutdown Earthquake Ground Motion (SSE).

(2) Operating Basis Earthquake Ground Motion (OBE).

(3) Required Plant Shutdown.

(4) Required Seismic Instrumentation.

(b) Surface Deformation

(c) Seismically Induced Floods and Water Waves and Other Design Conditions.

Dated at Rockville, Maryland, this 13th day of October 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–25240 Filed 10–19–92; 8:45 am]

BILLING CODE 7590–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Commodity Pool Operators; Exclusion for Certain Otherwise Regulated Persons From the Definition of the Term "Commodity Pool Operator"

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed Rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to amend Regulation 4.5 which excludes certain otherwise regulated persons from the definition of the term "commodity pool operator" ("CPO"). The rule currently permits such persons to maintain this exclusion to the extent that, *inter alia*, (1) the commodity futures or option positions which they assume are either bona fide hedging positions or long positions which are "incidental to a qualifying entity's activities in the underlying cash market" and (2) the aggregate initial margins and premiums for all such positions does not exceed five percent of the fair market value of the entity's assets. The Commission proposes to permit the assumption of commodity futures and option positions that are neither hedging nor "incidental" to the extent that the market exposure attained through such positions does not predominate a qualifying entity's overall market exposure. The Commission also proposes to (1) remove the current restriction that permits assumption of only *long* non-hedging positions and (2) modify the five percent margin/premium limitation to exclude margins on bona fide hedging positions from computation of the five percent.

DATES: Comments must be received by December 4, 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 "Regulation of Commodity Pool Operators, § 4.5.".

FOR FURTHER INFORMATION CONTACT: Ronald Hobson, Supervisory Economist, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581, (202) 254–6990.

I. Background

Section 4m(1) of the Commodity Exchange Act ("Act") makes it unlawful for any person to engage in business as a CPO without being registered as such.[1] Part 4 of the Commission's regulations governs the operations and activities of CPOs through certain operational, disclosure, reporting and recordkeeping requirements set forth in Subpart B thereof.[2]

In connection with the 1982 amendments to the Act, the Senate Committee on Agriculture, Nutrition, and Forestry directed the Commission to issue regulations which would have the effect of providing relief from regulation as a CPO for certain otherwise regulated entities. Specifically, the Committee Report states:

> [C]ertain entities are not within the intent of the definition of the term 'commodity pool operator', as that term is defined in the Act, unless these entities have other attributes or features which would warrant their regulation as a commodity pool operator.[3]

The Report goes on to state that an entity regulated under the Investment Company Act of 1940, an insurance company or a bank or trust company acting in its fiduciary capacity and subject to regulation by any State or the United States or certain federally regulated pension plans could be excluded from the definition of the term "commodity pool operator" under certain conditions.

In response, the Commission initiated a rulemaking proceeding which culminated in the issuance of § 4.5 (49 FR 4778–89, February 8, 1984; 50 FR 15868–84, April 23, 1985), effective April 23, 1985. This rule provides for the exclusion, under specified conditions, of certain otherwise regulated persons (registered investment companies, state or federally regulated financial depository institutions, state regulated insurance companies, and certain federally regulated and insured pension plans) from the CPO definition.[4] One of the requirements for exclusion is the filing of a notice of eligibility with the Commission. Among other things, this notice requires a representation that the qualifying entity that the person intends to operate pursuant to the exclusion will use commodity futures or commodity option contracts solely for bona fide hedging purposes as bona fide hedging is defined in § 1.3(z)(1). As an alternative to this hedging requirement, the rule permits a qualifying entity to use long futures or options positions which are not bona fide hedging positions when the person seeking the exclusion represents that the value of the commodities underlying such positions is covered by cash or cash equivalents (the "cash set aside" requirement) and that the positions are "incidental to a qualifying entity's activities in the underlying cash market."

This alternative representation (or "alternative test" as it has come to be called) evolved during the rulemaking proceeding as the result of comments received on the treatment of long anticipatory hedge positions under the rule as proposed. The test effectively permits otherwise qualifying entities to assume long futures and option positions that may or may not be anticipatory hedges without any requirement that the strategy involving such positions be coupled in any specific way with an ultimate transaction in the underlying cash markets. When it issued § 4.5, the Commission emphasized that the alternative test was intended to serve as a substitute for compliance with the bona fide hedging standard. This qualification was meant to make it clear that the Commission did not view inclusion of the test in § 4.5 to mean that long futures or option positions backed by cash or cash equivalents should necessarily be interpreted as bona fide hedging as defined in § 1.3(z)(1).[5]

Absent the incidental clause noted above, however, the language of the alternative test raised a regulatory concern, viz., that the operator could offer a fund with market exposure based solely or largely on the use of commodity futures or options rather than through the underlying cash markets and maintain exclusion from the CPO definition. Accordingly, in issuing § 4.5 the Commission stated that the alternative representation was not intended to encourage or authorize the trading of commodity interests as a replacement for trading in the corresponding cash markets and the Commission included the requirement in the alternative test of § 4.5 that trading of commodity interests be "incidental to a qualifying entity's activities in the underlying cash market."

II. The Proposed Regulation

It has become apparent that a literal application of the "incidental" clause of the alternative test may preclude the use of certain portfolio management strategies that would not be inconsistent with the objectives of § 4.5. As currently written and incorporated into § 4.5, the incidental clause requires that each commodity futures and option position be related to an entity's activities in the particular cash market underlying such position. While this still permits a wide range of portfolio management strategies, including covered call writing and duration extension, other strategies that are not intended to result in extensive commodity futures or option exposure are not allowed. For example, an otherwise qualifying entity that sought to diversify a securities portfolio by the purchase of a small non-financial futures position in a broad-based commodity index currently would not be able to claim § 4.5 exclusion since (by assumption) the entity is not involved in the cash markets for the indexed commodities.[6] On the other hand, the

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[1] The term commodity pool operator is defined in Section 2(a)(1)(A) of the Commodity Exchange Act, as amended, to mean:

> [A]ny person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market, but does not include such persons not within the intent of this definition as the Commission may specify by rule or regulation or by order.

[2] Sections 4.20–4.23. Commission rules referred to herein are found at 17 CFR Ch. I (1992).

[3] S. Rep. No. 384, 97th Cong., 2d Sess. 80 (1992).

[4] In addition, the rule excludes from the definition of the term commodity "pool" set forth in § 4.10(d) certain other pension plans that do not have to meet these specified conditions. *See* § 4.5(a)(4)(i)–(iii).

[5] The alternative test was applied only to long futures and option positions since short positions generally are assumed in conjunction with an existing cash market position and therefore are more obviously risk reducing at all times that such positions are held.

[6] In this regard, the Commission noted the use of futures for purposes of portfolio diversification when it adopted § 4.7. 57 FR 34853 (August 7, 1992). That rule permits registered CPOs under certain circumstances to claim relief from most CFTC disclosure, reporting and recordkeeping requirements for pools offered or sold to qualified eligible participants (including the institutions eligible for relief under § 4.5) in certain private securities offerings. In proposing § 4.7, the Commission stated that:

> Many large money managers, in particular many managers for institutional investors, are now *diversifying* and hedging their portfolios by investing a portion of the assets under management in the futures markets. [57 FR 3148 at 3150 (January 28, 1992), emphasis added].

commodity exposure so attained may represent only a small proportion of the fund's total overall exposure. In this regard, when the Commission adopted § 4.5 it stated that its intent was to determine when certain entities should be treated as commodity pools and their operators as CPOs— and not to establish what should be regarded as prudent trading strategies.

Moreover, a recently appointed working group of one of the Commission's industry advisory committees—the Financial Products Advisory Committee (FPAC)—is examining § 4.5 and developing recommendations to conform the provisions of § 4.5 with current uses of financial derivatives by institutional investors.[7] In its first report at FPAC's July 23, 1992 meeting, the working group questioned the propriety and necessity for § 4.5 to impose strict commodity futures and option trading constraints on institutions which, by definition, are subject to otherwise extensive federal or state regulation. The working group stated that, at the least, § 4.5 should be amended to permit otherwise regulated institutions to engage in a broader range of strategies without being subject to CPO registration. The working group is in the process of formalizing a comprehensive set of recommendations for amending § 4.5.

In view of these considerations, the Commission proposes to amend § 4.5(c)(2)(i) by removing the word "* * * long * * *" therefrom and by adding language that would permit a qualifying entity to assume commodity futures or option positions that are neither bona fide hedging nor "* * * incidental to a qualifying entity's activities in the underlying cash market * * *" as long as the gross market exposure collectively attained through such positions does not predominate the total market exposure of its portfolio.

The Commission believes that the addition of this proposed language expanding the uses of commodity futures and option markets that would be compatible with CPO exclusion yields a more "strategy-neutral" way of accomplishing the objectives of § 4.5. The Commission also understands that market exposure can be calculated in different ways and may change over time as a result of market dynamics. For purposes of application of this proposed revision to the rule, however, it generally will be sufficient to calculate commodity futures and option market exposure as the underlying commodity value of an entity's gross combined futures and option positions and this would be compared to the total value of the entity's other assets.[8] To the extent that the former figure would tend to exceed the latter over time, exclusion from the CPO definition under § 4.5 would be unavailable. Thus, it is the Commission's intent that an exempt entity's maximum exposure on futures contracts and commodity options could not exceed its collective exposure on other assets except as temporarily necessary to implement or alter strategies.

The Commission notes that the limitation of the alternative test to long positions is an artifact of the way in which the test originally evolved (see discussion in text and footnote 5 above). Removal of this limitation will provide institutional investors with greater flexibility in their use of commodity futures and options without thwarting the intended result of the application of § 4.5.

Toward this same end, the Commission also is proposing to modify the five percent margin/premium restriction to exclude margins and premiums on bona fide hedge positions from the computation. To a large extent, this restriction is redundant with respect to bona fide hedge positions since the amount of such positions is effectively limited by the size of an entity's portfolio. Furthermore, the current rule may at times restrict an entity's ability to hedge a large proportion of its portfolio at precisely the times when hedging may be most important, i.e., when markets are volatile and, as a consequence, margins and premiums may be significantly higher than normal.[9]

In this regard, the Commission notes that with the amendments proposed herein, § 4.5 will contain three separate "quantitative" trading constraints for non-hedge positions, viz., the five percent margin/premium limitation, the cash "set aside" that will continue to be required for all non-hedging positions and the newly proposed exposure cap. The Commission invites interested parties to specifically comment on the extent to which all three constraints are required or whether a single such constraint, *e.g.*, a single overall constraint on commodity futures and option exposure, may be sufficient. Other issues that commenters may wish to address are (1) whether the set of persons currently eligible to obtain § 4.5 relief might be expanded to include other regulated persons; and (2) whether different operating criteria should be specified by § 4.5 for different persons depending upon the nature of their primary regulatory requirements.

The Commission does not intend to require a refiling of notices of eligibility by persons who have previously filed such notices under § 4.5 but rather would deem those notices to include any commodity futures or option strategies that the revised rule, as ultimately promulgated by the Commission, would permit.

III. Other Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, ("PRA") imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with PRA, the Commission has submitted these proposed rules and their associated information collection requirements to the Office of Management and Budget. While this proposed rule has no burden, the group of rules of which this is a part has the following burden:

Average Burden Hours Per Response—138.10
Number of Respondents—11,497
Frequency of Response—Monthly, Quarterly, Semi-Annually, Annually, On Occasion

Persons wishing to comment on the information which would be required by this proposed/amended rule should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395–

[7] The current FPAC working group was established to follow-up on a study done by an FPAC working group in 1987. Among the recommendations of that study, *The Hedging Definition and the Use of Financial Futures and Options: Problems and Recommendations for Reform*, was that the Commission revise § 4.5 to provide an exclusion from CPO registration for otherwise regulated entities which use commodity futures and options for risk-management purposes. This recommendation has not been implemented.

[8] For purposes of measuring relative market exposure under the proposed rule, "other assets" would exclude cash or cash equivalents set aside pursuant to § 4.5(c)(2)(i)(A) through (C) as cover for any non-hedge commodity futures and option positions. This will insure that CPO exclusion will continue to be unavailable for persons operating funds which operate in a manner similar to so-called "90/10 funds." Through such funds commodity market exposure is obtained by allocating most fund assets to T-bills or other cash equivalents with the remainder put up as margin on a futures position. Under the rule as proposed, such cash equivalents, to the extent of the underlying contract value of the futures position, would be "counted" as commodity market exposure only.

[9] The Commission notes that it has not disturbed the proviso of § 4.5(c)(2)(v) that states that the making of any representation under the rule is not to be deemed a substitute for compliance with rules for commodity futures or option trading established by any regulator to which a person or qualifying entity is subject.

7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K St., NW., Washington, DC 20581, (202) 254–9735.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of these rules on small entities. The definitions of small entities that the Commission has established for this purpose do not address the persons and qualifying entities set forth in § 4.5 because, by the very nature of the rule, the operations and activities of such persons and entities generally are regulated by Federal and State authorities other than the Commission. Assuming, arguendo, that such persons and entities would be small entities for purposes of the RFA, the Commission believes that the proposed amendments to § 4.5 would not have a significant economic impact on them because it would not require the refiling of a notice with the Commission. Moreover, the Commission notes that the proposal potentially would relieve a greater number of those persons (and entities) from the requirement to register as a CPO and from the disclosure, reporting and recordkeeping requirements applicable to registered CPOs.

Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), that the proposed rules will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission invites comment from any firm which believes that these rules, as proposed, would have a significant economic impact on its operation.

List of Subjects in 17 CFR Part 4

Commodity pool operators, commodity trading advisors, commodity futures, commodity options.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4k, 4l, 4m, 4n, 4o, 8a and 14 thereof, 7 U.S.C. 2, 6k, 6l, 6m, 6n, 6o, and 12a and 18, the Commission hereby proposes to amend chapter I of title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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

Authority: Sections 2(a)(1)(A), 4b, 4c, 4*l*, 4m, 4n, 4*o*, 8a, and 19 of the Act, 7 U.S.C. 2, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23.

2. Section 4.5 is proposed to be amended by revising paragraph (c)(2) (i) and (ii) to read as follows:

§ 4.5 Exclusion for certain otherwise regulated persons from the definition of the term "commodity pool operator."

* * * * *

(c) * * *

(2) * * *

(i) Will use commodity futures or commodity options contracts solely for bona fide hedging purposes within the meaning and intent of § 1.3(z)(1); *Provided, however,* That in the alternative, with respect to positions in commodity futures or commodity option contracts which do not come within the meaning and intent of § 1.3(z)(1), a qualifying entity may represent that the underlying commodity value of such positions at all times will not exceed the sum of:

(A) Cash set aside in an identifiable manner, or short-term United States debt obligations or other United States dollar-denominated high quality short-term money market instruments so set aside, plus any funds deposited as margin on such contract;

(B) Cash proceeds from existing investments due in thirty days; and

(C) Accrued profits on such contract held at the futures commission merchant;

And, *Provided further,* That such positions are incidental to the qualifying entity's activities in the underlying cash market or that the gross market exposure collectively attained through such positions will not be predominant relative to the total market exposure (calculated exclusive of the assets identified pursuant to paragraphs (c)(2)(i) (A) through (C) of this section of the qualifying entity's portfolio.

(ii) Will not enter into commodity futures and commodity options contracts for which the aggregate initial margin and premiums exceed 5 percent of the fair market value of the entity's assets, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; *Provided, however,* That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in § 190.01(x) may be excluded in computing such 5% and that margins and premiums for bona fide hedging positions also may be so excluded;

* * * * *

Issued in Washington, DC on October 14, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–25389 Filed 10–19–92; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 256

Outer Continental Shelf (OCS) Oil and Gas Lease Well Abandonment, Platform Removal, and Seafloor Clearance Costs Workshop

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public workshop.

SUMMARY: A notice of proposed rulemaking to amend the surety bond provisions of part 256 of title 30 of the Code of Federal Regulations was published in the Federal Register January 24, 1990. This notice announces a workshop to address the elements of a financial security plan designed to ensure that the costs of all offshore well abandonment, platform and facility removal, and seafloor clearance work are paid by the responsible OCS oil and gas lessee.

DATES: Thursday, November 19, 1992, from 8:30 a.m. through 5:30 p.m.

ADDRESSES: Regional Director's Office, Minerals Management Service, room 111, 1201 Elmwood Park Boulevard, New Orleans, Louisiana, 70123–2394.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, Engineering and Technology Division, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070–4817, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in a workshop to be held November 19, 1992, at the Minerals Management Service's (MMS) Regional Director's office in New Orleans, Louisiana. Participants in the workshop will discuss elements that might comprise a financial security plan that will ensure that the costs of all well abandonment, platform and facility removal, and seafloor clearance work are paid by the responsible OCS oil and gas lessee.

Agenda: The workshop will address the elements of a three (3) tier financial security plan. Those elements are:

—Basic Foundation (i.e., the minimum bonding requirements set forth in MMS regulations.
—Additional Bonds (i.e., supplemental bonds, Treasury pledge accounts, abandonment accounts, self-insurance, or a combination thereof.)
—Abandonment Insurance Fund (i.e., an offshore well abandonment, platform and facility removal, and seafloor clearance fund which would serve as the payor of last resort when a lessee defaults in its lease abandonment and cleanup obligations.)

Presentations: Request by parties interested in making a formal presentation to the workshop should be accompanied by a summary of the material to be covered by the presentation and an estimate of the length of time required. If time constraints dictate, a time limit will be placed on individual presentations. Requests for time to make a presentation are to be addressed to Gerald D. Rhodes, Engineering and Technology Division, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070–4817 and must be received by close of business November 5, 1992.

Registration: There will be no registration fee for this workshop. Participants need not register prior to arrival at the workshop; however, prior registration with Gerald D. Rhodes at the Herndon, Virginia, address is requested in order to assess the probable number of participants. Seating is limited and will be on a first-come-first-seated basis.

Proceedings: Proceedings of the workshop will be available for public inspection and copying at the Minerals Management Service, 381 Elden Street, Herndon, Virginia.

Dated: October 13, 1992.

Richard Roldan,

Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 92–25309 Filed 10–19–92; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

The Army Privacy Program

AGENCY: Director of Information Systems for Command, Control, Communications, and Computers (DISC4), DOD.

ACTION: Proposed Rule; withdrawal.

SUMMARY: The Department of the Army's proposed rule revision to 32 CFR part 505, The Army Privacy Program published in the **Federal Register** (57 FR 44716), September 29, 1992 is hereby withdrawn. The reason for this withdrawal is that the Department of Defense Privacy Office objected to Army publishing this proposed rule revision without their coordination and approval.

DATE: The effective date of this withdrawal is October 20, 1992.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Denton, telephone (703) 325–6277.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–25323 Filed 10–19–92; 8:45 am]

BILLING CODE 3710–08–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7053]

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for each community listed, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

National Environmental Policy Act

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

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regulatory Impact Analysis

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
MAINE	
St. George (town), Knox County	
Stream to Mosquito Harbor:	
At mouth	*10
Approximately 40 feet upstream of Ridge Road	*26
Stream to the Marsh:	
At mouth	*10
Approximately 80 feet upstream of State Route 131	*12
Maps available for inspection at the Town Office, St. George, Maine.	
Send comments to Mr. Tim Polky, Town of St. George Code Enforcement Officer, Knox County, P.O. Box 131, Tennants Harbor, Maine 04860.	
OKLAHOMA	
Lindsay (city), Garvin County	
Washita River:	
At a point approximately 1,450 feet east of the intersection of State Route 76 and State Route 19	*977
At a point approximately 1,250 feet west of the intersection of Chicksaw and S.W. 11th Streets	*981
Maps available for inspection at the Lindsay City Hall, 308 S.W. 2nd, Lindsay, Oklahoma.	
Send comments to Mr. Richard Tracy, Lindsay City Manager, Garvin County, P.O. Box 708, Lindsay, Oklahoma 73052.	
TENNESSEE	
Rogersville (city), Hawkins County	
Crockett Creek:	
Approximately 350 feet downstream of West Hills Drive	*1,167
Approximately 0.2 mile upstream of State Route 70	*1,337
Maps available for inspection at the Rogersville City Hall, 106 East Kyle, Rogersville, Tennessee.	
Send comments to The Honorable Jim Sells, Mayor of the City of Rogersville, Hawkins County, P.O. Box 788, 106 East Kyle Street, Rogersville, Tennessee 37857.	
TEXAS	
Westlake (town), Denton and Tarrant Counties	
Higgins Branch:	
At confluence with Kirkwood Branch	*593
Approximately 100 feet upstream of Dove Street	*601
Kirkwood Branch:	
Approximately 100 feet downstream of State Route 114	*580
Approximately 1,825 feet downstream of Dove Street	*629
Marshall Branch:	
Approximately 50 feet downstream of State Route 114	*594
Approximately 275 feet upstream of Turner Lake Dam	*614
Whites Branch:	
Approximately 0.38 mile downstream of corporate limits	*596
At corporate limits	*607
Stream WB-1:	
At downstream corporate limits	*594
At upstream corporate limits	*596
Kirkwood Branch Tributary:	
At confluence with Kirkwood Branch	*588
Approximately 200 feet downstreams of Village Access Drive	*594
Maps available for inspection at Metroplex Engineering Consultants, Inc., 501 South Carroll Road, Denton, Texas.	
Send comments to The Honorable Dale White, Mayor of the Town of Westlake, Denton and Tarrant Counties, P.O. Box 27, Roanoke, Texas 76262.	
WEST VIRGINIA	
Jefferson County (unincorporated areas)	
Evitts Run:	
Approximately 280 feet downstream at County Route 36	*427
Approximately 0.6 mile upstream of confluence of Tributary A	*515
Tributary A:	
At confluence with Evitts Run	*507
At upstream side of Private Road	*520
Flowing Springs Run:	
At upstream side of U.S. Route 340	*385
Approximately 880 feet upstream of Norfolk and Western Railway	*512
Maps available for inspection at the Planning Commission Department, 104 E. Washington Street, Charles Town, West Virginia	
Send comments to Mr. Henry W. Morrow, President of Jefferson County Commission, P.O. Box 250, Charles Town, West Virginia 25414.	

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arkansas	Heber Springs	Sulphur Creek	Approximately 2,400 feet downstream of Hollowell Drive.	None	*289
			Approximately 7,700 feet upstream of South 12th Street.	None	*374
		Greers Ferry Lake	Entire lake	None	*490
Maps are available for review at the Municipal Building, 1001 West Main Street, Heber Springs, Arkansas.					
Send comments to the Honorable Ed Roper, Mayor, City of Heber Springs, 1001 West Main Street, Heber Springs, Arkansas 72543.					
Missouri	Unincorporated Areas of St. Louis County.	Maline Creek	About 0.80 mile downstream of Halls Ferry Road.	*449	*448
			About 0.40 mile upstream of Glen Owen Drive	*465	*466
		Black Jack Creek	At mouth	*451	*449
			Just downstream of Pershall Road	*478	*475
			Just upstream of Dunn Road	*493	*492
			Just downstream of Redman Avenue	None	*495
		Dellwood Creek	At mouth	*462	*460
			About 1,970 feet upstream of Clairmont Drive	*486	*487
		Halls Ferry Creek	At mouth	*476	*471
			Just downstream of Old Halls Ferry Road	*476	*474
Maps available for inspection at the Department of Planning, 41 South Central Avenue, Clayton, Missouri.					
Send comments to The Honorable George R. "Buzz" Westfall, County Executive, St. Louis County, 41 South Central Avenue, Clayton, Missouri 63105.					
New York	Middletown, Town	East Branch	At downstream corporate limits	None	*1,328
	Delaware County	Delaware River	At upstream corporate limits	None	*1,413
		Dry Brook	At confluence with East Branch Delaware River.	None	*1,339
			Approximately 100 feet upstream of Erpf Road	None	*1,402
		Bush Kill	At confluence with Dry Brook	None	*1,365

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			At upstream corporate limits	None	*1,468
		Batavia Kill	At confluence with East Branch Delaware River.	None	*1,384
			At upstream corporate limits	None	*1,630
		Vly Creek	Approximately 75 feet downstream of downstream corporate limits.	None	*1,558
			Approximately 25 feet upstream of upstream corporate limits.	None	*1,714

Maps available for inspection at the Middletown Town Hall, Main Street, Margaretville, New York.

Send comments to Mr. Alan Rosa, Middletown Town Supervisor, Delaware County, P.O. Box 577, Margaretville, New York 12455.

North Carolina	Cherokee County unincorporated areas.	Hiawasee River	Approximately 0.5 mile downstream of confluence of Peachtree Creek.	*1,560	*1,559
			Approximately 300 feet upstream of County Route 1548.	None	*1,591

Maps available for inspection at the County Commissioner's Office, Peachtree Street, Murphy, North Carolina.

Send comments to Mr. Bob Gibson, Chairman of the Cherokee County Commission, Peachtree Street, Murphy, North Carolina 28906.

Oklahoma	City of Del City Oklahoma County.	Cherry Creek	Approximately 1,700 feet downstream of East Reno Avenue.	*1,167	*1,167
			Approximately 50 feet upstream of East Reno Avenue.	*1,176	*1,178
			Approximately 1,000 feet downstream of interstate Route 40.	*1,184	*1,185
			Approximately 700 feet upstream of Interstate Route 40.	*1,190	*1,192
			Approximately 50 feet upstream of SE. 15th Street.	*1,192	*1,195
			Just upstream of Mallard Drive	*1,204	*1,202
			Approximately 50 feet upstream of SE. 29th Street.	*1,216	*1,217
			Just upstream of Overland Drive	*1,224	*1,225
			At SE. 44th Street	*1,234	*1,234

Maps are availabe for review at City Hall, 4517 Southeast 29th Street, Del City, Oklahoma.

Send comments to The Honorable Joe Nichols, Mayor, City of Del City, P.O. Box 15177, Del City, Oklahoma 73155-5177.

Oklahoma	City of Nowata Nowata County.	Western Branch Creek	Approximately 1,000 feet downstream of Choctaw Avenue, at the corporate limits.	None	*677
			Approximately 300 feet upstream of U.S. Route 169D.	None	*683
			At Cherokee Avenue	None	*686
			At Elm Street	None	*689
			Just upstream of Maple Street	None	*693
		Golf Course Tributary	At the confluence with Western Branch Creek	None	*691
			At Pecan Street	None	*701
			Approximately 250 feet upstream of Hickory Street.	None	*708
		Seneca Street Tributary	At the confluence with Western Branch Creek	None	*692
			Just upstream of Seneca Street	None	*694
		Southwest Tributary	Just downstream of Galer Street	None	*686
			Approximately 2,000 feet upstream of Galer Street.	None	*695

Maps are available for review at City Hall, 701 East Modoc Street, Nowata, Oklahoma.

Send comments to The Honorable Douglas Bullock, City Manager, City of Nowata, City Hall, 701 East Modoc Street, Nowata, Oklahoma 74048.

South Carolina	Unincorporated areas of Dorchester County.	Ashley River	At county boundary	*8	*7
			Just downstream of confluence of Eagle Creek	*9	*9
		Coosaw Creek	About 1300 feet downstream of Dorchester Road.	*10	*10
			Just upstream of trail road	None	*17
		Eagle Creek	At mouth	*9	*9
			At county boundary	*23	*22
		Unnamed Tributary to Ashley River.	Just upstream of State Road 13	None	*38

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			About 1500 feet upstream of confluence of Tributary No. 1.	None	*54
		Hurricane Branch	Just upstream of Tudor Road	None	*47
			Just downstream of unpaved road extending from Longleaf Road.	None	*71
		Chandler Bridge Creek	At confluence of Eagle Creek	*18	*14
			About 2100 feet upstream of Miles Jamison Road.	*27	*28
		Rumphs Hill Creek	Just downstream of Norfolk Southern Railway	*60	*60
			Just downstream of Lawrence Drive	None	*67
		Negro Branch	Just downstream of Orangeburg Road	*42	*42
			Just downstream of White Boulevard	None	*74
		Platt Branch	Just downstream of Orangeburg Road	*42	*42
			Just downstream of Lake Drive	None	*54
		Stanley Branch	About 1600 feet downstream of State Road 58	*41	*41
			About 1.0 mile upstream of State Road 58	None	*54
		Green Bay Branch	At mouth	None	*25
			Just downstream of Short Street	None	*69
		Tributary No. 2	At mouth	None	*7
			Just downstream of Dorchester Road	None	*18
		Edisto River	At county boundary	None	*18
			Just downstream of State Road 29	None	*50
		Four Hole Swamp	About 2400 feet downstream of State Road 19	None	*39
			Just downstream of U.S. Route 78	None	*46
		Polk Swamp	Just upstream of U.S. Route 15	None	*66
			Just downstream of State Road 16	None	*99
		Tributary No. 3	At mouth	*15	*15
			Just upstream of trail road	*15	*15
		Sawpit Creek	At county boundary	None	*9
			About 1900 feet upstream of trail road	None	*27
		Tributary No. 4	At mouth	None	*62
			About 1550 feet upstream of mouth	None	*67
		Tributary No. 5	At mouth	None	*58
			Just downstream of State Route 22	None	*65
		Tributary No. 6	At mouth	None	*53
			Just downstream of McMakin Street	None	*58
		Tributary No. 1	At mouth	None	*50
			About 1450 feet upstream of mouth	None	*55

Maps available for inspection at the County Planning Department, Summerville, South Carolina.

Send comments to The Honorable Jack Langston, County Administrator, Dorchester County, County Courthouse, P.O. Box 416, St. George, South Carolina 29477.

Tennessee	Unincorporated Areas of Williamson County.	Little East Fork	Just upstrean of county boundary	None	*588
			About 1000 feet upstrean of Old Charlotte Pike West.	None	*662
		Lynnwood Branch	About 450 feet downstream of Meadowgreen Drive.	None	*613
			About 200 feet upstream of Farmington Road	None	*658
		Beech Creek	About 1400 feet downstream of Highland Road	None	*666
			About 3400 feet upstream of Manly Lane	None	*742
		Cartwright Creek	At confluence with Harpeth River	None	*584
			Just upstream of Beech Creek Road	None	*651

Maps available for inspection at the County Planning Department, 1320 West Main Street, Suite 125, Franklin, Tennessee

Send comments to The Honorable Robert Ring, Williamson County Executive, 132 0 West Main Street, Suite 125, Franklin, Tennessee 37064.

Texas	City of Garland	Duck Creek Tributary 2C1	Approximately 2,500 feet downstream of Interstate Highway 30.	*450	*450
			Approximately 200 feet downstream of Interstate Highway 30.	*462	*460
			Approximately 700 feet downstream of Rowlett Road.	*469	*469

Maps are available for review at City of Garland, 800 Main Street, Garland, Texas.

Send comments to The Honorable Bob Smith, Mayor, City of Garland, P.O. Box 46902, Garland, Texas 75046.

	City of Everson Whatcom County.	Nooksack River	Approximately 2,300 feet downstream of Everson Road.	*82	*81
			Approximately 300 feet upstream of Everson Road.	*86	*85
			Approximately 4,000 feet upstream of Everson Road.	*96	*92

Maps are available for review at City Hall, 111 West Main Street, Everson, Washington.

Send comments to The Honorable Matt Lagerwey, Mayor, City of Everson, City Hall, P.O. Box 315, 111 West Main Street, Everson, Washington 98247.

Washington	City of Ferndale Whatcom County.	Nooksack River	Approximately 900 feet downstream of Maine Street, at the corporate limits.	*29	*25
			Just upstream of Burlington	*32	*27

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Just upstream of Interstate Highway 5, at the corporate limits.	*34	*31
		Nooksack River Right Overbank Divided Flow.	Approximately 1,000 feet downstream of River Road, at the corporate limits.	*24	*20
			At River Road	*27	*24
Maps are available for review at City Hall, 5694 Second Avenue, Ferndale, Washington.					
Send comments to The Honorable Madelyn Waslohn, Mayor, City of Ferndale, P.O. Box 936, 5694 Second Avenue, Ferndale, Washington 98248.					
Washington	Ferry County	Kettle River	Approximately 3.7 miles upstream from the confluence of Cottonwood Creek with Kettle River.	None	*1,811
			Approximately 4.33 miles upstream from the confluence of Cottonwood Creek with Kettle River.	None	*1,814
			Approximately 4.7 miles upstream from the confluence of Cottonwood Creek with Kettle River.	None	*1,816
Maps are available for review at the Ferry County Planning Department, 157 North Clark, Suite 7, Republic, Washington.					
Send comments to The Honorable Marie Bremner, Chairman, Ferry County Board of Commissioners, P.O. Box 305, Republic, Washington 99166.					
Washington	City of Lynden Whatcom County.	Nooksack River	Approximately 3,800 feet upstream of Guide Meridian Road.	*50	*48
			Approximately 2,500 feet downstream of Hannegan Road.	*54	*51
			Approximately 2,500 feet upstream of Hannegan Road.	*57	*56
Maps are available for review at City Hall, 323 Front Street, Lynden, Washington.					
Send comments to The Honorable Egberg Mass, Mayor, City of Lynden, City Hall, 323 Front Street, Lynden, Washington 98264.					
Washington	City of Nooksack Whatcom County.	Johnson Creek	At Tom Road	*75	*75
			Approximately 1,500 feet upstream of Tom Road.	None	*76
Maps are available for review at City Hall, 103 West Madison Street, Nooksack, Washington,					
Send comments to The Honorable E. Maxine Jones, Mayor, City of Nooksack, P.O. Box 265, 103 West Madison Street, Nooksack, Washington 98276.					
Washington	Whatcom County Unincorporated Areas.	Johnson Creek	At the confluence with Sumas River	None	*37
			At Lynden-Sumas Highway	*48	*48
			Just upstream of Clearbrook Road	None	*59
			At Frick Road	*70	*71
			Approximately 1,500 feet upstream of South Pass Road.	*86	*85
		Nooksack River	At Bellingham Bay	*10	*8
			Just upstream of Slater Road	*17	*14
			Approximately 900 feet downstream of Main Street at the Town of Ferndale corporate limits.	*29	*25
			Just upstream of Guide Meridian Road	*47	*47
			Just upstream of Hannegan Road	*56	*54
			Just upstream of Mount Baker Highway	*157	*155
			Approximately 600 feet downstream of Burlington Northern Railroad, at the confluence with South Fork Nooksack River.	*222	*221
		Nooksack River Right Overbank Divided Flow.	At Lummi Bay	None	*8
			At Slater Road	*10	*11
			At Ulrick Road	*17	*13
			Approximately 1,000 feet downstream of River Road.	*24	*20
		Middle Fork Nooksack River	At the confluence with North Fork Nooksack River.	None	*281
			At the confluence of Canyon Creek	None	*310
			Approximately 11,500 feet upstream of the confluence of Canyon Creek.	None	*406
		North Fork Nooksack River	At the confluence with South Fork Nooksack River.	*222	*221
			At the confluence of Middle Fork Nooksack River.	None	*281
			At the confluence of Kendall Creek	None	*389
			Approximately 14,000 feet upstream of the confluence of Kendall Creek.	None	*466
		South Fork Nooksack River	At the confluence with North Fork Nooksack River.	None	*221
			At Potter Road	*237	*235
			At Strand Road	*256	*257
			At Acme Road	*294	*293

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 7,400 feet upstream of Saxon Road.	None	*385
		South Fork Nooksack River Divided Flow.	At Burlington Northern Railroad	*251	*246
			Just upstream of Swamp Road	*268	*263
			At Acme Road	*282	*280
		Samish River	Approximately 3,000 feet downstream of Wickersham Road at the County Boundary.	None	*267
			At Wickersham Road	None	*275
			Approximately 6,000 feet upstream of Wickersham Road.	None	*278
			Just upstream of Doran Road	None	*295
			At Burlington Northern Railroad	None	*311
		Squalicum Creek	Approximately 200 feet upstream of Chicago, Milwaukee, St. Paul & Pacific Railroad, at the City of Bellingham corporate limits.	None	*127
			At Bakerview Road	None	*138
			At Ross Road	None	*149
			At Dewey Road	None	*180
			Approximately 2,000 feet upstream of Dewey Road.	None	*206
		Sumas River	Approximately 1,600 feet downstream of Jones Road, at the International Boundary.	None	*35
			Just upstream of Clearbrook Road	None	*46
			Just upstream of Telegraph Road	None	*56
			Just upstream of South Pass Road	None	*87
			Approximately 1,000 feet upstream of Massey Road.	None	*93
		Sumas River Left Overbank Divided Flow.	Approximately 300 feet downstream of Telegraph Road.	None	*56
			Just upstream of Kadin Road	None	*58
			Approximately 5,500 feet upstream of Kadin Road.	None	*69
	Terrell Creek	Approximately 500 feet downstream of Alderson Road.	None	*8	
		Just upstream of Jackson Road.	None	*9	
		At Helweg Road	None	*10	

Maps are available for review at the Department of Public Works Division of Engineering, 284 West Kellogg Street, Suite C, Bellingham, Washington.
Send comments to The Honorable Shirley Van Zanten, Whatcom County Executive, 284 West Kellogg Street, Bellingham, Washington 98226.

Wisconsin	Unincorporated Areas of Eau Claire County.	Chippewa River	At county boundary	*761	*761
			About 1850 feet upstream of Interstate 94	*776	*775
		Sherman Creek	About 1.3 miles downstream of Cameron Street.	None	*808
			Just downstream of West Vine Street	None	*855
			Just upstream of West Vine Street	None	*862
			At county boundary	None	*897
		Lake Eau Claire	Along shoreline	None	*911
		Elk Creek	About 2100 feet upstream of Elk Lake Dam	None	*807
			About 3400 feet downstream of Paquet Drive	None	*811
		Eau Claire River	Just upstream of Lake Altoona Dam	*812	*810
			Just upstream of confluence of Sixmile Creek	*815	*813

Maps are available for inspection at the County Courthouse, 721 Oxford Avenue, Eau Claire, Wisconsin.
Send comments to The Honorable Cliff Chatterson, Chairman of the Board, Eau Claire County, County Courthouse, 721 Oxford Avenue, Eau Claire, Wisconsin 54703.

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

Issued: October 8, 1992.

C. M. "Bud" Schauerte,

Administrator Federal Insurance Administration.

[FR Doc. 92-25387 Filed 10-19-92; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 92-50]

Financial Responsibility Requirements for Nonperformance of Transportation; Revision of Self-Insurance Qualification Standards

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its procedures for establishing passenger vessel financial responsibility for nonperformance of transportation. The proposed rule provides that: (1) Operators demonstrating a minimum of five years of operation in the United States trades with a satisfactory

explanation of any claims for nonperformance of transportation need meet only net worth standards to qualify as self-insurers; and (2) operators qualifying for self-insurance may not use the sliding scale provisions to qualify for a Certificate (Performance).

DATE: Comments on or before November 4, 1992.

ADDRESS: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573. (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573. (202) 523–5796.

SUPPLEMENTARY INFORMATION:

Background

Section 3 of Public Law 89–777, 46 U.S.C. app. 817e, ("section 3") is administered by the Federal Maritime Commission ("Commission" or "FMC"). Section 3 requires certain passenger vessel operators to establish their financial responsibility to indemnify passengers for nonperformance of transportation.[1] The Commission issues a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation to operators that demonstrate adequate financial responsibility.

The Commission's regulations implementing section 3 are at 46 CFR part 540, subpart A. These regulations generally provide that passenger vessel operators may evidence their financial responsibility by filing with the Commission a guaranty, escrow arrangement, surety bond, insurance or self-insurance in an amount established by the Commission. This amount is based upon the operator's unearned passenger revenue ("UPR") [2] and must equal 110 per cent of the operator's highest UPR over a 2-year period. The maximum coverage amount currently required is $15 million.

This proceeding is an outgrowth of the Notice of Proposed Rulemaking in Docket No. 92–19, *Revision of Financial Responsibility Requirements for Nonperformance of Transportation* ("NPR"). There the Commission proposed several revisions to its regulations governing the establishment of passenger vessel responsibility for the nonperformance of transportation,[3] including eliminating the requirement that operators maintain both working capital and net worth in the United States equal to 110 per cent of their UPR to qualify as self-insurers. Only net worth equal to 110 per cent of UPR would be required. Additionally, annual reporting requirements applicable to self-insurers would be increased to semiannual reports.

The Commission's final rule in Docket No. 92–19 essentially adopts the proposed revisions noted above, with the exception of the self-insurance change. The Commission believes that the self-insurance proposal set forth in Docket No. 92–19 requires certain conditions to ensure adequate protection for those funds that are paid to passenger vessel operators who qualify as self-insurers. Although the Commission wishes to liberalize its section 3 requirements in a manner which eases unnecessary burdens on passenger vessel operators, it also must maintain a regulatory regime that provides adequate protection of the travelling public. Therefore, the Commission has determined to re-publish the self-insurance revisions originally proposed in Docket No. 92–19, subject to certain conditions.

Comments in Docket No. 92–19 in connection with self-insurance revisions were filed by: Delta Queen Steamboat Company ("Delta Queen"), an intercoastal waterway U.S.-flag passenger vessel operator; [4] American Hawaii Cruises ("AHC"), a deep-water U.S.-flag passenger vessel operator; District 2 of the Marine Engineers Beneficial Association ("MEBA"), a maritime labor union representing the officers of AHC's vessels; and the International Council of Cruise Lines ("ICCL"), an association of foreign-flag passenger vessel operators.

1. Self-Insurance Qualification Requirements

Delta Queen supports the NPR's self-insurance proposal. It suggests that net worth be required at a level of 110 percent of an operator's greatest amount of UPR during the prior two fiscal years, with the operator having the option of valuing its assets at fair market value. It argues that fair market value, as compared to the historical cost less depreciation carried on an operator's books, more accurately identifies the assets available to satisfy nonperformance claims.

AHC also supports the NPR's approach, asserting that the current regulations are largely unworkable for mid-sized companies such as AHC, that have to use more financially onerous methods to meet their section 3 requirements. Also, while it is not concerned with the physical location of an operator's assets, AHC suggests that the Commission consider allowing some reliance on foreign-based assets, either on a case-by-case basis or through a regulatory format.

MEBA urges the Commission to adopt the NPR's liberalized self-insurance criteria.

ICCL supports the proposed approach on self-insurance, but opposes the requirement that an operator's assets must be located in the United States in order to qualify as a self-insurer. It notes that the nature of its members' business is international and by definition the assets are mobile. ICCL states that adequate legal process is available to attach those assets when and if required.

ICCL contends that the specific location of an operator's net worth has no bearing on the operator's financial responsibility, yet current requirements are the primary reason that large cruise operators, which are financially stable and ought to be able to qualify as self-insurers, would be unable to self-insure under the NPR. ICCL urges the Commission to allow operators to self-

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[1] Section 3 provides, in pertinent part:

No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or, in lieu thereof, a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

[2] UPR is defined under 46 CFR 540.2(i) as:

* * * that passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed.

[3] Specifically, the Commission proposed revising its section 3 rules to: (1) Consider a factor-based sliding scale in determining individual operators' coverage levels; (2) modify its section 3 self-insurance rules to allow operators to maintain only net worth in the United States equal to 110 percent of their UPR to qualify as self-insurers; (3) increase the frequency of filing for certain financial statements by self-insurers; (4) consider special provisions in its rules for "whole-ship contracts"; and (5) adopt a draft form escrow arrangement for the guidance of industry interests who require greater flexibility to accommodate fluctuating levels of UPR. For more information on the Commission's proposals and additional background, see the NPR (57 FR 19097 (May 4, 1992)) and the final rule in Docket No. 92–19 (57 FR 41887 (September 14, 1992)).

[4] Delta Queen filed two comments, a June 16, 1992 submission by David W. Kish, Vice President, Administration, and a June 17, 1992 submission by S. Cody Engle, Chairman of the Board.

insure if they have net worth of at least two times the difference between UPR and cash on hand.[5] ICCL also requests that the Commission allow a company to self-insure its entire cruise fleet, including its affiliates, through the issuance of guaranties by the operator or its parent company with respect to its affiliates' performance.[6]

The Commission is considering adopting the self-insurance proposal tendered in Docket No. 92–19, with two conditions: (1) Operators qualifying for self-insurance would not be permitted to use the sliding scale adopted by the Commission in the final rule in Docket No. 92–19; and (2) to qualify as a self-insurer, an applicant must also demonstrate a minimum of five years of operation in the United States trades with a satisfactory explanation of any claims for nonperformance of transportation.

In terms of the security ultimately provided to the travelling public, the Commission must consider self-insurance in a considerably different light from other methods of establishing section 3 coverage. The rules set forth in 46 CFR part 540 subpart A are designed to assist the Commission in determining the amount and type of coverage necessary to protect the public. In most cases, the operator acquires the financial instrument that actually provides that coverage from a recognized institution, which must independently assess the actual risks and costs associated with providing the coverage. With self-insurance, the operator itself—not an independent entity—makes those assessments and undertakes to provide the necessary coverage. This means that when the operator presents a proposal for self-insurance to the Commission, such a proposal is essentially presented without benefit of an independent entity's endorsement of the operator's risk-worthiness. To assure the adequacy of the self-insurance proposal, the Commission therefore must evaluate the financial probabilities and risks based upon the applicant's own assessment of its financial health.

Self-insurance presents a greater risk of loss to the travelling public than do other forms of coverage that are backed by independent interests holding sums of money for the protection of the public. Consequently, while the Commission believes that it is appropriate to ease the burden on the passenger vessel industry, it does not wish to expose the travelling public to undue risk. Accordingly, the Commission proposes to allow operators to qualify for self-insurance on the basis of their net worth alone, but without the benefit of the sliding scale provisions of the final rule in Docket No. 92–19. Liberalized sliding scale provisions will be available only where coverage is provided through independent interests. As an additional safeguard, the Commission also proposes to require operators wishing to qualify for self-insurance to provide evidence (in the form of an affidavit by the operator's Chief Executive Officer or other responsible corporate officer) of a minimum of five years' operation in United States trades, with a satisfactory explanation of any claims for nonperformance of transportation.

Several commenters have suggested that the Commission reconsider the requirement that the assets used to qualify as a self-insurer be physically located in the United States. As explained in Docket No. 92–19, the Commission is particularly concerned that the underlying purposes of Public Law 89–777 could be defeated if operator assets sufficient to indemnify passengers are not readily available in the United States:

> A judgment against an operator who has failed to perform becomes meaningless if the assets in the United States are insufficient to satisfy the judgment. Passengers may not have the ability or resources to pursue foreign-domiciled assets. Such efforts would probably not be cost-effective in the majority of instances. This view is supported in some measures by comments received in this proceeding. For instance, ICCL suggested that it would be inappropriate to consider an operator's vessels as assets in the United States since these vessels are outside of United States waters most of the time. SAA, a major surety association, also opposes removing the U.S.-based asset requirement.

Docket No. 92–19 NPR, p. 9. The record developed in that proceeding has not dissuaded the Commission from this view.

2. Semiannual Financial Statements by Self-Insurers

In connection with the liberalization of the self-insurance requirements in Docket No. 92–19, the Commission proposed more frequent reports concerning the financial standing of self-insurers. While Delta Queen believes that reporting by self-insurers would be appropriate, it suggests that semiannual filings would be unnecessary and unduly burdensome for operators which are "public" companies subject to the quarterly reporting requirements of the Securities Exchange Act of 1934, because their financial state is already a matter of public record.

Notwithstanding the fact that the reports of certain companies may be publicly available, the discrete elements subject to reporting in Docket No. 92–19 focus on those matters of greatest relevance to the Commission's administration of its Section 3 program with regard to self-insurers. On the basis of the present record, the Commission is not convinced that the proposed reporting requirements would be excessive for those operators wishing to avail themselves of liberalized self-insurance standards. Accordingly, the semiannual reporting requirements are retained.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" because it will not result in:

(1) An annual effect on the economy of $100 million or more;

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

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental organizations. the passenger vessel operators impacted by the rule are generally not small businesses.

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[5] ICCL would define "cash on hand" as cash, plus short-term investments, plus undrawn lines of credit from established financial institutions; "UPR" as monies paid to the carrier by passengers, less payments made by the carrier to purchase airline tickets and/or other payments directly related to the passenger booking; and "net worth" as the company's shareholders' equity in accordance with generally accepted accounting principles.

[6] It would appear that the Commission's present rules with respect to self-insurance and guaranties may accommodate ICCL's suggestion. Nothing in the Commission's rules would preclude a parent from acting as a guarantor with respect to its affiliates' performance if the Commission determined the parent to be "acceptable" pursuant to its rules. (46 CFR 540.5(c)).

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980, as amended. Public reporting burden for this collection of information is estimated to be 3 hours per respondent, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Maritime Commission, Washington, DC 20503.

List of Subjects in 46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Transportation.

Therefore, pursuant to 5 U.S.C. 553; section 3 Public Law 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e); section 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); and section 17 of the Shipping Act of 1984 (46 U.S.C. app. 1716), the Federal Maritime Commission proposes to amend part 540 of title 46 of the Code of Federal Regulations as follows:

PART 540—[AMENDED]

1. The authority citation to part 540 continues to read:

Authority: 5 U.S.C. 552, 553; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e, 817d); sec. 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); sec. 17 of the Shipping Act of 1984 (46 U.S.C. app. 1716).

2. Section 540.5 is amended by revising the introductory text of paragraph (d) and paragraphs (d) (4), (5) and (6), and the introductory text of paragraph (e) to read as follows:

§ 540.5 Insurance, guaranties, escrow accounts, and self-insurance.

* * * * *

(d) Filing with the Commission for qualification as a self-insurer such evidence acceptable to the Commission as will demonstrate continued and stable passenger operations over an extended period of time in the foreign or domestic trade of the United States. Such evidence must include an affidavit by the operator's Chief Executive officer or other responsible corporate officer of a minimum of five years of operation in United States trades, with a satisfactory explanation of any claims for nonperformance of transportation. In addition, applicant must demonstrate financial responsibility by maintenance of net worth in an amount calculated as in the introductory text of this section. The Commission will take into consideration all current contractual requirements with respect to the maintenance of such net worth to which the applicant is bound. Evidence must be submitted that the net worth required above is physically located in the United States. This evidence of financial responsibility shall be supported by and subject to the following which are to be submitted on a continuing basis for each year or portion thereof while the Certificate (Performance) is in effect:

* * * * *

(4) Semiannual current statement of the book value or current market value of any assets physically located within the United States together with a certification as to the existence and amount of any encumbrances thereon;

(5) Semiannual current credit rating report by Dun and Bradstreet or any similar concern found acceptable to the Commission;

(6) A list filed semiannually of all contractual requirements or other encumbrances (and to whom the applicant is bound in this regard) relating to the maintenance of net worth;

* * * * *

(e) The following schedule may be applied to determine the minimum coverage required for indemnification of passengers in the event of nonperformance of water transportation for those operators who (1) have not elected to qualify by self-insurance; and (2) can provide evidence (in the form of an affidavit by the operator's Chief Executive Officer or other responsible corporate officer) of a minimum of five years of operation in United States trades, with a satisfactory explanation of any claims for nonperformance of transportation:

* * * * *

By the Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 92–25435 Filed 10–19–92; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Threatened Status for *Amaranthus pumilus* (Seabeach Amaranth)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The Service announces that a public hearing will be held in accordance with provisions of the Endangered Species Act of 1973, as amended, on the proposed rule to list *Amaranthus pumilus* (seabeach amaranth) as a threatened species. The comment period is reopened to accommodate the hearing and for receipt of written comments as well.

DATES: The comment period on the proposal is reopened until November 16, 1992. The public hearing will be held November 5,1992, from 7 p.m. to 10 p.m.

ADDRESSES: Comments should be sent to the Field Supervisor, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806. The public hearing will be held in the auditorium of the Cape Hatteras School, Buxton, North Carolina.

FOR FURTHER INFORMATION CONTACT: Ms. Nora A. Murdock at the above field office address (704/665–1195, ext. 231).

SUPPLEMENTARY INFORMATION:

Background

Amaranthus pumilus (Rafinesque) (seabeach amaranth), an annual herb in the Amaranth family (Amaranthaceae), is known from 55 populations in New York, North Carolina and South Carolina. It is threatened throughout its range by habitat alteration, beach stabilization structures, off-road vehicles (during some seasons of the year), beach erosion and tidal inundation, beach grooming, and herbivory by insects and feral animals. On May 26, 1992, the Service published in the **Federal Register** (57 FR 21921) a proposal to list *Amaranthus pumilus* as a threatened species. Section 4(b)(5) of the Endangered Species Act provides for a public hearing on a proposed listing, if requested. The Service received a letter requesting a public hearing from Ms. Louise Dollard, Chairperson of the Dare County, North Carolina, Board of Commissioners.

The Service has scheduled a public hearing to be held in the auditorium of the Cape Hatteras School, Buxton, North Carolina, on November 5, 1992, from 7 p.m. to 10 p.m. Those parties wishing to make statements for the record are encouraged to provide a copy of their statements to the Service at the start of the hearing.

Author

The primary author of this notice is Ms. Nora Murdock, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806.

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1544).

Dated: October 13, 1992.

James W. Pulliam, Jr.,

Acting Regional Director.

W.T. Olds, Jr.,

Assistant Regional Director.

[FR Doc. 92–25450 Filed 10–19–92; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 57, No. 203
Tuesday, October 20, 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

Forest Service

Exxon Valdez Oil Spill Restoration, 1993 Draft Work Plan

ACTION: Availability of the 1993 Draft Work Plan for the EXXON VALDEZ oil spill.

SUMMARY: This notice announces that the 1993 Draft Work Plan ("1993 Document") is now available for public review and comment. The Regional Forester for the Alaska Region, Michael A. Barton, is acting on behalf of the Trustee Council in releasing this notice.

DATES: Comments concerning the 1993 Document must be received by November 20, 1992.

ADDRESSES: Copies of the 1993 Document may be received by contacting the Trustee Council, 645 G Street, Anchorage, AK, 99501. All comments must be written and submitted to: Trustee Council, 645 G Street, Anchorage, AK, 99501.

FOR FURTHER INFORMATION CONTACT: The Oil Spill Public Information Center at the following telephone numbers: (907) 278–8008; In Alaska toll free 1–800–478–7745; Outside Alaska toll free 1–800–283–7745.

SUPPLEMENTAL INFORMATION: In October, 1991, the Federal Government and the State of Alaska agreed to a settlement for injuries resulting from the rupture of the T/V EXXON VALDEZ and the discharge of approximately 11 million gallons of North Slope crude oil into Prince William Sound and the Gulf of Alaska. The natural resource Trustees for the State, the Commissioners of the Departments of Fish and Game and Environmental Conservation and the Alaska Attorney General, and for the Federal Government, the Secretaries of Agriculture and the Interior and the Administrator of the National Oceanic and Atmospheric Administration will receive $900 million in civil damages over the next ten years to be used to restore the environment of the areas affected by the EXXON VALDEZ oil spill to its prespill condition. A Trustee Council located in Alaska, which is comprised of the Federal Trustees' designees and the State Trustees, are responsible for decisions relating to the assessment of injuries, uses of the funds received for restoration, and all restoration activities, including the preparation of a Restoration Plan.

This Notice announces the availability of the 1993 Document and requests comments from the public concerning the proposed damage assessment and restoration activities to take place in 1993 detailed in the Work Plan. Those who have not already requested a copy of the 1993 Document may do so by contacting the Trustee Council indicated in the above address. Written comments concerning the 1993 Document must be received no later than November 20, 1992.

Dated: October 8, 1992.

Michael A. Barton,

Regional Forester.

[FR Doc. 92–25206 Filed 10–19–92; 8:45 am]

BILLING CODE 3410–11–M

Federal Crop Insurance Corporation

Frost/Freeze Exclusion of Nursery Growers

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of its determination with respect to the acceptance of applications and crop reports for nursery crop insurance in "Territory 03—Hardiness Zones 9—10" in the states of Arizona, California, Florida, Louisiana, Texas, and all other states with zones 9—10 on the USDA Plant Hardiness Zone Map. Prior to the 1993 crop year, the Nursery Crop Insurance Actuarial Tables required nurseries to have overwinterization protection to qualify for coverage. Many nurseries are located in areas where it is normal to operate without this protection. However, because of the actuarial table requirements, they were precluded from obtaining crop insurance coverage.

EFFECTIVE DATE: October 20, 1992.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: Prior to the 1993 crop year, the Nursey Corp Insurance Actuarial Tables required nurseries to have overwinterization protection in order to qualify for insurance coverage. Many nurseries are located in areas where it is a normal practice to operate without this protection. However, because of the actuarial table requirements, they were precluded from obtaining crop insurance coverage.

Accordingly, the Federal Crop Insurance Corporation herewith gives notice that the actuarial tables for nursery have been recently revised to include a "Risk Group C" in "Territory 03—Hardiness Zone 9—10." This revision affects the states of Arizona, California, Florida, Louisiana, Texas, and all other states with zones 9—10 on the USDA Plant Hardiness Zone Map. This classification does not contain overwinterization protection requirements and does not provide frost/freeze coverage. No rate adjustment was made. This revision permits producers, who could not qualify for insurance because of the overwinterization requirements, to purchase insurance covering perils other than frost/freeze.

To ensure that new policyholders who do not meet the overwinterization protection requirements understand that their policy does not cover frost or freeze damage, a statement or form signed by the insured must be attached to the application in order for FCIC to insure or to reinsure the policy. The following is a suggested statement: "This insurance does not provide frost or freeze coverage because the overwintering requirements will not be met."

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC on October 13, 1992.

David L. Bracht,

Associate Manager, Federal Crop Insurance Corporation.

[FR Doc. 92–25328 Filed 10–19–92; 8:45 am]

BILLING CODE 3410–08–M

Forest Service

Management Plan for Newberry National Volcanic Monument, Deschutes National Forest, Deschutes County, OR

AGENCY: Forest Service, USDA.

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

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) and comprehensive management plan for the Newberry National Volcanic Monument (NNVM). Newberry National Volcanic Monument was created in October, 1990, when the U.S. Congress approved Public Law (P.L. 101–552. President George Bush signed the legislation on November 5, 1990. The law calls for the preparation of a comprehensive management plan for the Monument, to be completed by 1994. According to the law, the comprehensive management plan for the Monument will not require an amendment to the 1990 Deschutes National Forest Land and Resource Management Plan. The Forest Service invites written comments and suggestions on the comprehensive management plan for this Monument, and on the scope of the analysis. The agency gives notice of the full environmental analysis and decision making process that will occur for this plan so that interested and affected people are aware of how they may participate and contribute to the final decision. Open houses on the issues relevant to the development of a comprehensive management plan will be held in Bend, Sunriver, and La Pine, Oregon, in October 1992. Actual dates, times and places of the reviews will be announced in *The Bend Bulletin*, and other appropriate places.

DATE: Comments concerning the scope and implementation of this proposal must be received by November 19, 1992.

ADDRESSES: Submit written comments concerning the scope of the analysis to: Carolyn Wisdom, Special Projects Coordinator, Fort Rock Ranger District, 1230 NE 3rd Street, Bend, Oregon 97701, (Phone (503) 383–4702).

FOR FURTHER INFORMATION CONTACT: Questions and written comments about the proposed action should be directed to: Carolyn Wisdom, Special Projects Coordinator, Fort Rock Ranger District, 1230 NE 3rd Street, Bend, Oregon 97701, (phone (503) 383–4702).

SUPPLEMENTARY INFORMATION: The proposed action calls for managing the Monument consistent with the legislative intent of P.L. 101–522. The Monument is located entirely within the Fort Rock Ranger District and includes the Newberry crater area, which holds two high alpine lakes, 7,985-foot Paulina Peak, the Big Obsidian Flow, and other geologic features. In addition to the crater area, the monument stretches northwest from the caldera along the Northwest rift zone of lava flows, and includes Lava Cast Forest, Lava River Cave, Lava Lands Interpretive Center, and Lava Butte. The northwest boundary of the Monument is the Deschutes River, designated a National Wild & Scenic River.

Public Law 101–522 directs the Forest Service to: Preserve and protect for present and future generations Newberry's remarkable geologic landforms—and to provide for the conservation, protection, interpretation, and enhancement of its ecological, botanical, scientific, scenic, recreational, cultural, and fish and wildlife resources.

The proposed action is to continue to manage the Monument for a wide range of recreation opportunities while at the same time providing for the protection and interpretation of the area's unique geologic and archaeological resources, as well as the other resource values specified in the legislation. This will be accomplished through a combination of land allocations and management prescriptions that direct intensive/developed recreation uses away from sensitive resource areas. Some areas of the Monument will emphasize dispersed recreation opportunities and a "discovery" theme; other areas will emphasize developed recreation opportunities and "guided" recreation themes.

Developed campgrounds in the caldera area will be provided, as will resorts located in the caldera. Trail systems for hiking, cross-country skiing, and snow-mobiling will be maintained to accommodate all-season recreational use. A vigorous interpretive program associated with the Monument will provide interpretation of this area's cultural and scientific legacy to visitors. The present interpretive center is the Lava Lands Visitor Information Center just off Highway 97 south of Bend.

Because the area has now becoming nationally known, use levels at all facilities are increasing dramatically. Part of the proposed action will address possible modifications to campgrounds, roads, trails, and interpretive facilities.

The proposed action will also deal with issues mandated in the legislation establishing the monument. These include: recreation; vegetation (including re-establishment of old-growth ponderosa pine ecosystems); roads and facilities; fish and wildlife; interpretation; scientific research; fire and fuels management; monitoring; and possible conflicts among uses and resources.

Public input, as well as Forest Service concerns and management requirements, will determine a full range of alternatives to the proposed action. The effects of the these alternatives, the Proposed Action and the No Action Alternative will be analyzed.

The Forest Service is seeking input from individuals, organizations, local and state agencies, and federal agencies who may be interested in or affected by the Proposal.

Scoping is a method for identifying relevant and significant issues related to the Proposed Action. Public participation will be especially important during the scoping process (40 CFR 1501.7).

Public meetings and open houses will be scheduled periodically during the preparation of the Draft Environmental Impact Statement. Meetings will be announced through mailings and through notices in the Bend Bulletin.

A mailing list has been compiled for the project. Interested individuals and agencies may have their names added to this list at any time by submitting a request to: Carolyn Wisdom, Special Projects Coordinator, Fort Rock Ranger District, 1230 NE 3rd Street, Bend, Oregon 97701. (phone (503) 383–4702).

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December, 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 of Availability appears in the **Federal Register**. It is important that those interested in the management of Newberry National Volcanic Monument participate at that time.

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

First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could 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 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 them and respond to them in the final EIS.

To be most helpful, 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 statement. 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 (FEIS) is scheduled to be completed by Spring 1994. 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.

The responsible official is the Regional Forester. The responsible official will decide which, if any, of the proposed action or alternatives will be implemented. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 217).

Dated: October 14, 1992.

Wayne Lewis,

Acting Regional Forester.

[FR Doc. 92–25379 Filed 10–19–92; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda of Public Meeting of the Massachusetts 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 Massachusetts Advisory Committee will be convened at 9:30 p.m. and adjourn at 12 p.m. on Monday, November 9, 1992, in Conference Room 163–C, Murray D. Lincoln Campus Center, Campus Center Way, University of Massachusetts, Amherst, Massachusetts, 01003. The purposes of the meeting are to discuss the status of the agency, release the Committee's recently approved report, Campus Tensions in Massachusetts: Searching for Solutions in the Nineties, and to consider topics for a 1993 project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Dorothy S. Jones, Chairperson (617/623–5610) or John I. Binkley, Director, Eastern Regional Office, at (202/523–5264) or 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 office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, October 13, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92–25325 Filed 10–19–92; 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: Department of Commerce.

Title: Women–Owned Business Sources Clause.

Agency Form Number: None.

OMB Approval Number: 0605–0019

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 300 hours.

Number of Respondents: 25.

Avg Hours Per Response: 12 hours.

Needs and Uses: Contract clause to encourage the use of women–owned businesses as subcontractors under DOC contracts. The clause is required when the Federal Acquisition Regulation requires a successor offeror to prepare a small business and small disadvantaged business subcontracting plan. The DOC clause requires that goals for women–owned businesses be included in the subcontracting plan. Small businesses are excluded from this requirement.

Affected Public: Businesses or other for–profit institutions, non–profit institutions, and 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 Institute of Standards and Technology (NIST).

Title: Analysis of Calibration Services Pricing Policies.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New Collection.

Burden: 1,800 hours.

Number of Respondents: 600.

Avg Hours Per Response: 3 hours.

Needs and Uses: NIST provides equipment calibration services to U.S. industry to help industry achieve its productivity and quality assurance goals. The owner of the equipment is charged the marginal cost of the calibration plus a surcharge to help cover the cost of the underlying research. OMB has asked NIST to conduct an economic analysis of the effects of the surcharge on industry demand for NIST calibration services and the impacts of any subsequent changes in company strategies towards calibration of equipment. The survey will collect quantitative and qualitative data needed to perform these analyses.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: One–time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785, room 3235, New Executive Office Building, Washington, DC 20503.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer listed above.

Dated: October 15, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–25424 Filed 10–19–92; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

[A-580-501]

Photo Albums and Filler Pages From Korea; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from a reseller, the Department of Commerce has conducted an administrative review of that reseller under the antidumping duty order on photo albums and filler pages from Korea. The review covers Four Star Trading Company ("Four Star"), a Taiwanese reseller of photo albums and filler pages, and the period December 1, 1990 through November 30, 1991. We preliminary find that there were no shipments of Korean photo albums and filler pages to the United States during the period of review by Four Star.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 20, 1992.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Thomas F. Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C.; telephone: (202) 377-0090/3814.

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1985, the Department of Commerce (the Department) published in the **Federal Register** (50 FR 51273) an antidumping duty order on photo albums and filler pages from Korea. On December 17, 1991, a Taiwanese reseller of photo albums and filler pages, Four Star Trading Company ("Four Star"), requested in accordance with 19 CFR 353.22(a)(2) that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on February 24, 1992 (57 FR 6314). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of photo albums and filler pages. This merchandise is currently classifiable under item numbers 3920, 3921, 4819.50, 4820.50, 4820.90 and 4823.90 of the Harmonized Tariff Schedule (HTS). HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

The review covers one exporter of photo albums and filler pages, Four Star Trading Company ("Four Star"), and the period December 1, 1990 through November 30, 1991. Four Star is a Taiwanese reseller of photo albums and filler pages. However, the United States Customs Service suspended liquidation of an entry of this merchandise because it considered it to be of Korean origin. Four Star submitted certified documentation to the Department to support its claim that the entry in question consisted only of Taiwanese photo albums and filler pages. After review of Four Star's information, the Department preliminarily agrees that the merchandise covered by this review is of Taiwanese origin and, therefore, not subject to the antidumping duty order on photo albums and filler pages from Korea.

Preliminary Results of the Review

As a result of this review, we preliminary determine that there were no shipments of Korean photo albums and filler pages from Four Star to the United States during the period December 1, 1990 through November 30, 1991 by Four Star. For previously reviewed or investigated companies, the cash deposit rate will continue to be the company-specific rate published for the most recent period.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication.

Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Prehearing briefs and/or written comments may be submitted not later than 30 days after the date of publication. Rebuttal briefs or rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

Upon completion of this review, the Department will issue instructions to Customs to liquidate any entries of photo albums and filler pages being suspended with regard to Four Star during the period December 1, 1990 through November 30, 1991.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), and § 353.22 of the Commerce Department's regulations.

Dated: October 1, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-25425 Filed 10-19-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-549-501]

Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand; Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of termination of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) has terminated the countervailing duty administrative review of certain circular welded carbon steel pipes and tubes from Thailand initiated on September 28, 1992.

EFFECTIVE DATE: October 20, 1992.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION: On August 31, 1992, Saha Thai Steel Pipe Co., Ltd., an exporter of the subject merchandise, requested an administrative review of the countervailing duty order on certain circular welded carbon steel pipes and tubes from Thailand for the period January 1, 1991 through December 31, 1991. No other interested party requested the review. On September 28, 1992, the Department initiated the administrative review for that period (57 FR 44551).

Saha Thai Steel Pipe Co., Ltd. withdrew its request for review on September 11, 1992. The withdrawal was timely within the meaning of 19 CFR

355.22(a)(3). As a result, the Department has terminated the review.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: October 13, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-25426 Filed 10-19-92; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 920812-2212]

RIN 0693-AB10

Proposed Revision of Federal Information Processing Standard (FIPS) 158, the User Interface Component of the Applications Portability Profile

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The purpose of this notice is to announce the proposed revision of Federal Information Processing Standard (FIPS) 158, The User Interface Component of the Applications Portability Profile. This proposed revision will adopt the X Protocol, Xlib Interface, Xt Intrinsics and Bitmap Distribution Format Specifications of the X Window System, Version 11, Release 5 (X Window System is a trademark of the Massachusetts Institute of Technology (MIT)). This proposed standard is for use by computing professionals involved in system and application software development and implementation. This proposed standard is part of a series of specifications needed for application portability.

Prior to the submission of this proposed FIPS to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain the specifications for Release 5 of the X Window System, Version 11, by electronic mail from D. Richard Kuhn, National Institute of Standards and Technology, Technology Building, room B266, Gaithersburg, MD 20899, telephone (301) 975-3337, FAX (301) 948-1784. Copies of FIPS 158 are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, telephone (703) 487-4650.

DATES: Comments on this proposed FIPS must be received on or before January 19, 1993.

ADDRESSES: Written comments concerning the proposed FIPS should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed Revision of FIPS 158, User Interface Component of APP, Technology Building, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. D. Richard Kuhn, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3337, FAX (301) 948-1784.

Dated: October 14, 1992.

John W. Lyons,

Director.

Proposed Federal Information Processing Standards Publication 158-1 (date) Announcing the Standard for the User Interface Component of the Applications Portability Profile

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

Name of Standard

The User Interface Component of the Applications Portability Profile (FIPS PUB 158-1).

Category of Standard

Software Standard, Application Program Interface.

Explanation

This publication announces the adoption of the X Protocol, Xlib Interface, Xt Intrinsics and Bitmap Distribution Format specifications of the X Window System, Version 11, Release 5 (X Window System is a trademark of the Massachusetts Institute of Technology (MIT)) as a Federal Information Processing Standard. This FIPS is identical to FIPS 158, except that the specification is updated from Release 3 to Release 5 of the X Window System, Version 11. This standard is for use by computing professionals involved in system and application software development and implementation. This standard is part of a series of specifications needed for application portability. This standard covers the Data Stream Encoding, Data Stream Interface, and Subroutine Foundation layers of the reference model. It is the intention of NIST to provide standards for other layers of the reference model as consensus develops within industry. This standard addresses the user interface functional area of the Applications Portability Profile (SP 500-187).

Approving Authority

Secretary of Commerce.

Maintenance Agency

U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Computer Systems Laboratory.

Cross Index

The X Window System, Version 11, Release 5.

Related Documents

a. Federal Information Resources Management Regulations subpart 201-20.303, Standards, and subpart 201-39.1002, Federal Standards.

b. FIPS 160, Programming Language C.

c. FIPS 151-1, POSIX: Portable Operating System Interface for Computer Environments.

d. Applications Portability Profile (NIST SP 500-187).

Objectives

This FIPS permits Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of this FIPS are:

a. To promote portability of computer application programs at the source code level.

b. To simplify computer program documentation by the use of a standard portable system interface design.

c. To reduce staff hours in porting computer programs to different vendor systems and architectures.

d. To increase portability of acquired skills, resulting in reduced personnel training costs.

e. To maximize the return on investment in generating or purchasing computer programs by insuring operating system compatibility.

f. To provide ease of use in computer systems through network-based bit-mapped graphic user interfaces with a consistent appearance. Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard specifications.

Applicability

This FIPS shall be used for network-based bit-mapped graphic systems that are either developed or acquired for government use where distributed/networked bit-mapped graphic interfaces to multi-user computer systems are required.

Specifications

The specifications for this FIPS are the following documents from the X Window System, Version 11, Release 5. These specifications define a C language source code level interface to a network-based bit-mapped graphic system. The computer program source code contained in Version 11, Release 5 is not part of the specifications for this FIPS. The specifications for this FIPS are the following documents from X Version 11, Release 5:

a. X Window System Protocol, X Version 11,

b. Xlib—C Language X Interface,

c. X Toolkit Intrinsics—C Language Interface,

d. Bitmap Distribution Format 2.1.

Implementation

This standard becomes effective six (6) months after date of publication of the final document in the **Federal Register** announcing approval of the revised standard by the Secretary of Commerce. The other elements identified in the Appendix should be considered in planning for future procurements.

a. Acquisition of a Conforming System

Organizations developing network-based bit-mapped graphic system applications which are to be acquired for Federal use after the effective date of this standard and which have applications portability as a requirement should consider the use of this FIPS. Conformance to this FIPS should be considered whether the network-based bit-mapped graphic system applications are:

1. developed internally,

2. acquired as part of an ADP system procurement,

3. acquired by separate procurement,

4. used under an ADP leasing arrangement, or

5. specified for use in contracts for programming services.

b. Interpretation of the FIPS for the User Interface Component of the Applications Portability Profile

NIST provides for the resolution of questions regarding the FIPS specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of this FIPS should be addressed to: Director, Computer System Laboratory, Attn: APP User Interface Component FIPS Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

c. Validation of Conforming Systems

The X Consortium is developing a validation suite for measuring conformance to the Xlib component of this standard. NIST is considering the use of the X Consortium validation suite as the basis for an NIST validation suite for measuring conformance to this standard.

Waivers

Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

[FR Doc. 92–25361 Filed 10–19–92; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Marine Mammals

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

ACTION: Issuance of Public Display Permit No. 774.

On January 14, 1992, notice was published in the **Federal Register** (57 FR 1458) that an application had been filed by Sea World, Inc. for a permit to import killer whales (*Orcinus orca*), one (1) adult male, two (2) adult females and possibly two (2) calves, for public display at Sea World facilities in Florida and Texas.

Notice is hereby given that on October 7, 1992, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) the National Marine Fisheries Service issued a Permit for the above importation subject to certain conditions set forth therein.

Issuance of this permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The National Marine Fisheries Service has determined that Sea World, Inc. offers an acceptable program for education or conservation purposes. Sea World, Inc. facilities are open to the public on a regularly scheduled basis and access to these facilities is not limited or restricted other than by the charging of an admission fee.

The Permit is available for review by interested persons by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: October 7, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–25381 Filed 10–19–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

October 14, 1992.

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

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

EFFECTIVE DATE: October 21, 1992.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6709. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

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

The U.S. Government has agreed to increase the limits for Categories 239, 336/836 and 342 for the 1992 agreement period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 56506, published on November 5, 1991.

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

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 14, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 29, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on October 21, 1992, you are directed to amend further the directive dated October 29, 1991, to increase the limits for the following categories:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
239	130,000 kilograms.
336/836	26,000 dozen.
342	45,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

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

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–25346 Filed 10–19–92; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Intent to Grant an Exclusive License to Kalker Industrial Rubber

AGENCY: Office of the Judge Advocate General, DOD.

ACTION: Notice.

In compliance with 37 CFR 404 et seq., the Department of the Army hereby gives notice of its intent to Kalker Industrial Rubber, a foreign corporation having its principal place of business at Route du Lude, 72200 La Fleche, France an exclusive license under European Patent Application No. 89300778.1 with designated countries of Austria, United Kingdom, Germany, France, and Sweden. This application is a foreign counterpart of U.S. Patent No. 4,843,114 entitled "Rubber Compound for Tracked Vehicle Track Pads." Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

EFFECTIVE DATE: December 22, 1992.

FOR FURTHER INFORMATION CONTACT: Comments, if any, may be addressed to the following address: Commander, U.S. Army Belvoir R, D, & E Center, ATTN: SATBE–D (Karen Gordon), Fort Belvoir, VA 22060–5606.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–25324 Filed 10–19–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Advisory Council on Educational Research and Improvement; Meeting

AGENCY: National Advisory Council on Educational Research and Improvement, Education.

ACTION: Full Council Meeting of the National Advisory Council on Educational Research and Improvement.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Educational Research and Improvement. This notice also describes the functions of the Council. Notice of this meeting is required section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND MEETING TIMES: November 12 and 13, 1992, 8:30 a.m. to 5:30 p.m. On November 12 meeting will take place at the Hyatt Regency Hotel Washington on Capitol Hill (Room will be posted). On November 13 meeting will take place from 8:30 a.m. to 12:30 p.m. at the National Demonstration Laboratory for Interactive Information Technologies, Madison Building, Library of Congress. From 1:30 p.m. to 5:30 p.m. the meeting will continue in the Madison Building (location will be posted).

ADDRESSES: Hyatt Regency Washington on Capitol Hill Hotel 400 New Jersey Avenue, NW., Washington, DC 20001.

National Demonstration Laboratory for Interactive Information Technologies, Madison Building, Library of Congress, 101 Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Executive Director, National Advisory Council on Educational Research and Improvement, 330 C Street, SW., Washington, DC 20202–7579, (202) 205–9004.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Educational Research and Improvement is established under section 405 of the 1972 Education Amendments, Public Law 92–318, as amended by the Higher Education Amendments of 1986, Public Law 99–498, (20 U.S.C. 1221e). The Council is established to advise the President, the Secretary of Education and the Congress on policies and activities carried out by the Office of Educational Research and Improvement (OERI). The meeting of the Council is open to the public. The proposed agenda for November 12 includes presentations by officials and department heads of the Office of Educational Research and Improvement on standards-setting projects and OERI's long-range planning process. On November 13 the members will examine educational applications of recently developed interactive information technology, and develop recommendations for further research. The final agenda will be available from the Council office on November 2. Records are kept of all Council Proceedings and are available for public inspection at the Office of the National Advisory Council on Educational Research and Improvement, 330 C Street, SW., suite 4076, Washington, DC 20202–7579, from 9 a.m. to 5 p.m. Monday through Friday.

Dated: October 15, 1992.

Anne Carson Daly,

Acting Executive Director.

[FR Doc. 92–25353 Filed 10–19–92; 8:45 am]

BILLING CODE 4000–01–M

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: November 16–17, 1992, from 9 a.m. to 5 p.m. On November 16, 1992, from 9 a.m. to 5 p.m., the meeting will be closed to the public. The open portion of the meeting will be held November 17, 1992, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Albuquerque Hilton Hotel, 1901 University Boulevard, NE., Albuquerque, New Mexico 87102, 505/844–2500.

FOR FURTHER INFORMATION CONTACT: Robert K. Chiago, Executive Director, National Advisory Council on Indian Education, 330 C Street, SW., room 4072, Switzer Building, Washington, DC 20202–7556. Telephone: 202/205–8353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (part C, title V, Pub. L. 100–297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

Under section 5342(b)(6) of the Indian Education Act, (20 U.S.C. 2642) the Council is directed to submit to the Secretary of Education a list of nominees for the position of Director of the Office of Indian Education whenever a vacancy in such position occurs. The Council will meet in closed session starting at approximately 9 a.m. until 5 p.m. on Monday, November 16, 1992 to interview applicants for the position of Director of the Office of Indian Education.

The discussion during the interviews may disclose sensitive information about applicants. Such discussions would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. In addition, the interviews will relate solely to the internal personnel rules and practices of an agency. Such matters are protected by exemption (2) and (6) of section 552(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c)).

In addition to the closed meeting on November 16, there will be an open business meeting of the National Advisory Council on Indian Education on Tuesday, November 17, 1992. This meeting will be held from 9 a.m. to approximately 5 p.m.

A summary of the activities at the closed session which are informative to the public consistent with the policy of title 5 U.S.C. 552b will be available for public inspection within 14 days after the meeting

Records are kept of all Council proceedings and shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 330 C Street SW., room 4072, Washington, DC 20202–7556 from the hours of 9 a.m. to 5 p.m., Monday through Friday.

Dated: October 7, 1992.

Eddie L. Tullis,

Chairman, National Advisory Council on Indian Education.

[FR Doc. 92–25313 Filed 10–19–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Statement of Findings for Surface Water Monitoring Station Upgrades and Installations at the Rocky Flats Plant, Golden, CO

AGENCY: Department of Energy.

ACTION: Floodplain statement of findings.

SUMMARY: This Statement of Findings is prepared pursuant to Executive Order (EO) 11988 and 10 CFR part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. The Department of Energy (DOE) has determined that some activities associated with water quality monitoring are proposed to be within the 100-year floodplains of Woman, Walnut, and Rock Creeks. These actions are needed to comply with Clean Water Act regulatory requirements applicable to the Rocky Flats Plant. On the basis of the Floodplain Assessment for the proposed actions prepared pursuant to 10 CFR part 1022, the DOE has determined that there is no practicable alternative to the proposed actions. In compliance with EO 11988, the floodplain actions that will be taken have been designed to avoid or minimize potential impacts on the floodplain and they conform to applicable floodplain requirements of Jefferson County, Colorado. The DOE expects the actions will have no effect on the floodplain. The Notice of Floodplain Involvement was published in the **Federal Register** [57 FR 19890 (May 8, 1992)] and no public comments were received.

DATES: Comments on the Statement of Findings must be postmarked by November 4, 1992.

ADDRESSES: Comments concerning this Statement of Findings or requests for copies of the Floodplain Assessment should be addressed to: Beth Brainard, Public Affairs Office, U.S. Department of Energy, Rocky Flats Office, P.O. Box 928, Golden, CO 80402–0928; telephone (303) 966–5993. Fax comments to: (303) 966–6633.

FOR FURTHER INFORMATION CONTACT: For information on the proposed action, contact the Rocky Flats Office at the address identified above. For information on DOE floodplain/wetland environmental review requirements, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202) 586–4600 or (800) 474–2756.

SUPPLEMENTARY INFORMATION: DOE proposes two projects at the Rocky Flats Plant, located approximately 16 miles northwest of Denver, Colorado. The two projects involve the upgrade and installation of surface water monitoring stations at 12 locations within the 100-year floodplain at the Plant (Figure 1).

The purpose of the project is to characterize stream flows at the plant site. This requires the placement of new flumes, with corresponding samplers and sensors, in the stream channel and, therefore, within a floodplain. Shelters containing the electronic equipment are placed within 30 feet of the flumes, which would require some shelters to be located in floodplains.

The basic components of each monitoring station would be a flume, water sampling and measurement instrumentation, recording devices, and a fiberglass shelter anchored to a concrete pad. The flumes would range from 1.5 to 4.5 feet wide. Instruments housed in each shelter would be connected to sampling and measurement devices in each flume via cables and tubing extending between the flume and shelter. The cables and tubing would be protected by PVC piping buried approximately 8 inches below the ground surface. Utility poles to bring power to the stations would be installed where needed.

The two projects would establish a series of gauging stations that monitor water flow and quality, and furnish automated sampling for collection of composite or sequential samples. Volatile and semivolatile organic compounds, pesticides, PCBs, metals, radionuclides, anions, and other parameters would be evaluated during sampling. This information would be factored into future water management plans for the Plant site.

Alternative locations for the monitoring stations were considered in planning the projects. The proposed locations were selected where deep, narrow stream configurations would provide good monitoring results and require the least area to be disturbed during flume installation. The alternative locations were rejected because construction there would be more expensive and disturb a greater channel and wetland surface area.

The no action alternative would produce no impacts on floodplains. However, taking no action would not meet the need to characterize water conditions to support the development of water management plans. This lack of data would impair the Plant's ability to develop adequate plans to comply with regulatory requirements. Therefore, the no-action alternative is unacceptable.

The project complies with section 42 of the Jefferson County Zoning Resolution, which identifies requirements for construction in floodplains.

Fiberglass and concrete shelters for monitoring equipment would be located outside the floodplain where possible, to minimize potential harm to or within the floodplain.

None of the facilities located within the floodplains would cause a rise in the 100-year floodplain elevation and would not significantly alter the hydraulic characteristics of the floodplain.

Prior to implementing the proposed floodplain action, the DOE will allow at least fifteen (15) days of public review after publication of the Statement of Findings.

Issued at Washington, DC, this 14th day of October, 1992.

Richard A. Claytor,

Assistant Secretary for Defense Programs.

[FR Doc. 92–25420 Filed 10–19–92; 8:45 am]

BILLING CODE 6450–01–M

Statement of Findings for Well Plugging and Abandonment Program at the Rocky Flats Plants, Golden, CO

AGENCY: Department of Energy.

ACTION: Floodplain statement of findings.

SUMMARY: This Statement of Findings is prepared pursuant to Executive Order (EO) 11988 and 10 CFR part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. On April 2, 1992, the Department of Energy (DOE) published a "Notice of Involvement in Floodplains/Wetlands" regarding implementation of a Well Abandonment Program at its Rocky Flats Plant (RFP) north of Golden, Colorado [57 FR 11304 (April 2, 1992)]. The Program involves the plugging and capping of older ground water monitoring wells at the RFP, that no longer produce reliable data due to age and deterioration.

In compliance with EO 11988, the floodplain actions that will be taken have been designed to avoid or minimize potential impacts on the floodplain and they conform to floodplain requirements of Jefferson County, Colorado. On the basis of the floodplain assessment for the proposed action prepared pursuant to 10 CFR part 1022, the DOE expects that the project would have no positive or negative effects on floodplain valves.

DATES: Comments on the Statement of Findings must be postmarked by November 4, 1992.

ADDRESSES: Comments concerning this Statement of Findings or requests for copies of the Floodplain/Wetlands Assessment should be addressed to: Beth Brainard, Public Affairs Office, U.S. Department of Energy, Rocky Flats Office, P.O. Box 928, Golden, CO 80402–0928; Telephone (303) 966–5993; Fax comments to: (303) 966–6633.

FOR FURTHER INFORMATION CONTACT: For information regarding the proposed action, contact the Rocky Flats Office at the address identified above. For information on DOE floodplain/wetlands environmental review requirements contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW.; Washington, DC 20585; telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: During the past thirty years, numerous wells have been drilled at the RFP for purposes of characterizing the site and identifying the nature and extent of underground contamination. Fifty-six wells constructed before 1986 are initially being proposed for abandonment. Eleven of the fifty-six wells are located in floodplains.

Decommissioning a well typically involves removal of all man-installed material from the well, including the existing bentonite grout, the bentonite seal, a silica-sand filter and the well casing. The casing of some wells may not be removable due to well depth, casing condition or other factors. In these cases, the well casing and the protective surface casing (a larger-diameter pipe surrounding the upper portion of the well casing) may be left in place below the ground surface. Abandonment would be accomplished

in this manner only when absolutely necessary.

After the casing is removed, the resulting hole is reamed to the original construction depth and diameter to remove any remaining annular material and debris. The resulting borehole is then filled with bentonite grout. Wells whose casing is not removed would be abandoned by filling the casing with bentonite grout, and cutting the well casing and surface casing off below ground level.

A concrete pad would be poured at all abandonment locations to provide a surface seal. A metal cap showing the well identification number and the date of abandonment would be anchored to the concrete slab. Abandonment of a given well would take 1–2 days.

The only other alternative considered in the assessment was the no-action alternative. The no-action alternative is unacceptable because leaving the wells in place would have the potential to spread contaminants vertically through the groundwater.

Activities under the Well Abandonment Program are consistent with the guidance provided by section 42 of the Jefferson County, Colorado, zoning regulations. The State of Colorado defers regulation of floodplains to local governments.

Because of the negligible impacts on floodplains from the project, few steps are needed to minimize potential harm. Measures that would be implemented are:

(1) Travel within floodplains would be restricted to established roads and tracks where they are available;

(2) Where trees block access to a well, the trees would be trimmed rather than cut down, if trimming alone would permit the necessary access;

(3) If bringing the grout plant to a well site would result in impacts greater than those necessitated by driving the drilling rig to the well site, grout would be pumped to the well instead; and

(4) Work would not be done during periods of high soil moisture when vehicles would cause damage to the terrain.

Prior to implementing the proposed floodplain action, the DOE will endeavor to allow at least fifteen (15) days of public review after publication of the Statement of Findings.

Issued at Washington, DC, this 14 day of October, 1992.

Richard A. Claytor,

Assistant Secretary for Defense Programs.

[FR Doc. 92–25444 Filed 10–19–92; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review By the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed by November 19, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA–412, 759, 826, 860, 861, and 867.
3. 1905–0129.
4. Electric Power Surveys.
5. Revision.
6. Monthly—EIA–759, EIA–826; Annually—EIA–412, EIA–860, EIA–861, EIA–867.
7. Mandatory.
8. Businesses or other for-profit, Federal agencies or employees.
9. 7,090 respondents.
10. 2.63 responses per respondent.
11. 4.03 hours per response.
12. 75,189 hours.
13. The Electric Power Surveys collect information on capacity, generation, fuel consumption, receipts and stocks, prices, electric rates, constructions costs, and operating income and revenue of electric utility companies. Data are published in various EIA reports. Respondents are primarily electric utilities (EIA–867, nonutility generating facilities).

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC., October 13, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92–25421 Filed 10–19–92; 8:45 am]

BILLING CODE 6450–01–M

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The

listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection;

(7) Response obligation i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collected submitted to OMB for review was:

1. Fossil Energy.
2. FE–748.
3. 1901–0291.
4. Enhanced Oil Recovery Annual Report.
5. Extension.
6 Annually.
7. Voluntary.
8. Businesses and other for-profit.
9. 40 respondents.
10. 1 response per respondent.
11. 2 hours per response.
12. 80 hours.
13. FE–748 collects data on changes in well data, description of operation, average monthly production, and injection on projects in the enhanced oil recovery incentive program. Data are published. Respondents are individuals or companies that have enhanced oil recovery projects approved for the incentive program.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. § 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, October 13, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92–25422 Filed 10–19–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ES93–1–000, et al.]

Northwestern Public Service 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. Northwestern Public Service Company

[Docket No. ES93–1–000]

October 9, 1992.

Take notice that on October 6, 1992, Northwestern Public Service Company (NWPS) filed on application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue and deliver not more than $21 million to Grant County, South Dakota, Mercer County, North Dakota, and the City of Salix, Iowa, separate securities in the form of Pollution Control Refunding Obligations to refund outstanding Pollution Control Obligations which previously were issued in connection with the financing of the construction of NWPS's undivided share of certain pollution control facilities at the Big Stone Electric Generating Plant in Grant County, South Dakota, at the Coyote I Electric Generating Plant near the City of Salix, Iowa.

NWPS also seeks exemption from the competitive bidding requirements of § 34.2(a) of the Commission's Regulations as a negotiated placement under § 34.2(b) of the Regulations, or in the alternative, as the issuance of securities to holders of existing securities on a pro rata basis under § 34.2(a)(1)(i) of the Regulations.

Comment date: October 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Oklahoma Gas and Electric Company

[Docket No. ES92–62–000]

October 13, 1992.

Take notice that on September 29, 1992, Oklahoma Gas and Electric Company filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than $300 million of short-term debt on or before December 31, 1994, with a final maturity date no later than December 31, 1994.

Comment date: October 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Colorado

[Docket No. ES92–873–000]

October 13, 1992.

Take notice that on September 30, 1992, Public Service Company of Colorado tendered for filing in this docket a contract for transmission services between itself and Tri-State Generation and Transmission Association, Inc.

Comment date: October 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Kramer Junction Company, et al.

[Docket No. EL93–1–000]

October 9, 1992.

Take notice that on October 6, 1992, Kramer Junction Company, General Partner of LUZ Solar Partners, Ltd., III (LSP III), LUZ Solar Partners, Ltd., IV (LSP IV), LUZ Solar Partners, Ltd., V (LSP V), LUZ Solar Partners, Ltd., VI (LSP VI), LUZ Solar Partners, Ltd., VII (LSP VII); Harper Lake Company VIII, Administrative General Partner of LUZ Solar Partners, Ltd., VIII (LSP VIII); and HLC IX Company, Administrative General Partner of LUZ Solar Partners, Ltd., IX (LSP IX), filed a request for a 120-day waiver of the 25 percent fossil fuel use limitation established for qualifying small power production facilities (QFs) by § 292.204(b)(2) of the Commission's Rules and Regulations, 18 CFR 292.204(b)(2), implementing title II of the Public Utility Regulatory Policies Act of 1978 (PURPA). The Petitioners request that the waiver be applied to all seven QF solar projects to which the

Petitioners are General or Administrative General Partners and be effective as of November 1, 1992. The Petitioners also request expedited consideration of the request for waiver and a public comment period not to exceed fifteen days.

Comment date: October 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. United States Department of Energy—Western Area Power Administration (Salt Lake City Area Integrated Projects)

[Docket Nos. EF92–5172–000 and EF92–5172–001]

October 9, 1992.

Take notice that on October 6, 1992 and October 7, 1992, the United States Department of Energy—Western Area Power Administration (WAPA) tendered for filing in the respective dockets shown above its response to an earlier deficiency letter from the Commission concerning its filing in Docket No. EF92–5172–000 and its corrected firm power rate in this docket.

Comment date: October 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Bangor Hydro-Electric Company

[Docket No. ER93–8–000]

October 9, 1992.

Take notice that Bangor Hydro-Electric Company (Bangor) on October 6, 1992, tendered for filing and four Service Agreements which provide for service pursuant to Bangor's Rate Schedule tendered for filing in Docket No. ER92–697–000.

Bangor requests that the Commission waive its notice requirement in order to allow the Service Agreements to become effective on October 15, 1992.

Comment date: October 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. New York Power Pool

[Docket No. ER93–9–000]

October 9, 1992.

Take notice that on October 6, 1992, the member systems of the New York Power Pool (NYPP) submitted for filing with the Commission a proposed amendment to the NYPP Agreement, on file with the Commission as NYPP FERC Rate Schedule No. 1. The proposed amendment is an increase to the T-Fund percentage of savings rate; this charge is part of the compensation mechanism for the members' provision of transmission services in conjunction with economy energy transactions. The NYPP member systems propose that the change be effective 60 days after filing. The member systems state that copies of the filing have been served on the New York Public Service Commission and all member of NYPP.

Comment date: October 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Iowa-Illinois Gas and Electric Company

[Docket No. ER93–7–000]

October 9, 1992.

Take notice that Iowa-Illinois Gas and Electric Company (Iowa-Illinois), 206 East Second Street, P.O. Box 4350, Davenport, Iowa 52808, on October 5, 1992, tendered for filing pursuant to § 35.13 of the Regulations under the Federal Power Act a rate schedule change in the form of a Third Electric Service Agreement dated August 12, 1992 (the Agreement) between Iowa-Illinois and City of Eldridge, Iowa (Eldridge).

Iowa-Illinois states the Agreement applies only to transactions between Iowa-Illinois and Eldridge. The Agreement is identical in all respects to the Second Electric Service Agreement except for the term. The term of the Second Electric Service Agreement commenced on October 1, 1989 and ended on December 31, 1992. The term of the Agreement commences on January 1, 1993 and ends on December 31, 1995.

Iowa-Illinois proposes the rate schedule change to be effective on Jaunary 1, 1993.

Copies of the filing were served upon the Illinois Commerce Commission, the Iowa Utilities Board and Eldridge.

Comment date: October 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Iowa Public Service Company

[Docket No. ER92–846–000]

October 9, 1992.

Take notice that on September 21, 1992, Iowa Public Service Company (Iowa) tendered for filing Amendment No. 2 to Notices of Cancellation to reinstate Rate Schedule Nos. 42 and 66 effective from the termination date of May 28, 1992.

Comment date: October 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. John T. Newton

[Docket No. ID–2750–000]

October 9, 1992.

Take notice that on October 2, 1992, John T. Newton (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Chairman of the Board, President and Chief Executive Officer—Kentucky Utilities Company.
Director—Bank One, Lexington, N.A.

Comment date: October 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Illinois Power Company

[Docket No. ER92–809–000]

October 9, 1992.

Take notice that on September 29, 1992, Illinois Power Company for an amendment to its original filing filed in this docket on August 31, 1992.

Comment date: October 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Power, Inc.

[Docket No. ER92–874–000]

October 9, 1992.

Take notice that Entergy Power, Inc. (EPI), on September 30, 1992, tendered for filing an Amendment to a unit capacity letter agreement with Oglethorpe Power Corporation (EPI Rate Schedule FERC No. 5). The Amendment clarifies a substitute energy provision in the letter agreement, and effectively decreases the energy price.

EPI request an effective date for the Amendment of October 1, 1992, and requests waiver of the Commission's notice requirements in accordance with § 35.11 of the Commission's regulations.

Comment date: October 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of New Hampshire

[Docket No. ER92–74–000]

October 9, 1992.

Take notice that Public Service Company of New Hampshire (PSNH) tendered for filing on September 30, 1992, supplemental information regarding the Exchange Agreement Between PSNH and Northeast Utilities Service Company as agent for The Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO).

Comment date: October 23, 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 Commissions' 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. 92-25418 Filed 10-19-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. F-054]

Energy Conservation Program for Consumer Products; Decision and Order Granting a Waiver From the Furnace Test Procedure to Evcon Industries, Inc.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F-054) granting a waiver to Evcon Industries, Inc. (Evcon) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Evcon its Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its BGV upflow, BGH horizontal, and BGD downflow series of gas furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Evcon has been granted a Waiver for its BGV upflow, BGH horizontal, and BGD downflow series of gas furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, October 14, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

In the Matter of: The Evcon Industries, Inc. (Case No. F-054)

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Evcon filed a "Petition for Waiver," dated June 10, 1992, in accordance with § 430.27 of 10 CFR part 430. DOE published in the **Federal Register** on July 31, 1992, Evcon's petition and solicited comments, data and information respecting the petition. 57 FR 33950. Evcon also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on July 27, 1992. 57 FR 33950, July 31, 1992.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." DOE consulted with The Federal Trade Commission (FTC) concerning the Evcon Petition. The FTC did not have any objections to the issuance of the waiver to Evcon.

Assertions and Determinations

Evcon's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Evcon requests the allowance to test using a 30-second blower time delay when testing its BGV upflow, BGH horizontal, and BGD downflow series of gas furnaces. Evcon states that since the 30-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 1.0 to 2.0 percent, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Evcon indicates that it is unable to take advantage of any of these exceptions for its BGV upflow, BGH horizontal, and BGD downflow series of gas furnaces.

Since the blower controls incorporated on the Evcon furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the Evcon BGV upflow, BGH horizontal, and BGD

downflow series of gas furnaces. Accordingly, with regard to testing the BGV upflow, BGH horizontal, and BGD downflow series of gas furnaces, today's Decision and Order exempts Evcon from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Evcon Industries, Inc. (Case No. F–054) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, Evcon Industries, Inc. shall be permitted to test its BGV upflow, BGH horizontal, and BGD downflow series of gas furnaces on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t—), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t—), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Evcon Industries, Inc. shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the BGV upflow, BGH horizontal, and BGD downflow series of gas furnaces manufactured by Evcon Industries, Inc.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective October 20, 1992, this Waiver supersedes the Interim Waiver granted The Evcon Industries, Inc. on July 27, 1992. 57 FR 33950, July 31, 1992 (Case No. F–054).

Issued In Washington, DC, October 14, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92–25443 Filed 10–19–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Special Research Grant Program Notice 93–02: Pre-Service Teacher Enhancement Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Science and Technology Advisor of the U.S. Department of Energy (DOE) announces its interest in receiving applications for Special Research Grants to be submitted by four-year accredited institutions of higher education, to support innovative pre-service approaches to encouraging science and mathematics majors to become precollege teachers. Examples of pre-service approaches include but are not limited to: programs which emphasize transfer of research experiences to the classroom; intern programs and in-school activities which provide the potential teacher with quality experiences working under the guidance of a master teacher through college/university-school system collaboration; conferences to explore effective mechanisms to encourage science and math majors, including women, underrepresented minorities and the handicapped, to pursue careers as precollege teachers; programs to encourage high school students to pursue science and mathematics majors with the goal of entering the precollege teaching profession; programs which encourage students majoring in science and mathematics to become elementary school teachers or specialists; and college/university programs which include content specific pedagogy, utilization of faculty members who have demonstrated the most effective teaching strategies in the precollege classrooms, and collaboration between the science/mathematics and education departments.

DATES: To permit timely consideration for award in Fiscal Year 1993, formal applications submitted in response to this notice should be received no later than 4:30 p.m., December 9, 1992. No electronic submissions of formal applications will be accepted.

ADDRESSES: Completed formal applications referencing Program Notice 93–02 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, Washington, DC 20585, Attn: Program Notice 93–02. The following address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Cynthia Musick, Program Manager, Office of University and Science Education Programs, ST–50, Office of Science and Technology Advisor, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0987.

SUPPLEMENTARY INFORMATION: The DOE is strongly committed to increasing the number of students interested in science, mathematics and technology careers, including an increase in the number of students majoring in science mathematics and technology who will become precollege teachers. In accordance with 10 CFR 600.7(b)(1), eligibility for awards under this notice is limited to four-year accredited institutions of higher education because this program supports innovative pre-service approaches to encouraging

science and mathematics majors to become precollege teachers. Such students must participate in programs which will lead to graduation from, and attainment of certification through, an accredited four-year teacher education program. Collaborative efforts and encouraged and may include, but are not limited to: A significant involvement and commitment of the participating local school system(s); enterprises which utilize the scientific and technical expertise of research facilities including the DOE national laboratories and other research contractors, particularly for research experiences; and the broader educational community, including science museums/science centers. Other elements which may strengthen applications include, but are not limited to, the utilization of master mathematics/science teachers; the linkage of programs with state curriculum frameworks; the conformation of programs with the new National Council of Teachers of Mathematics (NCTM) Math Standards; the linkage between schools of education and disciplinary departments; the commitment of the institution of higher education to support this project by providing financial support through the provision of scholarships, forgivable loans or other incentives; academic credit for research or in-school experiences for the participating students; and effective on-campus programs. All applications are required to have an evaluation component which demonstrates the effectiveness of the program.

Contingent upon availability of FY 1993 appropriated funds, it is anticipated that approximately $400,000 will be available to fund five to eight new grants with a range of $50,000 to $100,000 with terms lasting up to 2 years.

This notice requests further that the "Detailed Description of Research Work Proposed" component of a complete grant application as required by 10 CFR part 605 should not exceed 15 double-spaced, typed pages. The description of work should include the conceptual design and how that design relates to the program objectives; the target audience(s) the project will serve and efforts planned to serve that audience; the mechanisms to be used to organize and manage the project, including the rules and responsibilities, financial and otherwise, of any partnerships; the monitoring and evaluation plan, including how those plans can be used for possible project modification; the planned outcomes and how these outcomes will be assessed and reported; and the anticipated significance of the project and how it will be confirmed.

Information about the development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the ER Special Research Grant Application Kit and Guide. The application kit and guide and copies of 10 CFR part 605 are available from the U.S. Department of Energy, Office of Energy Research, Office of University and Science Education Programs, ST–50, Washington, DC 20585. Telephone requests may be made by calling (202) 586–8949.

The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on October 7, 1992.

D. D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 92–25423 Filed 10–19–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL—4524–7]

Regulation of Fuel and Fuel Additives; Administrator's Finding That No Control or Prohibition on Maximum Oxygen Content of a Winter Oxygenated Gasoline Program is Necessary Under Section 211(c)(4)(A) of the Clean Air Act as Amended by the Clean Air Act Amendments of 1990

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Proposed Finding under section 211(c)(4)(A)(i) of the Clean Air Act as Amended.

SUMMARY: EPA is proposing to issue a finding that "no control or prohibition" on the maximum oxygen content of oxygenated gasoline as required under section 211(m) is "necessary" under section 211(c)(4)(A)(i) of the Clean Air Act ("the Act"). Section 211(c)(4)(A) provides generally that no state or political subdivision of a State may "prescribe or enforce, for purposes of motor vehicle control" a control or prohibition respecting a characteristic or component of a motor vehicle fuel or fuel additive if the Administrator has found that no such control or prohibition is necessary and has published such a finding in the **Federal Register**, unless the state prohibition or control is identical to the prohibition or control prescribed by the Administrator. Some states are considering controls on the maximum oxygen content of oxygenated gasoline in response to a concern that oxygenates cause an increase in nitrogen oxides (NO_x) emissions as compared to non-oxygenated gasoline. EPA has reviewed existing and recently generated data on the effect of oxygenates on vehicle NO_x emissions, and has concluded (for reasons discussed below) that controls or prohibitions on maximum oxygen content at 2.7% oxygen by weight and above are not necessary within the meaning of section 211(c)(4)(A). The effect of EPA making such a finding would be to preempt state controls on maximum oxygen content in conjunction with section 211(m) oxygenated gasoline programs. The proposed finding would not preclude a state from seeking and obtaining a waiver under section 211(m)(3)(A) based on the state's demonstration that the use of oxygenated gasoline in an area in the state would prevent or interfere with the attainment by the area of a National Ambient Air Quality Standard or a state or local ambient air quality standard for a pollutant other than carbon monoxide, nor would it preclude a state from seeking any other waiver permitted under section 211(m) of the Clean Air Act.

DATES: The comment period will close December 7, 1992. The Agency plans to hold a public hearing on this proposal November 6, 1992 at 10 a.m. to 4 p.m.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to the Air Docket Section, Docket A–92–24, at the above address. A copy should also be sent to Mr. Alfonse Mannato at the EPA address listed below: U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW. (6406–J), Washington, DC 20460.

The public hearing will be held at the Rossyln Westpark Hotel, 1900 North Fort Myer Drive, Arlington, VA 22209, (703) 527–4814.

Materials relevant to this proposed finding have been placed in Docket A–92–24 by EPA. The docket is located in the Air Docket Section (LI–131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500 of Waterside Mall and may be inspected from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Alfonse Mannato, (202) 233–9050.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 211(m) of the Act requires that various states submit revisions to their State Implementation Plans (SIPs), and implement oxygenated gasoline programs no later than November 1, 1992. This requirement applies to all states with carbon monoxide nonattainment areas with design values of 9.5 parts per million or more based on 1988 and 1989 data.[1] Each state's oxygenated gasoline program must require gasoline in the specified nonattainment areas to contain not less than 2.7 percent oxygen by weight during that portion of the year in which the areas are prone to high ambient concentration of carbon monoxide. The length of the control period is to be established by the Administrator and shall not be less than four months in length unless a state can demonstrate that, because of meteorological conditions, a reduced period will assure that there will be no carbon monoxide exceedances outside of such reduced period. These requirements are to generally cover all gasoline sold or dispensed in the larger of the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical Area (MSA) in which the nonattainment area is located.

EPA used the regulatory negotiation process in developing proposed and supplemental proposed guidelines, as well as proposed labeling regulations, for oxygenated gasoline programs. More detail regarding the oxygenated gasoline program and the regulatory negotiation process is provided in today's **Federal Register** notices announcing these actions.

Some parties who participated in the development of the oxygenated gasoline program guidance have raised the concern that the use of oxygenated gasoline, while reducing CO emissions for motor vehicles, will cause an increase in NO_x emissions over non-oxygenated gasoline. In response to this concern, some states that are required to implement oxygenated gasoline programs have suggested that a control or cap on the maximum oxygen content of gasoline would control NO_x emissions during the oxygenated gasoline control period. The focus of the caps issue is not the overall effect of oxygen on emissions. Instead, the focus is on the potential for increased levels of oxygenate to incrementally increase NO_x emissions in the absence of maximum oxygen content cap.

Specifically, at least several states are considering a cap of 2.7% to 2.9% oxygen content. Under EPA's gasohol waiver [2] gasoline blends of up to 10% ethanol by volume are allowed. A 10% blend of ethanol and gasoline results in 3.51% oxygen by weight. Thus, a cap at 2.7% oxygen content by weight or above would have the effect of precluding the use of 10% ethanol blends.[3]

Some comments received in response to the "Supplemental Notice of Proposed Guidelines for Oxygenated Gasoline Credit Programs under section 211(m) of the Clean Air Act as Amended" [4] stated that caps on oxygen content are discriminatory against ethanol and therefore do not allow for competition between oxygenates. These comments will be addressed fully in the final Notice of Guidelines for oxygenated gasoline credit programs, to be issued shortly.

EPA has recently generated data on the effect of oxygenates on vehicle NOx emissions and has considered the need for oxygen content caps to avoid potential increases in NOx that might otherwise occur as a result of the oxygenated gasoline program and the effects such caps may have on the availability of ethanol for use in the program. With this notice, EPA proposes to find under section 211(c)(4)(A)(i) that no control or prohibition on the maximum oxygen content of oxgenated gasoline at or above 2.7% by weight is necessary under section 211(c)(1) of the Act. This finding is limited to caps on oxygenate levels between 2.7% and 3.51%. Section 211(c)(4)(A) provides that:

> (4)(A) Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting any characteristic or component of a fuel or fuel additive in a motor vehicle or motor vehicle engine—
>
> (i) *if the Administrator has found that no control or prohibition of the characteristic or component of a fuel or fuel additive under paragraph (1) is necessary and has published his finding in the Federal Register,* or
>
> (ii) if the Administrator has prescribed under paragraph (1) a control or prohibition applicable to such characteristic or component of a fuel or fuel additive, unless State prohibition or control is identical to the prohibition or control prescribed by the Administrator." [Emphasis added].

EPA is proposing this finding because the Agency believes that such caps would have little, if any, environmental benefit but would have a serious negative impact on the ethanol industry, which, as explained below, is important for national environmental, energy security, and economic reasons.

EPA has placed several technical documents, including one titled "Effect of a Cap on Nitrogen Oxide Emissions," in the Docket for this action.

II. Legal Authority

The Agency believes the section 211(c) scheme—which grants EPA control over environmental regulation of fuels—and the legislative history of the oxygenated gasoline program authorize the Agency to take the action being proposed today.

The section 211(c) general authority to regulate fuels was added in virtually its current form in the first major expansion of the clean air law in 1970. The legislative history reveals that Congress believed broad authority to regulate fuels was necessary in conjunction with authority over motor vehicles to most effectively address motor vehicle emissions.[5] While concern about lead gasoline additives was prominent, Congress also recognized the potential need for other fuel regulations.[6] Thus, in paragraph (1) of section 211(c) Congress provided broad authority to regulate fuel to fuel and fuel additives in two circumstances: (A) if the emission products of the fuel or fuel additive may reasonably be anticipated to endanger [7] the public health or welfare; or (B) if such emission products will impair the performance of emission control equipment to a significant degree. At the same time, Congress indicated that it wanted the need for fuel regulations to be carefully considered before such regulations were promulgated. It enacted subparagraph (2)(A), mandating that EPA [8] consider all relevant

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[1] The Agency has determined that the 1988 and 1989 data for several areas is inadequate to properly characterize the ambient concentrations of carbon monoxide. Therefore, for these areas—Boston, Cleveland, and Washington, DC—older, more accurate data has been used.

[2] Ethanol may be blended with gasoline at up to 3.5% by weight under a section 211(f) waiver.

[3] As explained in more detail later, ethanol is generally blended into gasoline at 10% volume because 10% ethanol blends receive a federal tax exemption. Ethanol blends at less that 10% by volume would also be eligible for a 54 cent per gallon of ethanol tax credit under pending legislation.

[4] 57 FR 4413 (February 5, 1991).

[5] *See* Administration letter to Committee on Conference, Legislative History of the Clean Air Amendments of 1970 ("1970 History"), Senate committee on Public Works, 93rd Cong., 2d Sess., at 217 (1974).

[6] *See* 1970 History at 266–67.

[7] The clause "will endanger" was changed to "many reasonably be anticipated to endanger' in the 1977 Amendments to the Clean Air Act. Pub. L. No. 95–95 (August 7, 1977).

[8] At the time this section was added, the clean air law was still administered by the Secretary of Health, Education and Welfare.

scientific and medical evidence as well as other technologically or economically feasible means of achieving emissions standards through motor vehicle regulations before adopting fuel regulations under subparagraph (a)(A). Congress further provided that before adopting fuel regulations to protect emission control devices under subparagraph (1)(B), the Administrator must consider all scientific and economic data, including a cost benefit analysis comparing emissions control devices that do or do not require the fuel regulation (subparagraph (2)(B)).

In section 211(c)(4), Congress also recognized the need for federal preemption of state fuel regulations, in light of the interstate nature of the petroleum and auto industries, except where the state regulation is required to attain the national ambient air quality standards in a region within the State. Under paragraph (4), federal fuel regulations under paragraph (1) preempt state regulations that are not identical to federal regulations (except where a "California waiver" is applicable under section 209). Also under paragraph (4), if the Administrator believes certain fuel regulations are not necessary under paragraph (1), publication of this finding will similarly preempt States from adopting such regulations. State preemption may be overcome if EPA approves state fuel regulations included in a SIP as necessary to achieve the national primary or secondary ambient air quality standard which the SIP plan implements.

The statutory scheme and legislative history reveal Congress' intent that the Agency consider all relevant technical and economic information and options to ensure that needless, unduly burdensome, or inefficient fuel regulations are avoided. While not completely preempting State regulation, Congress fashioned section 211(c)(4) to assign EPA the responsibility of preventing the states from adopting fuel controls that EPA would not itself deem appropriate under section 211(c).

III. Environmental Basis for Oxygen Content Caps

EPA has reviewed existing and recently-generated data on the impact of oxygenates on vehicle NOx emissions. A summary of EPA's analysis follows.

At the outset, EPA notes that oxygenated blends will be used only in gasoline vehicles, and thus increase only the NOx emissions of gasoline vehicles. Gasoline vehicles account for about 50% of a typical urban area's motor vehicle NOx (diesel trucks and buses represent the rest), and about 17% of a typical area's overall NOx emissions. Hence the maximum impact on overall NOx emissions attributable to the oxygenation of gasoline will be very small.

EPA has prepared an analysis of the effects of maximum oxygen content controls on NOx emissions. This technical document, "Effect of A Cap on Nitrogen Oxide Emissions" has been placed in the public docket at the location specified in the "ADDRESSES" section of this notice. As further summarized below, the analysis indicates that the incremental effect on the total NOx inventory for a typical area with a per gallon 2.7% oxygen by weight program and a cap on oxygen content at 2.7% oxygen by weight, in comparison to a per gallon 2.7% minimum oxygen content program allowing oxygen content up to 3.5%, will be to decrease the total NOx inventory by about .04% to .08%. This assumes a 30% market share for ethanol and 70% for MTBE (reflecting EPA's current estimate of ethanol's market penetration in the absence of the cap).[9]

EPA utilized the Agency's "National Air Pollutant Emissions Estimates 1940–1990" and MOBILE4.1 modeling runs to characterize the contribution of gasoline-powered vehicles to the production of NOx. It concluded that in 1990, the contribution of gasoline-powered highway vehicles to the total U.S. NOx inventory was approximately 17%. EPA then applied the 17% figure to emission factor data for gasoline vehicles in the analysis set forth in the technical document in order to determine the effects of oxygenated gasoline use on the total NOx inventory.

The analysis contained in the technical document incorporates two equally valid methodologies for computing the effects of oxygenate usage on highway vehicle NOx emissions. Both of the methods used assume that the content of aromatics will vary with the use of oxygenates. The first method, called "method one" in the technical document, determines the effect of oxygen at the baseline aromatics level in the presence of oxygen. "Method two" determines the effect of changing the aromatics level first and then the effect due to the addition of oxygen. The difference in results obtained for the two methods indicates uncertainty in the data from which fuel oxygen effects on NOx emissions has been estimated.

Assuming a market penetration of 30% for ethanol and 70% for MTBE, EPA determined that, on average, the effect of allowing up to 3.5% oxygen by weight in gasoline will be an increase in the total NOx inventory from about 0.68% to 1.15%. A cap at 2.7% oxygen by weight reduces that effect by only 0.04% to 0.08% of the total NOx inventory.

Oxygenated gasoline has become a widely recognized strategy for reducing carbon monoxide emissions from motor vehicles. Without a cap on the maximum content of oxygen, an oxygenated gasoline program would result in the use of oxygenates up to 3.5% by weight and a reduction in the total CO inventory of about 12%. With a cap at 2.7% oxygen by weight, the reduction in the CO inventory would fall off to 11%.[10] This result assumes a 30% market penetration for ethanol and 70% market penetration for MTBE in the non-cap scenario. As a result, a cap of 2.7% would reduce the CO benefits of the oxygenated gasoline program by 1%. These results are for a per-gallon program. EPA also analyzed the impact of an oxygenate averaging program where credits generated by gasoline containing greater than 2.7% oxygen by weight is permitted to offset gasoline containing less than 2.7%. EPA believes that such a program could actually provide equivalent or lower NOx emissions than a program with an oxygen content cap at 2.7% oxygen.

The details of EPA's averaging analysis are more thoroughly explained in the technical document. Assuming a market penetration of 30% for ethanol (at 3.5% oxygen by weight), market penetration rates of 36% for MTBE at 2.7% oxygen by weight and 34% for MTBE at 2.0% oxygen by weight would need to occur in order to meet an average oxygen content of 2.7% by weight. Applying these penetration rates to the data in the technical document, EPA determined the effect on the total NOx inventory for methods one and two. For method one, averaging was shown to result in a slightly higher increase in NOx emissions compared to 100% penetration of MTBE at 2.7% oxygen by weight (0.02% higher). For method two, a slightly lower increase in NOx emissions resulted compared to 100% MTBE at 2.7% oxygen by weight (0.07% to 0.09% lower).

It is important to note that many other factors will likely reduce the future contribution of highway vehicles to NOx emissions. Among these factors are fleet turnover to cleaner vehicles,

[9] Even if ethanol penetration was 100%, which is highly unlikely, the analysis would not change significantly. *See* "Effect of a Cap on Nitrogen Oxide Emissions."

[10] Please refer to the technical document, "Effect of a Cap on Nitrogen Oxide Emissions." This document has been placed in the public docket at the location listed in the ADDRESSES section of this notice

implementation of the Tier 1 tailpipe emission standards which will reduce the NOx standard for 1994 Model Year vehicles by 60%, future controls on off-highway engines, new heavy-duty vehicle NOx standards, and enhanced I/M programs. The technical document cites projections that indicate a trend toward a dramatic decrease in the contribution of mobile sources to the total NOx inventory between the years 1990 and 2000. The reduction in highway vehicles' NOx emissions between the years 1990 and 2000 has been estimated to be between 35% and 40% [11] by one analysis and as much as 46% [12] by another. This trend indicates that the total NOx contribution of mobile sources to the total NOx inventory will be even less than indicated above by the year 2000.

In summary, EPA analysis indicates that there is a relatively small impact on NOx emissions from allowing gasoline blends at 3.5% oxygen by weight versus imposing a maximum cap of 2.7% oxygen by weight. This effect amounts to only 0.04% to 0.08% of the total NOx inventory. An averaging program may have an equivalent or lower NOx increase than is obtained through the sole use of oxygenates at 2.7% oxygen by weight.

IV. Impact of Caps on Ethanol and Oxygenated Fuels Programs

In considering the need for oxygen content caps under section 211(c), EPA may also take into account the economic considerations about which Congress was concerned in that subsection. The legislative history of the section 211(m) oxygenated gasoline program added in the 1990 Amendments highlights many of these economic considerations.

EPA believes that a cap on oxygen content at 2.7% oxygen by weight would discourage ethanol use. The legislative history of section 211(m) indicates that Congress believed ethanol use in this program would be beneficial.[13]

As explained in the Senate Report,[14] ethanol blenders receive a 54 cents per gallon federal tax exemption, making 10 percent ethanol blends exempt from 5.4 cents out of the 11.5 cents per gallon federal tax on gasoline. See 26 U.S.C. section 4081, as amended. In order to qualify for this exemption, the blend must contain a full 10 percent ethanol (within certain narrow tolerances which have been established by the Treasury Department). Additionally, if a blender purchases gasoline for which the excise tax is fully paid, that blender may recoup a "per gallon of ethanol" tax credit equivalent to the amount of the taxes which would have been exempted if the gasoline had been blended with ethanol.[15] In the latter scenario, ethanol may be added to the gasoline at levels below 10 percent and the resulting tax credit is equivalent to, on a per gallon of ethanol basis, the excise tax exemption that would have been received.

In practice, most traditional ethanol blenders have preferred to claim the excise tax exemption. These blenders prefer to never pay the exempted portion of the tax rather than to recoup the tax later as a credit. One reason might be that the net present value of currently avoided tax is greater than that of tax paid but later recouped through credits. Also, a blender may have insufficient tax liability to utilize the credit in the current tax year and may not anticipate sufficient tax liability in the near future in order to utilize the credit as a carry-forward. Finally, the credit is subject to certain limitations. Title 26, section 38(c) of the United States Code provides, in pertinent part:

> The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of the taxpayer's net income tax over the greater of—
>
> (A) the tentative minimum tax for the taxable year, or
>
> (B) 25 percent of so much of the taxpayer's net regular tax liability as exceeds $25,000."

Blenders whose tentative minimum tax exceeds the blender's net regular tax liability would not be able to utilize the credit. See 26 U.S.C. section 55 (tentative minimum tax).

The legislative history reflects Congress' intent to preserve a role for the two major oxygenates—MTBE and ethanol—in the oxygenated gasoline program. Representatives Sharp and Simpson noted that the 2.7% oxygen by weight level "was chosen in part to provide more even opportunities for competition between the two major oxygenates, and should encourage fair competition among them.[16] Of course, caps strictly are not "discriminatory" and do not prevent "fair competition" simply because they make the ethanol tax credit unavailable. Nevertheless, caps would disadvantage ethanol when compared to the economic picture Congress anticipated in setting the 2.7% minimum oxygen content requirement. The Senate Report discussion of the ethanol tax credit makes clear that Congress expected that the credit would be available to ethanol blenders.

The Agency requests comment (including supporting data and analysis) on the extent to which oxygen caps would discourage ethanol use and burden the ethanol industry.

V. Conclusion

Considering the small reductions in NOx associated with a cap are considered in light of the NOx reductions expected from mobile source programs, the Agency proposes to find under section 211(c)(4)(A)(i) that such caps under section 211(c)(1) are not necessary. The Agency believes the potential detrimental effect caps would have on the ethanol industry further supports this conclusion.

VI. Public Participation

EPA invites comments on all issues relevant to this proposed rulemaking. A hearing will be held on the date and at the location specified in the "**DATES**" section above. All comments received by December 7, 1992 will be considered in EPA's final finding. All comments will be available for inspection during normal business hours at the EPA office listed in the "**ADDRESSES**" section of this notice.

Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest extent possible and clearly label it "Confidential Business Information." Submissions containing proprietary information should be sent directly to the contact person, Mr. Alfonse Mannato, and not to the public docket. This will ensure that proprietary information is not inadvertently placed in the public docket. If a commenter

[11] Please refer to the technical document, which has been placed in the public docket.

[12] *See*, "National Air Pollutant Emission Estimates 1940–1990," prepared by EPA's Office of Air Quality Planning and Standards (OAQPS), and cited in the technical support document for this action. The OAQPS preliminary estimate also indicates a 20% reduction in the total NOx inventory from the year 1990 to the year 2000.

[13] *See Cong. Rec.* H12861 (daily ed. October 26, 1991) (statement of Rep. Sharp); *Cong. Rec.* H12880 (October 26, 1990) (statement of Rep. Madigan); *Cong. Rec.* S16962 (October 27, 1990) (statement of Sen. Baucus); 136 *Cong. Rec.* H12874 (daily ed. October 26, 1990) (statement of Rep. Rinaldo); 136 *Cong. Rec.* S1699 (October 27, 1990) (statement of Sen. Dole); *see also* Table 2.6, Draft Regulatory Support Document, "Analysis of the Supply and Demand for Oxygenates in the 1992 and 1993 Winter CO Seasons" (June 26, 1991).

[14] Report of the Senate Committee on Environment and Public Works, 101st Cong., 1st Sess., at 118–20 (1989). At the time of the Report, ethanol blends were exempt from 6 cents out of the 9 cents per gallon federal tax on gasoline applicable at that time. The gasohol tax change was made in 1990, Pub. L. 101–508, to offset a 10 cents per gallon tax credit for small ethanol producers. See 26 U.S.C. section 40(b)(4).

[15] See 26 U.S.C. sections 38, 40.

[16] *See* 136 *Cong. Rec.*, H12860 (daily ed., October 26, 1990) (statement of Rep. Sharp) and 136 *Cong. Rec.* S17253 (daily ed. October 26, 1990) (statement of Sen. Simpson).

wants EPA to base its decision on the submission labelled as confidential business information, then a nonconfidential version of the document which summarizes the key data or information should be placed in the docket.

Information covered by a claim of confidentially will be discussed by EPA only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

VII. OMB Review

This notice of proposed finding under section 211(c)(4)(A)(i) of the Clean Air Act as amended has been submitted to OMB for review. Any written comments from OMB, and EPA responses to those written comments, have been placed in the public docket at the location shown in the "**ADDRESSES**" section.

Statutory Authority: Authority for the action proposed in this notice is granted to EPA by section 211(c) of the Clean Air Act, 42 U.S.C. 7545.

Dated: October 14, 1992.

William K. Reilly,

Administrator.

[FR Doc. 92-25400 Filed 10-19-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4524-8]

Guidelines for Oxygenated Gasoline Credit Programs and Guidelines on Establishment of Control Periods Under Section 211(m) of the Clean Air Act as Amended

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of guidance documents.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of both guidance on oxygenated gasoline credit programs and guidance on establishment of control periods by area under section 211(m)(2) of the Clean Air Act as amended.

ADDRESSES: Persons wishing to receive copies of the guidance documents should contact Ms. Angela Young at (202) 233-9010. Written requests for the guidance documents may be sent to: Ms. Angela Young, Field Operations and Support Division (6406-J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Materials relevant to the guidance documents have been placed in Docket A-91-04 by EPA. The docket is located in the Air Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 in room M-1500 of Waterside Mall and may be inspected from 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket material.

EPA used the Regulatory Negotiation process in developing the notices of proposed guidance [1] and notices of supplemental proposed guidance [2] for both the oxygenated gasoline credit programs and the establishment of control periods by area. These notices were published in the **Federal Register**. Materials relevant to the Regulatory Negotiation have been placed in docket A-91-17 by EPA. The docket is located at the address listed above.

FOR FURTHER INFORMATION CONTACT: For information on the substantive content of the guidance documents, please contact Mr. Alfonse Mannato at (202) 233-9050. For copies of the guidelines, please contact Ms. Angela Young at the phone numbers specified in the "**ADDRESSES**" section.

SUPPLEMENTARY INFORMATION: Section 211(m) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 ("the Act") requires that various states submit revisions to their State Implementation Plans (SIPs) and implement an oxygenated gasoline program. This requirement applies to all states with carbon monoxide (CO) nonattainment areas with design values of 9.5 parts per million or more, generally based on data for 1988 and 1989.[3] The oxygenated gasoline program must require gasoline in the specified control areas to contain no less than 2.7% oxygen by weight during that portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide, except that a state is strongly encouraged to adopt an averaging program employing marketable oxygen credits.

Section 211(m)(5) of the Act requires that EPA promulgate guidelines for state credit programs, allowing the use of marketable oxygen credits for gasolines with a higher oxygen content than required to offset the sale or use of gasolines with a lower oxygen content than required. The guidelines announced in today's **Federal Register** notice address these state credit programs.

The guidelines announced today are to be employed in state oxygenated gasoline programs in which gasoline containing more oxygen than the minimum 2.7% by weight than is required would generate marketable credits.

The credit program guidelines are designed to ensure that all gasoline sold or dispensed in the control area, on the average, meets or exceeds the minimum oxygen content required under section 211(m).

Gasoline is typically sold or dispensed from gasoline terminals into trucks for shipment to retail stations, or transferred in bulk to other terminals. Under the Agency's averaging program guidelines, averaging at the terminal level is required. In addition, oxygenate or gasoline blending conducted in trucks at the terminal or at remote locations is to be included in such averaging. This scenario should encompass all retail gasoline in a control area and should thus result in all such gasoline meeting the required oxygen content on the average. Taking advantage of the terminals' central position in the gasoline distribution system should maximize the credit program's success while minimizing its burdens, both on the regulated community and the governmental bodies involved.

The party responsible for complying with the minimum 2.7% oxygen by weight standard on the average, over the designated averaging period, must be specifically identified. This party will be designated the Control Area Responsible Party (CAR). The responsibilities of the CAR are more fully in the guidelines document.

At the terminals the CAR would be the person who owns the gasoline sold or dispensed from a control area terminal into a truck.[4] Selling or dispensing gasoline from a terminal into trucks is commonly referred to as "breaking bulk." Parties who own or operate terminals but who do not own or sell gasoline are not CARs. Also, persons downstream from a control area terminal who blend oxygenates into gasoline or who otherwise change the oxygen content of gasoline intended for use in any control area are also CARs, but are called Blender CARs. Blender CARs and CARs are hereinafter

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[1] 56 FR 31154 (July 9, 1991) and 56 FR 31151 (July 9, 1991).

[2] 57 FR 4413 (February 5, 1992) and 57 FR 4406 (February 5, 1992).

[3] The Agency has determined that the 1988 and 1989 data from several areas is inadequate to properly characterize the ambient concentrations of CO. Therefore, for these areas—Boston, Cleveland, and Washington, DC—older, more representative data has been used.

[4] Control area terminals would be those terminals at which gasoline intended for use in any control area is sold or dispensed into trucks. The terminal itself need not be physically located in the control area.

collectively referred to as CARs. Terminal owners, whether or not they are CARs, must provide CARs using the terminal with the volume and oxygen content of the gasoline delivered to or received from each CAR.

The volume and oxygen content of all gasoline entering into a terminal must be provided to the CAR. Based on this and other information the CAR must keep a running weighted average of the gasoline it transfers into each control area.[5] Gasoline that is transferred in bulk becomes the responsibility of the CAR to whom it is transferred. Gasoline transferred by a CAR to another CAR is therefore removed from the averaging calculations of the CAR who transferred the gasoline. At the end of the averaging period, the average oxygen content of all gasoline the CAR distributed to trucks destined for each separate control area is calculated separately. In each control area, if the average oxygen content is greater than or equal to the required minimum, then compliance has been demonstrated. Credits are created if the average is greater than the required minimum. If the average oxygen content is less than the required 2.7% by weight minimum then credits are needed to meet the compliance average.

The averaging program presented in the guidelines is similar to the type of program used by EPA in the lead phase down gasoline program. To comply with the oxygenated gasoline program CARs must, at a minimum, achieve the sales-weighted average oxygen content over a specified time period, called the averaging period. This can be done either by always selling each gallon of fuel with an oxygen content at or above the requisite oxygen content, or by adjusting the quantities and types of fuel sold over the averaging period either directly or by obtaining credits from another regulated party within the control period to attain at least the requisite oxygen content on an averaged basis.

The guidelines specify a minimum of 2.0% oxygen by weight in all gasoline offered for sale, sold or dispensed by a CAR for use in the control areas during the control period. This requirement would also apply to all parties downstream of the CAR. The same minimum requirement would apply for all gasoline sold or dispensed to the ultimate consumer in the control area during the applicable control periods. The only exception to this requirement would be for gasoline sold or dispensed from one CAR directly to another CAR. Also, this requirement does not prevent the storage of nonoxygenated gasoline which is either intended for use in blending with ethanol or intended for use outside of control areas.

EPA requests that states monitor the availability of the demand for a variety of oxygenates. States should take appropriate steps necessary to reasonably assure the availability of these various oxygenates in the marketplace.

In the guidelines announced by this notice, CARs are required to register with the state and to provide reports on each averaging period. Under the guidelines, each CAR shall, as part of the reporting requirements, engage either an internal auditor or an independent certified public accountant (CPA) or firm of independent CPAs to perform an agreed-upon procedures attestation engagement of the underlying documentation that forms the basis of the reports, in accordance with the requirements of the guidelines, at the conclusion of each annual control period. Illustrative attestation report are included in the guidelines.

The credit program guidelines provide that credits are created on the basis of the oxygen content of the oxygenated gasoline sold or dispensed in a particular control area, that credits are to be used to demonstrate compliance only within the same control area in which they were earned, and that credits may only be used during the averaging period in which they were created.

Although not strictly necessary to achieve the desired air quality results or to comply with the requirement of section 211(m), an averaging program has a number of benefits. The principal advantage of this program design is that it entails less regulatory intrusion into the marketplace than traditional command and control approaches. It thus retains a high degree of marketing flexibility and competition among blending agents. The advantageous aspects of this approach can be further enhanced by allowing suppliers to trade oxygen credits among themselves, with suppliers of relatively low-oxygen fuels able to purchase such credits from suppliers of relatively high-oxygen fuel within a control area.

Furthermore, when compared to an oxygenated gasoline program requiring oxygen content compliance on a per-gallon basis, a program incorporating an oxygen averaging provision should prove to be less costly to implement in 1992. This is due to the fact that averaging programs will allow the supply of oxygenates, which some parties have suggested to be limited for the first control season beginning in 1992, to be used in a flexible and hence more efficient manner. Therefore, EPA strongly recommends that states adopt averaging programs consistent with these guidelines.

Section 211(m)(2) requires that the Administrator specify the portion of the year in which the area is prone to high ambient concentrations of carbon monoxide. This portion of the year ("control period") is to be not less than four months in length, unless the state can demonstrate that based on meteorological conditions, a reduced period will not result in exceedances outside of such reduced period. The guidance document announced by this notice contains EPA's guidance on control periods by area and discuss the geographic scope for oxygenated gasoline programs.

The primary determinants of the control periods, as set forth in the guidance document, are the statutory minimum of four months and data on exceedances of the carbon monoxide standard at the design value monitor in the design value year. The proposed control periods by area are listed in Table 1 below. Table 1 also appears in the guidance document announced today.

According to section 211(m) of the Act, SIP revisions must be submitted by each State in which there is located all or part of an area which is designated under Title I as a nonattainment area for carbon monoxide and which has a carbon monoxide design value of 9.5 parts per million (ppm) or above based on data for the two-year period of 1988 and 1989 [6] and calculated according to the most recent interpretation methodology issued by the Administrator prior to enactment of the 1991 amendments to the Act. These control areas are as follows:

1. Boston-Lawrence-Salem, MA-NH CMSA
2. Hartford-New Britain-Middletown, CT CMSA
3. New York-Northern New Jersey-Long Island, NY-NJ-CT CMSA
4. Syracuse, NY MSA
5. Baltimore, MD MSA
6. Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD CMSA
7. Washington, DC-MD-VA MSA
8. Greensboro-Winston-Salem-High Point, NC MSA
9. Memphis, TN-AR-MS MSA
10. Raleigh-Durham, NC MSA

[5] Section 211(m)(5) of the Act requires that an averaging program be conducted separately for each control area.

[6] The Agency has determined that the 1988 and 1989 data from several areas is inadequate to properly characterize the ambient concentrations of CO. Therefore, for these areas—Boston, Cleveland and Washington, DC—older, more representative data has been used.

11. Cleveland-Akron-Lorain, OH CMSA
12. Duluth, MN-WI MSA
13. Minneapolis-St. Paul, MN-WI MSA
14. Albuquerque, NM MSA
15. El Paso, TX MSA
16. Colorado Springs, CO MSA
17. Denver-Boulder, CO CMSA
18. Fort Collins-Loveland, CO MSA
19. Missoula, MT
20. Provo-Orem, UT MSA
21. Chico, CA MSA
22. Las Vegas, NV MSA
23. Fresno, CA MSA
24. Los Angeles-Anaheim-Riverside, CA CMSA
25. Modesto, CA MSA
26. Phoenix, AZ MSA
27. Reno, NV MSA
28. Sacramento, CA MSA
29. San Diego, CA MSA
30. San Francisco-Oakland-San Jose, CA CMSA
31. Stockton, CA MSA
32. Anchorage, AK MSA
33. Fairbanks, AK
34. Grant's Pass, OR
35. Klamath County, OR
36. Medford, OR MSA
37. Portland-Vancouver, OR-WA CMSA
38. Seattle-Tacoma, WA CMSA
39. Spokane, WA MSAQ04

Section 211(m)(2) of the Act requires that the oxygenated gasoline program apply to all gasoline sold or dispensed in the larger of the CMSA or MSA in which the nonattainment area is located. For nonattainment areas not in a CMSA or MSA, the control area is the nonattainment area. The requirements of the program shall apply to every county or partial county which is located in the CMSA, MSA or nonattainment areas. In the guidance document announced today EPA has compiled a table based on information from the U.S. Census Bureau. This table contains a list of the counties that are covered by these programs.[7]

Dated: October 14, 1992.

William K. Reilly,

Administrator.

Table 1—Guidance on Control Period by Nonattainment Area

November 1–February 29

Hartford-New Britain-Middletown, CT CMSA
Boston-Lawrence-Salem, MA-NH CMSA
Syracues, NY MSA
Baltimore, MD MSA
Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD CMSA
Washington, DC-MD-VA MSA
Greensboro-Winston-Salem-High Point, NC MSA
Memphis, TN-AR-MS MSA
Raleigh-Durham, NC MSA
Cleveland-Akron-Lorain, OH CMSA
Albuquerque, NM MSA
El Paso, TX MSA
Colorado Springs, CO MSA
Denver-Boulder, CO CMSA
Fort Collins-Loveland, CO MSA
Missoula, MT
Provo-Orem, UT MSA
San Diego, CA MSA
Anchorage, AK MSA
Fairbanks, AK
Portland-Vancouver, OR-WA CMSA
Seattle-Tacoma, WA CMSA
Grant's Pass, OR
Klamath County, OR
Medford, OR MSA

October 1–April 30

New York-Northern New Jersey-Long Island, NY-NJ-CT CMSA

October 1–January 31

Duluth, MN-WI MSA
Minneapolis-St. Paul, MN-WI MSA
Chico, CA MSA
Fresno, CA MSA
Modesto, CA MSA
Reno, NV MSA
Sacramento, CA MSA
San Francisco-Oakland-San Jose, CA CMSA
Stockton, CA MSA

October 1–February 29

Las Vegas, NV MSA
Phoenix, AZ MSA
Los Angeles-Anaheim-Riverside, CA CMSA

September 1–Februray 29

Spokane, WA MSA

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[7] States may rely on the list of covered areas which appears in Table 2. This list includes the CMSAs, MSAs and nonattainment areas which are required to implement oxygenated gasoline programs in 1992.

[OPP–00341; FRL–4171–3]

State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees on Enforcement & Certification and Registration & Classification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees on Enforcement & Certification and Registration & Classification will hold a 3–day meeting, beginning on October 21, 1992, and ending on October 23, 1992. This notice announces the location and times for the meeting and sets forth tentative agenda topics.

DATES: The SFIREG Working Committee on Registration & Classification will meet on Wednesday, October 21, 1992, from 8:30 a.m. to 5 p.m. The SFIREG Working Committee on Enforcement & Certification will meet on Friday, October 23, 1992, from 8 a.m. to approximately 4:30 p.m. On Thursday, October 22, 1992, the two SFIREG Working Committees will meet together in joint session for the entire day starting at 8 a.m. and adjourning at approximately 5 p.m.

ADDRESSES: The meetings will be held at: Charleston Trident Chamber of Commerce, Henry J. Lee Boardrooms A & B, 81 Mary St., Charleston, South Carolina, (803) 577–2510.

FOR FURTHER INFORMATION CONTACT: By mail: Shirley M. Howard, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1109, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7371.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee on Registration & Classification includes the following:

1. Atrazine Labeling and The Maryland Atrazine Bay Program.
2. Report on EPA/State Pesticide Laboratory Meeting in September.
3. Discussion of Penalty Schedules for Pesticide Violations.
4. Discussion of Section 18 and the "Delaney Clause" Court Ruling.
5. Section 24(c) Regulations; Discussion of Modifications Desired by State Regulatory Agencies.
6. Update on Label Coding Project.
7. Results of Workshop on Reduced Risk Pesticide Proposal.
8. Other topics as appropriate.

The tentative agenda of the SFIREG Working Committee on Enforcement & Certification includes the following:

1. Discussion of the Special Analytical Services - Center for Excellence Concept.
2. Enforcement of Plantback Statements.
3. Discussion of Laboratory Issues & Organization of AAPCO Laboratory Liaison Committee.
4. Status of Proposed Revisions for 40 CFR Part 171.
5. Compliance Initiatives for 1994.
6. Other topics as appropriate.

The tentative agenda for the joint session of the SFIREG Working Committees on Enforcement & Certification and Registration & Classification includes the following:

1. Office of Compliance Monitoring Strategic Dialogue.
2. Discussion of Implementation Plan for Worker Protection Standards.
3. Update on Endangered Species Implementation.
4. Update on the PREP Training Courses.
5. Other topics as appropriate.

Dated: October 13, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92–25412 Filed 10–19–92; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4523–6]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given that a proposed administrative cost recovery settlement concerning the Applied Materials, Inc. site in Santa Clara, California was executed by the Agency on September 28, 1992. The proposed settlement resolves an EPA claim under Section 107 of CERCLA against Applied Materials, Inc. The proposed settlement was entered into under the authority granted EPA in section 122(h) of CERCLA, and requires Applied Materials, Inc. to pay $301,737.00 to the Hazardous Substances Superfund. In addition, this settlement requires Applied Materials, Inc. to reimburse EPA for all future response costs incurred at or in connection with the Applied Materials site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available inspection at: Santa Clara Library, located at 2635 Homestead Road in Santa Clara, CA 95051; and the U.S. Environmental Protection Agency, 75 Hawthrone Street 16th Floor, San Francisco, CA 94105 (Attention: Steven Armsey, Regional Hearing Clerk).

DATES: Comments must be submitted on or before November 19, 1992.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency at the address provided above. A copy of the proposed settlement may be obtained from Steven Armsey, U.S. EPA Regional Hearing Clerk (RC–1), 75 Hawthrone, San Francisco, CA 94105. Comments regarding the proposed settlement should be addressed to Steven Armsey at the address provided above, and should reference the Applied Materials site located in Santa Clara, California (EPA Docket No. 92–27).

FOR FURTHER INFORMATION CONTACT: Harrison Karr (RC–3–3), Assistant Regional Counsel, U.S. Environmental Protection Agency, San Francisco, CA 94105, Telephone: (415) 744–1322.

Dated: September 28, 1992.

Jeff Zelikson,

Director, Hazardous Waste Management Division.

[FR Doc. 92–25404 Filed 10–19–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4523–5]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given that a proposed administrative cost recovery settlement concerning the International Business Machines Corporation site located in San Jose, California was executed by the Agency on September 28, 1992. The proposed settlement resolves an EPA claim under section 107 of CERCLA against International Business Machines Corporation. The proposed settlement was entered into under the authority granted EPA in section 122(h) of CERCLA, and requires International Business Machines Corporation to pay $490,168.99 to the Hazardous Substances Superfund. In addition, this settlement requires International Business Machines Corporation to reimburse EPA for all future response costs incurred at or in connection with the International Business Machines Corporation site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at: Santa Teresa Library, located at 290 International Circle, San Jose, California; and at the U.S. Environmental Protection Agency, 75 Hawthorne Street, 16th Floor, San Francisco, CA 94105 (Attention: Steven Armsey, Regional Hearing Clerk).

DATES: Comments must be submitted on or before November 19, 1992.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency at the address provided above. A copy of the proposed settlement may be obtained from Steven Armsey, U.S. EPA Regional Hearing Clerk (RC–1), 75 Hawthorne Street, San Francisco, CA 94105. Comments regarding the proposed settlement should be addressed to Steven Armsey at the address provided above, and should reference the International Business Machines Corporation site located in San Jose, California (EPA Docket No. 92–30).

FOR FURTHER INFORMATION CONTACT: David Silverman (RC–3–1), Assistant Regional Counsel, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1377.

Dated: September 28, 1992.

Jeff Zelikson,

Director, Hazardous Waste Management Division.

[FR Doc. 92–25405 Filed 10–19–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4523–4]

Operating Industries, Inc. Site; Proposed Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, notice is hereby given of the administrative settlement entered into by EPA Region IX and ten municipalities: The City of Bell Gardens; the City of Beverly Hills; the City of Huntington Park; the City of La Puente; the City of Norwalk; the City of Paramount; the City of San Marino; the City of Sierra Madre; and the City of South El Monte. The proposed settlement was entered into under the *de minimis* authority granted EOA in section 122(g) of CERCLA, 42 U.S.C. 9622(g), and resolves the liability of these ten municipalities for all past and future costs associated with the

Operating Industries, Inc. Superfund site in Monterey Park, California.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or consideration that indicate the proposed settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region IX, (RC–1), 75 Hawthorne Street, San Francisco, CA 94105, Attention: Steve Armsey, Regional Hearing Clerk.

DATES: Comments must be submitted on or before November 19, 1992.

ADDRESSES: A copy of the proposed settlement may be obtained from the Regional Hearing Clerk, U.S. EPA Region IX (RC–1), 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference the Operating Industries, Inc. Site and EPA Docket reference the Operating Industries, Inc. Site and EPA Docket No. 92–18.

FOR FURTHER INFORMATION CONTACT: Katherine Shine, Assistant Regional Counsel, (RC–3–1), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1338.

Dated: October 2, 1992.

Jeff Zelikson,

Director, Hazardous Waste Management Division.

[FR Doc. 92–25402 Filed 10–19–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4523–7]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given that a proposed administrative cost recovery settlement concerning the Signetics site in Sunnyvale, California was executed by the Agency on September 28, 1992. The proposed settlement resolves an EPA claim under section 107 of CERCLA against Signetics Company. The proposed settlement was entered into under the authority granted EPA in section 122(h) of CERCLA, and requires Signetics Company to pay $220,598.72 to the Hazardous Substances Superfund. In addition, this settlement requires Signetics Company to reimburse EPA for all future response costs incurred at or in connection with the Signetics site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this proposed settlement. The Agency's response to any comments received will be available for public inspection at: Sunnyvale Public Library, located at 555 W. Olive in Sunnyvale, California; and the U.S. Environmental Protection Agency, Regional Hearing Clerk's Office (16th Floor), 75 Hawthorne, San Francisco, CA 94105.

DATES: Comments must be submitted on or before November 19, 1992.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency at the address provided above. A copy of the proposed settlement may be obtained from Steven Armsey, U.S. EPA Regional Hearing Clerk (RC–1), 75 Hawthorne, San Francisco, CA 94105. Comments regarding the proposed settlement should be addressed to Steven Armsey at the address provided above, and should reference the Signetics site located in Sunnyvale, California (EPA Docket No. 92–24).

FOR FURTHER INFORMATION CONTACT: Robert Ogilvie (RC–3–3), Assistant Regional Counsel, U.S. Environmental Protection Agency, San Francisco, CA 94105, Telephone: (415) 744–1332.

Dated: September 28, 1992.

Jeff Zelikson,

Director, Hazardous Waste Management Division.

[FR Doc. 92–25406 Filed 10–19–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4523–8]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given that a proposed administrative cost recovery settlement concerning the Solvent Service, Inc. site located in San Jose, California was executed by the Agency on September 28, 1992. The proposed settlement resolves an EPA claim under section 107 of CERCLA against Solvent Service, Inc. The proposed settlement was entered into under the authority granted EPA in section 122(h) of CERCLA, and requires Solvent Service, Inc. to pay $228,901.57 to the Hazardous Substances Superfund. In addition, this settlement requires Solvent Service, Inc. to reimburse EPA for all future response costs incurred at or in connection with the Solvent Service site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at: Santa Teresa Library, located at 290 International Circle, San Jose, California; and at the U.S. Environmental Protection Agency, 75 Hawthorne Street, 16th Floor, San Francisco, CA 94105 (Attention: Steven Armsey, Regional Hearing Clerk).

DATES: Comments must be submitted on or before November 19, 1992.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency at the address provided above. A copy of the proposed settlement may be obtained from Steven Armsey, U.S. EPA Regional Hearing Clerk (RC–1), 75 Hawthorne Street, San Francisco, CA 94105. Comments regarding the proposed settlement should be addressed to Steven Armsey at the address provided above, and should reference the Solvent Service site located in San Jose, California (EPA Docket No. 92–20).

FOR FURTHER INFORMATION CONTACT: David Silverman (RC–3–1), Assistant Regional Counsel, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1377.

Dated: September 28, 1992.

Jeff Zelikson,

Director, Hazardous Management Division.

[FR Doc. 92–25407 Filed 10–19–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL-4523-9]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given that a proposed administrative cost recovery settlement concerning the Synertek, Inc. site in Santa Clara, California was executed by the Agency on September 28, 1992. The proposed settlement resolves an EPA claim under section 107 of CERCLA against Honeywell, Inc. The proposed settlement was entered into under the authority granted EPA in section 122(h) of CERCLA, and requires Honeywell, Inc. to pay $216,590.73 to the Hazardous Substances Superfund. In addition, this settlement requires Honeywell, Inc. to reimburse EPA for all future response costs incurred at or in connection with the Synertek site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this proposed settlement. The Agency's response to any comments received will be available for public inspection at: Santa Clara Library, located at 2635 Homestead Road in Santa Clara, CA 95051; and the U.S. Environmental Protection Agency, Regional Hearing Clerk's Office (16th Floor), 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before November 19, 1992.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency at the address provided above. A copy of the proposed settlement may be obtained from Steven Armsey, U.S. EPA Regional Hearing Clerk (RC-1), 75 Hawthorne, San Francisco, CA 94105. Comments regarding the proposed settlement should be addressed to Steven Armsey at the address provided above, and should reference the Synertek site located in Santa Clara, California (EPA Docket No. 92-23).

FOR FURTHER INFORMATION CONTACT: Robert Ogilvie (RC-3-3), Assistant Regional Counsel, U.S. Environmental Protection Agency, San Francisco, CA 94105, Telephone: (415) 744-1332.

Dated: September 28, 1992.

Jeff Zelikson,

Director, Hazardous Waste Management Division.

[FR Doc. 92-25408 Filed 10-19-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4524-1]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given that a proposed administrative cost recovery settlement concerning the TRW Inc. site in Sunnyvale, California was executed by the Agency on September 28, 1992. The proposed settlement resolves an EPA claim under section 107 of CERCLA against TRW Inc. The proposed settlement was entered into under the authority granted EPA in section 122(h) of CERCLA, and requires TRW Inc. to pay $157,326.18 to the Hazardous Substances Superfund. In addition, this settlement requires TRW Inc. to reimburse EPA for all future response costs incurred at or in connection with the TRW Inc. site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this proposed settlement. The Agency's response to any comments received will be available for public inspection at: Sunnyvale Public Library, located at 555 W. Olive in Sunnyvale, California; and the U.S. Environmental Protection Agency, Regional Hearing Clerk's Office (16th Floor), 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before November 19, 1992.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency at the address provided above. A copy of the proposed settlement may be obtained from Steven Armsey, U.S. EPA Regional Hearing Clerk (RC-1), 75 Hawthorne, San Francisco, CA 94105. Comments regarding the proposed settlement should be addressed to Steven Armsey at the address provided above, and should reference the TRW Inc. site located in Sunnyvale, California (EPA Docket No. 92-25).

FOR FURTHER INFORMATION CONTACT: Robert Ogilvie (RC-3-3), Assistant Regional Counsel, U.S. Environmental Protection Agency, San Francisco, CA 94105, Telephone: (415) 744-1332.

Dated: September 28, 1992.

Jeff Zelikson,

Director, Hazardous Waste Management Division.

[FR Doc. 92-25409 Filed 10-19-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4524-2]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given that a proposed administrative cost recovery settlement concerning the Van Waters & Rogers Inc. site in San Jose, California was executed by the Agency on September 28, 1992. The proposed settlement resolves an EPA claim under section 107 of CERCLA against Van Waters & Rogers Inc. The proposed settlement was entered into under the authority granted EPA in section 122(h) of CERCLA, and requires Van Waters & Rogers Inc. to pay $300,000 to the Hazardous Substances Superfund. In addition, this settlement requires Van Waters & Rogers Inc. to reimburse EPA for all future response costs incurred at or in connection with the Van Waters & Rogers site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's

response to any comments received will be available for public inspection at: City of San Jose Public Library, located at 180 West San Carlos Street, San Jose, CA 95113; and the U.S. Environmental Protection Agency, 75 Hawthorne Street, 16th Floor, San Francisco, CA 94105 (Attention: Steven Armsey, Regional Hearing Clerk).

DATES: Comments must be submitted on or before November 19, 1992.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency at the address provided above. A copy of the proposed settlement may be obtained from Steven Armsey, U.S. EPA Regional Hearing Clerk (RC–1), 75 Hawthorne, San Francisco, CA 94105. Comments regarding the proposed settlement should be addressed to Steven Armsey at the address provided above, and should reference the Van Waters & Rogers site located in San Jose, California (EPA Docket No. 92–28).

FOR FURTHER INFORMATION CONTACT: Barbara Ettlinger (RC–3–4), Assistant Regional Counsel, U.S. Environmental Protection Agency, San Francisco, CA 94105, Telephone: (415) 744–1383.

Dated: September 28, 1992.

Jeff Zelikson,

Director, Hazardous Waste Management Division.

[FR Doc. 92–25410 Filed 10–19–92; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–59951; FRL–4169–8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 7 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92–197, September 29, 1992.
Y 92–199, September 30, 1992.
Y 92–200, October 5, 1992.
Y 92–201, October 13, 1992.
Y 92–202, October 15, 1992.
Y 92–203, October 19, 1992.
Y 92–204, October 20, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92–197

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Substituted phenol ester.

Use/Production. (S) Captive intermediate. Prod. range: Confidential.

Y 92–199

Manufacturer. Confidential.

Chemical. (G) Polyurethane colloid.

Use/Production. (G) Colloid. Prod. range: Confidential.

Y 92–200

Manufacturer. Westvaco Corporation.

Chemical. (G) Styreneacrylic copolymer, sodium salt.

Use/Production. (S) Polymeric stablizer for water based ink production. Prod. range: Confidential.

Y 92–201

Importer. Ricoh Corporation.

Chemical. (G) Polyol resin.

Use/Import. (G) Ingredient for copies toner and developer. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative.

Y 92–202

Manufacturer. Ricard H. Fairfield.

Chemical. (S) Methacrylic acid, sodium salt, polymer with *N,N*-dimethylacrylamide.

Use/Production. (S) Viscosity modified. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 mg/kg species (rat). Acute dermal toxicity: > 2.0 g/kg species (rabbit). Eye irritation: minimal species (rabbit). Skin irritation: negligible species (rabbit).

Y 92–203

Manufacturer. Confidential.

Chemical. (G) Polycarboxylic acid, amine salt.

Use/Production. (S) Thickener for adhesives. Prod. range: Confidential.

Y 92–204

Manufacturer. Reichhold Chremicals, Inc.

Chemical. (G) Carboxylated styrene butadiene copolymer latex.

Use/Production. (G) Thickener compound. Prod. range: Confidential.

Dated: October 14, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 92–25413 Filed 10–19–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[DA 92–1426]

Advisory Committee on Advanced Television Service Implementation Subcommittee Meeting

Dated: October 15, 1992.

November 24, 1992, 10 a.m., Commission Meeting Room (room 856), 1919 M Street, NW., Washington, DC

The agenda for the meeting will consist of:

1. Introduction
2. Minutes of Last Meeting
3. Policy and Regulation Report of Working Party 1
4. Report of Working Party 2 Transition Scenarios
5. Review of Final Report Submissions
6. Future of Implementation Subcommittee
7. General Discussion
8. Other Business
9. Adjournment

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Implementation Subcommittee Chairs.

Any questions regarding this meeting should be directed to George Vradenburg III at (310) 203–1334, Dr.

James J. Tietjen at (609) 734–2237, or Gina Harrison at (202) 632–7792.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–25368 Filed 10–19–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–948–DR]

South Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota (FEMA–948–DR), dated July 2, 1992, and related determinations.

EFFECTIVE DATE: August 26, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of South Dakota, dated July 2, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 2, 1992:

The county of Lyman for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92–25384 Filed 10–19–92; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Commodore Cruise Line, Ltd.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200660–001.

Title: New Orleans/Commodore Cruise Line Terminal Agreement.

Parties: Commodore Cruise Line, Ltd., Port of New Orleans.

Synopsis: The amendment extends the term of the Agreement and adjusts the cost of the terminal to be constructed under the terms of the Agreement.

Agreement No.: 224–200684–001.

Title: Maryland Port Administration/ Guthrie Latex, Inc., Terminal Agreement.

Parties: Maryland Port Administration ("MPA"), Guthrie Latex, Inc. ("Guthrie").

Synopsis: This modification increases the amount of space leased to Guthrie by the MPA at its North Locust Point Marine Terminal from 14,193 square feet to 15,138 square feet.

Agreement No.: 203–011160–021.

Title: Agreement 11160.

Parties:

Atlantic Container Line AB
Compagnie Generale Maritime
Orient Overseas Container Line (UK) Ltd.
Hapag Lloyd AG
Lykes Bros. Steamship Co., Inc.
Sea-Land Service, Inc.
Evergreen Marine Corp. (Taiwan), Ltd.
Nedlloyd Lijnen BV
Mediterranean Shipping Co.
P&O Containers Limited
Deppe Linie GmbH & Co.
Polish Ocean Lines
DSR-Senator Joint Service
Cho Yang Shipping Co.

Synopsis: The proposed amendment extends the duration of the Agreement from its current expiration date of January 13, 1993 to July 18, 1993.

Dated: October 15, 1992.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 92–25434 Filed 10–19–92; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; Maryland Port Administration/Ceres Marine Terminal, Inc. 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, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200165–009.

Title: Maryland Port Administration/ Ceres Marine Terminal, Inc., Leasing Agreement.

Parties: The Maryland Port Administration ("MPA") Ceres Marine Terminal, Inc. ("Ceres").

Synopsis: The agreement extends the leasing arrangements between MPA and Ceres for an additional sixty days until December 8, 1992.

Agreement No.: 224–200699.

Title: Terminal Use Agreement Between Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Hyundai Merchant Marine Co., Ltd., and The Port of Portland.

Parties: Kawasaki Kisen Kaisha, Ltd. Mitsui O.S.K. Lines, Ltd. Hyundai Merchant Marine Co., Ltd. The Port of Portland ("Port")

Synopsis: This agreement replaces Agreement No. 224–200541 between the Port and the other parties and will expire on September 26, 1993. All terms and conditions of the original agreement remain the same in this Agreement.

Dated: October 14, 1992.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 92–25339 Filed 10–19–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Button Gwinnett Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are

considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 12, 1992.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Button Gwinnett Bancorp, Inc., Shellville, Georgia; to merge with The Gwinnett Financial Corporation, Lawrenceville, Georgia, and thereby indirectly acquire The Bank of Gwinnett County, Lawrenceville, Georgia.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Citizens Bancorporation of New Ulm, Inc., New Ulm, Minnesota; to merge with Lafayette Bancshares, Inc., Lafayette, Minnesota, and thereby indirectly acquire Citizens State Bank of Lafayette, Lafayette, Minnesota.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. BancWest, Inc., Edmond, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Leedy Bancorporation, Inc., Leedy, Oklahoma, and thereby indirectly acquire First National Bank of Leedy, Leedy, Oklahoma; and 81 percent of the voting shares of Thomas Bancshares, Inc., Thomas, Oklahoma, and thereby indirectly acquire The Bank of the West, Thomas, Oklahoma.

Board of Governors of the Federal Reserve System, October 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-25315 Filed 10-19-92; 8:45 am]

BILLING CODE 6210-01-F

SouthTrust Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 12, 1992.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. SouthTrust Corporation, Birmingham, Alabama, and SouthTrust of Georgia, Inc., Atlanta, Georgia; to acquire Prime Bancshares, Inc., Decatur, Georgia, and thereby indirectly acquire Prime Bank, FSB, Decatur, Georgia, pursuant to § 225.25(b)(9). Prime Bank FSB will then be merged with and into SouthTrust Bank of Georgia, N.A., Atlanta, Georgia, pursuant to § 5(d)(3) of the Federal Deposit Insurance Act, as amended by the Federal Deposit Insurance Corporation Improvement Act of 1991.

Board of Governors of the Federal Reserve System, October 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-25316 Filed 10-19-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION

[Between: 092892 and 100992]

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Hanson PLC, Arclar Company, Arclar Company	92-1483	09/28/92
Richard A. Jordan, AB Volvo, Florida Machinery & Equipment Company	92-1487	09/28/92
Richard E. Jordan, Clark Equipment Company, Florida Machinery & Equipment Company	92-1488	09/28/92
Merrill Lynch & Co., Inc., Unifax Holdings, Inc., Unifax Holdings, Inc.	92-1499	09/28/92
Einar Wilhelm Sissener, Able Laboratories, Inc., Able Laboratories, Inc.	92-1470	09/29/92
Cooper Industries, Inc., IFINT S.A., IFINT-USA Inc.	92-1476	09/29/92
Genzyme Corporation, Vivigen, Inc., Vivigen, Inc.	92-1495	09/30/92
Willcox & Gibbs, Inc., Pinault P.L.C., Southern Electric Supply Company, Inc.	92-1500	09/30/92
Pinault P.L.C., Willcox & Gibbs, Inc., Willcox & Gibbs, Inc.	92-1508	09/30/92
Glenn R. Jones, Jones Intercable Investors, L.P., Jones Intercable Investors, L.P.	92-1525	09/30/92
Waste Management, Inc., John Mowlem & Company PLC, SGB Construction Services, Inc.	92-1464	10/01/92
Sam Fox and Marilyn Fox, Richard A. Bearse, Pneumatic Products Corporation	92-1514	10/02/92
National Westminster Bank PLC, John Hancock Mutual Life Insurance Company, First Signature Bank and Trust Company	92-1542	10/02/92
Smiths Industries plc, Kenneth G. Pigot, Intertech Resources Inc.	92-1549	10/02/92
Tele-Communications, Inc., Ralph J. Roberts, SCI Holdings Inc.	92-1519	10/05/92
John L. Booth, Sr., Tele-Communications, Inc., Booth Communications of Birmingham	92-1534	10/05/92
Fondation Ligure, Celebrity Cruise Lines Inc., Celebrity Cruise Lines Inc.	92-1560	10/05/92
Overseas Shipholding Group, Inc., Celebrity Cruise Lines, Inc., Celebrity Cruise Lines, Inc.	92-1561	10/05/92
Wingate Partners, L.P., Lynn-Edwards Corp. Stock Bonus ESOT, Lynn-Edwards Corp.	92-1566	10/05/92
TW Associates, L.P., TW Holdings, Inc., TW Holdings, Inc.	92-1552	10/08/92
Ithaca Holdings, Inc., Ithaca Industries, Inc., Ithaca Industries, Inc.	92-1556	10/08/92
Merrill Lynch Capital Appreciation Partnership No. I, LP, Ithaca Holdings, Inc., Ithaca Holdings, Inc.	92-1562	10/09/92
Merrill Lynch & Co., Inc., Ithaca Holdings, Inc., Ithaca Holdings, Inc.	92-1563	10/09/92

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-25367 Filed 10-19-92; 8:45 am]

BILLING CODE 6750-01-M

[File No. 912 3265]

United States Golf Association; 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 require, among other things, a New Jersey-based non-profit corporation to clearly state in all future advertisements and product descriptions in mail order catalogs, and in all mail order promotional material, whether its clothing and other textile-fiber merchandise, that it sells by mail, are manufactured or processed in the United States or imported. In addition, the respondent would be required to use proper generic fiber names, consistent with the Textile Fiber Products Identification Act, and not to mention or imply fiber content for a fiber which is not present in such textile fiber products.

DATES: Comments must be received on or before December 21, 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: Bob Easton, FTC/S-4631, Washington, DC 20580. (202) 326-3029.

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 United States Golf Association, a non-profit corporation (hereinafter referred to as United States Golf Association or proposed respondent) and it now appearing that United States Golf Association, is 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 United States Golf Association, by its duly authorized officer and counsel for the Federal Trade Commission that:

1. Proposed respondent United States Golf Association, is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at Liberty Corner Road, Far Hills, New Jersey.

2. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

3. Proposed respondent waives:

(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.

4. 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, 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 respondent, 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.

5. 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 respondent, (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 respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any rights it 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.

6. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

It is ordered That respondent United States Golf Association, a non-profit corporation, its successors and assigns, trading under its own name or under any other name or names, and its officers, agents, licensees, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, selling or advertising of any textile fiber product in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such textile fiber product, in commerce, as the terms "textile fiber product" and "commerce" are defined in the Textile Fiber Products Identification Act (15 U.S.C. 70) ("Textile Act"), do forthwith cease and desist from:

1. Failing to state in the description of such textile fiber product in a clear and conspicuous manner that such textile fiber product is processed or manufactured in the United States of America, or imported, or both;

2. Mentioning or implying fiber content without using the generic fiber names in a manner consistent with the Textile Act and the rules and regulations thereunder; and

3. Mentioning or implying fiber content for a fiber which is not present in such textile fiber product.

II

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other such change in the corporation which may affect compliance obligations arising out of the order.

III

It is further ordered That respondent shall forthwith distribute a copy of this order to each of its agents, licensees and representatives acting in connection with the offering for sale, selling or advertising of any textile fiber product in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such textile fiber product, in commerce, as the terms "textile fiber product" and "commerce" are defined in the Textile Fiber Products Identification Act (15 U.S.C. 70) ("Textile Act").

IV

It is further ordered That respondent shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from United States Golf Association.

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 make final the agreement's proposed order.

United States Golf Association (U.S.G.A.) is a large non-profit corporation that uses the mail to sell things to people. The complaint claims that U.S.G.A., in selling clothing and other textile products through mail order catalogs, did not tell customers whether the products were made in the United States or imported. Further, the complain claims that U.S.G.A. did not use the proper terms such as "polyester" to describe the type of textile fibers used in the goods it sold. Additionally, the complaint states that U.S.G.A. used the manufacturer's trademark "Cashmerelon" to describe clothing when there is no cashmere in the clothing. The Federal Trade Commission claims that these actions by U.S.G.A. are illegal because several years ago, in 1984, Congress passed a law that changed the Textile Act and told companies which sell by catalog, like U.S.G.A., that they mut let people know where textile products are made. Also, the Textile Act requires that certain names be used to describe fiber and states that you cannot use trademarks which make people think a type of fiber is in a garment when none of the fiber is there.

The proposed order tells U.S.G.A. that it has to let customers know where the textile products it sells by mail are made, what the correct fiber name is and cannot misuse trademarks that sound like fiber names. While U.S.G.A. does not admit that it did anything wrong, the company agrees to give the information in the future.

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. 92-25366 Filed 10-19-92; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR); Stocking Change of SF 530, Medical Record—Neurological Examination

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration/ICMR is changing the stocking requirement of SF 530, Medical Record—Neurological Examination. This form is now authorized for local reproduction. You can request camera copy of SF 530 from General Services Administration (CARM), Attn.: Barbara Williams, (202) 501–0581.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Freed, GSA Standard and Optional Forms Liaison Officer, (202) 501–0492.

DATES: Effective on October 20, 1992.

Johnny T. Young,

Director, Reproduction Services Division.

[FR Doc. 92–25321 Filed 10–19–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Senior Executive Service Performance Review Board Membership

Title 5, U.S. Code, section 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that the appointment of Performance Review Board members be published in the Federal Register.

The following persons will serve on the Performance Review Boards or Panels which oversee the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services:

Richard H. Adamson, Ph.D.
Duane F. Alexander, M.D.
Philip Amoruso
Joseph R. Antos, Ph.D.
Michele Applegate
William H. Aspden, Jr.
Michael J. Astrue
Virginia S. Bales
Claudia R. Baquet, M.D., M.P.H.
Paul Barnes
Ruth L. Berkelman, M.D.
Lyle W. Bivens, Ph.D.
Annette H. Blum
Windell R. Bradford
Samuel Broder, M.D.
David J. Butler
Bruce A. Chabner, M.D.
Philip S. Chen, Jr., Ph.D.
Andria Childs
Gene Cohen, M.D.
Beverly Dennis, III
John W. Diggs, Ph.D.
Peter DiSturco
Walter R. Dowdle, Ph.D.
Robert G. Eaton
Murray Eden, Ph.D.
Kevin L. Erbe
Anthony S. Fauci, M.D.
Stephen Ficca
Florence B. Fiori, Dr.P.H.
Gail F. Fisher, Ph.D.
Gilbert Fisher
William T. Fitzsimmons
Howard A. Foard
Margaret Foertschbeck
James Fornataro
Richard K. Fuller, M.D.
George J. Galasso, Ph.D.
John I. Gallin, M.D.
Charles Gillum
Donna N. Givens
Phillip Gorden, M.D.
Michael Gottesman, M.D.
Jerome C. Green, M.D.
Myrtle Habershan
Jim Harrell
B. Earl Henderson, M.D.
Michael Heningburg
Jane E. Henney
Ada Sue Hinshaw, Ph.D.
George R. Holland
Thomas V. Holohan, M.D.
Sharon Smith Holston
Robert A. Israel
Arthur C. Jackson
Duane L. Jeanotte
David Jenkins
Barry L. Johnson, Ph.D.
John H. Kelso
Eugene Kinlow
Ruth L. Kirschstein, M.D.
Dushanka Kleinman, D.D.S.
Irwin J. Kopin, Ph.D.
Edward Korn, Ph.D.
Carl Kupfer, M.D.
Risa J. Lavizzo-Mourey, M.D.
Richard A. Lemen, Ph.D.
Antonia Lenane
Claude J. Lenfant, M.D.
Joseph R. Leone
Alan I. Leshner, Ph.D.
Arthur S. Levine, M.D.
Samuel Lin, M.D., Dr.P.H.
Michel E. Lincoln
Donald A.B. Lindberg, M.D.
V. Markku Linnoila, M.D.
Lance Liotta, M.D., Ph.D.
Harald A. Loe, D.D.S.
John D. Mahoney
Thomas Malone
Audrey Manley, M.D.
Naomi B. Marr
George R. Martin, M.D.
Thomas S. McFee
John A. McLachlan, Ph.D.
Merle C. McPherson, M.D.
Henry Metzger, M.D.
Larry Morey
Jay Moskowitz, Ph.D.
Gary R. Noble, M.D., M.P.H.
Robert Nussenblatt, M.D.
Kenneth Olden, Ph.D.
Steven Paul, M.D.
Roy W. Pickens, Ph.D.
Alan S. Rabson, M.D.
Juan Ramos, Ph.D.
William A. Robinson, M.D.
David Rodbard, M.D.
Saul W. Rosen, M.D.
Marla E. Salmon, Sc.D.
Philip E. Schambra, Ph.D.
Carol Scheman
Lawerence E. Schulman, M.D.
James B. Snow, Jr., M.D.
Dale Sopper
Robert Stovenour
Robert A. Streimer
Edwin M. Sullivan
Frank J. Sullivan, Ph.D.
Sandra Swain, M.D.
Michael Taylor
Arnold R. Tompkins
Judith L. Vaitukaitis, M.D.
Martha Vaughan, M.D.
Mary Jo Veverka
Josephine T. Waconda
Edwin L. Walker
James Walsh
Rueben C. Warren, Dr.P.H.
Kenneth R. Warren, Ph.D.
Jacquelyn Y. White

Dated: October 9, 1992.

Thomas S. McFee,

Assistant Secretary for Personnel Management.

Summary Statement

Department of Health and Human Services

ACTION: Listing of members of this Department's Senior Executive Service Performance Review Boards.

DATE: Performance Review Boards Effective: September 30, 1992.

For further information contact: Renita E. Morse, 202: 690–6537.

[FR Doc. 92–25377 Filed 10–19–92; 8:45 am]

BILLING CODE 4110–60–M

Centers for Disease Control

CDC Advisory Committee on the Prevention of HIV Infection; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: CDC Advisory Committee on the Prevention of HIV Infection.

Times and Dates: 8:30 a.m.–5 p.m. November 4, 1992. 8:30 a.m.–1 p.m., November 5, 1992.

Place: CDC, Executive Park Facility, 26 Executive Park Drive, Conference Room A, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV prevention efforts including maintaining surveillance of HIV infection and AIDS, the epidemiologic and laboratory study of HIV and AIDS, information/education and risk

reduction activities designed to prevent the spread of HIV infection, and other preventive measures that become available.

Matters to be discussed: The committee will discuss actions taken by CDC on the recommendations made by the committee during the April 15–16, 1992, meeting and the relationship between tuberculosis and HIV. In-depth discussions will lead to development of a preliminary list of recommendations regarding CDC methods and approaches. In addition, a general update will be given to the committee on key items of current interest.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Connie Granoff, Committee Assistant, Office of the Associate Director for HIV/AIDS, CDC, 1600 Clifton Road, NE, Mailstop E–40, Atlanta, Georgia 30333, telephone (404) 639–2918.

Dated: October 9, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92–25341 Filed 10–19–92; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics: Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Times and Dates: 1 p.m.–5 p.m., November 4, 1992; 9 a.m.–5 p.m., November 5, 1992; 9 a.m.–1 p.m., November 6, 1992.

Place: Room 703A–729A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the Committee to consider reports from each NCVHS subcommittee; to receive reports from offices of the Department of Health and Human Services; and to address new business as appropriate. The agenda will include a half-day session on race/ethnicity, socioeconomic factors, and health.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: October 9, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 92–25342 Filed 10–19–92; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 92N–0320]

North American Biologicals, Inc.; Revocation of U.S. License No. 1022–029

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 1022–029) and the product license issued to North American Biologicals, Inc., doing business as the South Seattle Donor Center for the manufacture of Source Plasma. Other locations under North American Biologicals, Inc., license are not affected by this revocation. In a letter dated January 23, 1992, the firm requested that its establishment and product licenses be revoked and thereby waived an opportunity for a hearing.

DATES: The revocation of the establishment license (U.S. License No. 1022–029) and the product license became effective April 16, 1992.

FOR FURTHER INFORMATION CONTACT: Paula McKeever, Center for Biologics Evaluation and Research (HFB–130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–295–8188.

SUPPLEMENTARY INFORMATION: FDA has revoked the establishment license (U.S. License No. 1022–029) and the product license issued to North American Biologicals, Inc., doing business as the South Seattle Donor Center, located at 5700 Martin Luther King Jr. Way, Seattle, WA 98122, for the manufacture of Source Plasma. The mailing address for North American Biologicals, Inc., is 16500 NW., 15th Ave., Miami, FL 33169.

The revocation is based on the failure of the South Seattle Donor Center and its responsible management to conform to the applicable standards and conditions established in its license and FDA's regulations (21 CFR parts 600, 601, 606, and 640). FDA inspection and concurrent investigation of the South Seattle Donor Center, conducted from October 29, 1991, through November 20, 1991, indicated significant noncompliance with important provisions of the Federal standards relating to donor protection and product quality.

During the inspection, the following deviations were found: (1) Failure to ensure that personnel have adequate training and experience necessary for competent performance of their assigned functions (21 CFR 606.20(b)); (2) failure to ensure that each donor is examined by a qualified licensed physician or approved physician substitute on the day of the first donation or no more than 1 week before the first donation (21 CFR 640.63(b)); (3) failure to adequately determine donor suitability (21 CFR 640.63(e) and 21 CFR 640.65(b)); (4) failure to ensure that an adequate number of personnel are present to assure competent performance of their assigned functions, in that on at least two occasions the ratio of phlebotomists to donors exceeded the maximum acceptable ratio specified in the firm's standard operating procedure (21 CFR 606.20(b) and 21 CFR 606.100(b)); and (5) failure to maintain complete and accurate records (21 CFR 606.160).

The concurrent investigation involved interviews with former and current employees. These interviews indicated that: (1) Unauthorized personnel performed critical steps in the plasmapheresis procedure by responding to the alarming of Red Cell/Hemoglobin sensors; (2) an employee performed at least two donor medical examinations prior to his approval as the physician substitute by Center for Biologics Evaluation and Research (CBER) without the firm's physician being present and without the physician's countersignature on the examination documents; and (3) an infrequent donor program had been implemented without CBER approval.

In a letter dated November 27, 1991, FDA notified North American Biologicals, Inc., that the deviations noted at the South Seattle Donor Center represented a danger to health and that its South Seattle Donor Center licenses had been suspended (21 CFR 601.6(a)). In a letter to FDA, dated December 3, 1991, the firm requested that the revocation of the licenses be held in abeyance. In a letter dated January 14, 1992, FDA notified North American Biologicals, Inc., that FDA intended to take steps to revoke U.S. License No. 1022–029. The firm, in its response dated January 23, 1992, waived an opportunity for a hearing and voluntarily requested revocation of U.S. License No. 1022–029. On February 14, 1992, North American Biologicals, Inc., returned its license for its 30 locations and requested that it be reissued after deletion of its location in Seattle, WA, because manufacture of biological products had been discontinued at the South Seattle Donor Center. On April 16, 1992, in accordance with the provisions of 21 CFR 601.9(b), the Establishment License No. 1022 was reissued with designations of the remaining 29 locations.

FDA has placed copies of letters relevant to the license revocations and reissue dated November 27, 1991, December 3, 1991, January 14, 1992, January 23, 1992, February 14, 1992, and April 16, 1992, on file under the docket number found in brackets in the heading of this document in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. These documents are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Accordingly, under 21 CFR 601.5, section 351 of the Public Health Service Act (42 U.S.C. 262), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68), the establishment license (U.S. License No. 1022–029) and the product license issued to North American Biologicals, Inc., doing business as the South Seattle Donor Center for the manufacture of Source Plasma, were revoked, effective April 16, 1992. The establishment and product licenses were reissued for the remaining 29 locations on April 16, 1992 (21 CFR 601.9(b)).

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67.

Dated: September 28, 1992.

Gerald V. Quinnan, Jr.,

Deputy Director, Center for Biologics Evaluation and Research.

[FR Doc. 92–25314 Filed 10–19–92; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to a notice of meeting of the Anti-Infective Drugs Advisory Committee which is scheduled for October 27 and 28, 1992. This meeting was announced in the **Federal Register** of September 21, 1992 (57 FR 43461). The amendment is being made to reflect numerous changes in the 2–day meeting including a change in the location of the meeting. Only the dates of the meeting remain the same.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 21, 1992 (57 FR 43461), FDA announced a meeting of the Anti-Infective Drugs Advisory Committee which is scheduled for October 27 and 28, 1992. One of the announced topics for discussion was whether there is a need for a new specific immunodeficiency warning on the carton and package insert for over-the-counter (OTC) drug products used to treat recurrent vaginal yeast infections. This new warning would inform consumers of the relationship of immune deficiencies (including infection with human immunodefiency virus (HIV)—the virus that causes acquired immunodefiency syndrome (AIDS)) as a cause of recurrent or persistent vaginal yeast infections in some women. The warning would also encourage women who may have been exposed to the HIV virus and who are experiencing recurrent, persistent vaginal yeast infections to see their physician promptly. This topic will not be discussed as previously planned. Because of an agreement between FDA and the sponsors of approved OTC drug products, the use of committee time for discussing this issue has now been determined unnecessary at this time. This topic for discussion has now been replaced with a new item for discussion. Additionally, the committee will now hold closed committee deliberations on the second day. Further, the meeting location has been changed and will not be held in Conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD, as previously announced. On page 57 FR 43461, column 3, after the 4th line, the notice is amended to read as follows:

Anti-Infective Drugs Advisory Committee

Date, time, and place. October 27, 1992, 1 p.m., Potomac Inn, Ballrooms A, B, and C, I–270 and Shady Grove Rd., Three Research Ct., Rockville, MD, and October 28, 1992, 8:30 a.m., Maryland rm., Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, October 27, 1992, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m.; closed committee deliberations, October 28, 1992, 8:30 a.m. to 5 p.m.; Adele Seifried, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695. Copies of the revised divisional "points to consider" document will be available at the meeting. The Infectious Disease Society of America (IDSA) guidelines will be published in the near future by IDSA.

General function of the committee. The committee reviews and evaluates available data relating to the safety and effectiveness of marketed and investigational human drugs for use in infectious and ophthalmic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 23, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 27, 1992, the Committee will discuss a draft Division of Anti-Infective Drug Products divisional "points to consider" document concerning the need for "two adequate and well-controlled studies" in the clinical development of antimicrobial drug products (agency presentation). This presentation will be a followup to the discussion of this document made during the committee's October 31 and November 1, 1991, meeting. The committee will also discuss any final comments and make recommendations for further review and publication of the series of 16 draft guidelines prepared under contract by IDSA. These guidelines were discussed in detail by the committee on November 1 and 2, 1990.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information relevant to pending new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however,

that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: October 13, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 92–25312 Filed 10–19–92; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Plan of Operations and Environmental Assessment for Continuing Operation of the W.T. Mudget No. 1 Oil Well; Cal-T Management Corporation; Lake Meredith National Recreation Area; Hutchinson County, Texas

Notice is hereby given in accordance with § 9.52(b) of title 36 of the Code of Federal Regulations that the National Park Service has received from Cal-T Management Corporation a Plan of Operations for the continuing operation of the W.T. Mudget No. 1 Oil Well within Lake Meredith National Recreation Area, located within Hutchinson County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Lake Meredith National Recreation Area, 419 East Broadway, Fritch, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, room 211, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, Post Office Box 728, Santa Fe, New Mexico 87504–0728, and will be sent on request.

Dated: October 9, 1992.

Ernest W. Ortega,

Regional Director, Southwest Region.

[FR Doc. 92–25365 Filed 10–19–92; 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 October 10, 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 November 4, 1992.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Coconino County

Bullethead (Snake Gulch Rock Art MPS), Address Restricted, Fredonia vicinity, 92001544

Checkered Men (Snake Gulch Rock Art MPS), Address Restricted, Fredonia vicinity, 92001546

Head Hunters (Snake Gulch Rock Art MPS), Address Restricted, Fredonia vicinity, 92001548

Rock Family (Snake Gulch Rock Art MPS), Address Restricted, Fredonia vicinity, 92001550

Rocketeers (Snake Gulch Rock Art MPS), Address Restricted, Fredonia vicinity, 92001547

Twins (Snake Gulch Rock Art MPS), Address Restricted, Fredonia vicinity, 92001545

White Man Cave (Snake Gulch Rock Art MPS), Address Restricted, Fredonia vicinity, 92001543

Wise Men (Snake Gulch Rock Art MPS), Address Restricted, Fredonia vicinity, 92001549

CALIFORNIA

Los Angeles County

DeWenter Mansion, Guest House and Grounds, 6100 Brydon Rd., La Verne, 92001559

CONNECTICUT

Litchfield County

Cannondale Historic District, Roughly bounded by Cannon, Danbury and Seeley Rds., Wilton, 92001531

GEORGIA

Muscogee County

Rainey, Gertrude Ma Pridgett, House, 805 5th Ave., Columbus, 92001530

HAWAII

Hawaii County

Kalaoa Permanent House Site 10,205, Near Kalihi Pt., Natural Energy Laboratory of Hawaii, Kailua-Kona vicinity, 92001552

Honolulu County

Church of the Crossroads, 1212 University Ave., Honolulu, 92001551

ILLINOIS

Bureau County

Stevens House, 140 E. Main St., Tiskilwa, 92001537

Christian County

Kitchell Park, Jct. of Ninth and Kitchell Sts., Pana, 92001538

Kankakee County

Point School, 6976 N. Vincennes Trail, Grant Park vicinity, 92001539

Macoupin County

Anderson, John C., House, 920 W. Breckenridge St., Carlinville, 92001535

Montgomery County

Freeman-Brewer-Sawyer House, 532 S. Main St., Hillsboro, 92001536

Putnam County

Clear Creek Meeting House, Address Restricted, McNabb vicinity, 92001534

LOUISIANA

Iberville Parish

Carville Historic District, 5445 Point Clair Rd., Carville, 92001529

Webster Parish

Minden Historic District, Broadway, East/West St. and Lewisville Rd. bordering Academy Park and adjacent parts of Elm St. and Fort St., Minden, 92001527

MASSACHUSETTS

Hampshire County

Cushman Village Historic District, roughly bounded by E. Leverett Rd. and Pine, Henry, Bridge and State Sts., Amherst, 92001553

Norfolk County

Scott's Woods Historic District, Hillside St. between Randolph Ave. and MDC Blue Hills Reservation, Milton, 92001528

NEW YORK

Chemung County

St. Patrick's Parochial Residence—Convent and School, 515–517 Park Pl., Elmira, 92001561

Otsego County

South Worcester Historic District, Jct. of Co. Rt. 40 and Co. Rt. 39 and W along 40, South Worcester, 92001563

Rockland County

Hopson—Swan Estate, US. 9W E of Sparkill, Tallman Mountain State Park, Sparkill vicinity, 92001562

RHODE ISLAND

Providence County

Whipple—Jenckes House, 2500 Diamond Hill Road, Cumberland, 92001541

Washington County

Kenyon's Department Store, 344 Main St., South Kingstown, 92001540

Washington County Court House, 3481 Kingstown Rd., South Kingstown, 92001542

VERMONT

Chittenden County

Jericho Village Historic District, VT 15, Plains Rd., Mill St. and Old Pump Rd., Jericho, 92001533

Washington County

Warren Village Historic District (Mad River Valley MPS), along Town Hwys. 1, 4, 16 and 17, Warren, 92001532

WISCONSIN

Dane County

Ames, Francis Marion, Farmstead, 221 US 14, Rutland, 92001555

Dodge County

Greenfield, Willard, Farmstead, N–7436 WI Trunk Hwy. 26, Burnett Township, Horicon Vicinity, 92001557

Green County

Blumer, Dr. Samuel, House, 112 Sixth Ave., New Glarus, 92001556

Monroe County

Water Street Commercial Historic District, roughly bounded by K, Main, Bridge and Spring Sts. and Jefferson Ave., Sparta, 92001554

Portage County

Pomeroy, L. A., House, 203 Laconia St., Amherst, 92001560

Rock County

Prospect Hill Historic District, roughly bounded by Eisenhower, Prospect and Atwood Aves., Milwaukee St., Parker Dr. and Centerway, Janesville, 92001558

[FR Doc. 92–25364 Filed 10–19–92; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32139]

The Belt Railway Co. of Chicago; Trackage Rights Exemption; The Commuter Rail Division of the Regional Transportation Authority, Metra

The Commuter Rail Division of The Regional Transportation Authority, Metra, has agreed to grant approximately 4.15 miles of overhead trackage rights to The Belt Railway Company of Chicago. The trackage rights extend from a connection with Consolidated Rail Corporation south of 42d Place to a connection with the Norfolk and Western Railway Company at approximately 74th Street, in Chicago, IL. The parties intend to consummate the transaction on or after October 6, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Woodrow M. Cunningham, 6900 South Central Avenue, Chicago, IL 60638.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western*

Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: October 8, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–25378 Filed 10–19–92; 8:45 am]

BILLING CODE 7035–01–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Civil Rules

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: There will be a three-day meeting of the Advisory Committee on Civil Rules. The meeting will be open to public observation but not participation. The meeting will commence each day at 8:30 a.m.

DATES: November 12–14, 1992.

ADDRESSES: The Westin Hotel, Tabor Center, 1672 Lawrence Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, telephone (202) 273–1820.

Dated: September 28, 1992.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 92–25382 Filed 10–19–92; 8:45 am]

BILLING CODE 2210–01–M

Meeting of the Judicial Conference Standing Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: There will be a three-day meeting of the Judicial Conference Committee on Rules of Practices and Procedure. The meeting will be open to public observation but not participation. The meeting will commence at 8:30 a.m.

DATES: December 17–19, 1992.

ADDRESSES: The Grove Park Inn and Country Club, 290 Macon Avenue, Asheville, North Carolina.

FOR FURTHER INFORMATION CONTACT: Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: September 28, 1992.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 92–25383 Filed 10–19–92; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States of America* v. *Great Lakes Dredge & Dock Co.*, (D. Conn. No. 3:92CV464(WWE)), was lodged with the United States District Court for the District of Connecticut on October 5, 1992.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311 and 1344(s). Specifically, defendant discharged and disposed dredged material in waters of the United States while performing maintenance dredging in the Federal Channel at Westcott Cove, Stamford, Connecticut, for the City of Stamford, Connecticut. Defendant's actions contravened the provisions of a permit issued by the Department of the Army to the City of Stamford, Connecticut, which required disposal of the dredged material at a designated disposal site, and that every discharge of dredged material at the disposal site be witnessed by an on-board inspector assigned by the Army Corps of Engineers.

The consent decree requires Great Lakes Dredge & Dock Co. to pay $10,000.00 to the United States Treasury, and hereafter to abide by the regulations and provisions of the Army Corps of Engineers permit program under the Clean Water Act.

The United States Attorney's Office will receive written comments relating to the consent decree until November 19, 1992. Comments should be addressed to Sharon E. Jaffe, Esq., Assistant United States Attorney, District of Connecticut, P.O. Box 1824, New Haven, Connecticut 06508, and should refer to *United States of America* v. *Great Lakes Dredge & Dock Co.*, (D. Conn. No. 3:92CV464(WWE)), File No. 9200393.

The complaint and consent decree in this case may be examined at the Clerk's office, United States District Court, 915 Lafayette Boulevard, Bridgeport, Connecticut 06604.

Albert S. Dabrowski,

United States Attorney, District of Connecticut.

[FR Doc. 92–25370 Filed 10–19–92; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 91–26]

John W. Wang, M.D.; Denial of Application

On July 23, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John W. Wang, M.D., (Respondent) of Route 101–A, Amherst, New Hampshire, proposing to deny Respondent's application for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show cause alleged that Respondent's registration would be inconsistent with the public interest.

By letter dated July 26, 1991, Respondent requested a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Boston, Massachusetts, on December 17, 1991. On May 29, 1992, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. On June 18, 1992, Respondent submitted exceptions to Judge Bittner's opinion and recommended ruling and on July 6, 1992, Government counsel filed a response to Respondent's exceptions. On July 7, 1992, the administrative law judge transmitted the record of these proceedings, including Respondent's exceptions and the Government's response thereto, to the Administrator.

The Administrator has considered the entire record of this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. After such consideration of the record, the Administrator has adopted the administrative law judge's findings of fact and conclusions of law in their entirety. They are incorporated into this final order as though they were set forth at length herein. The adoption of the judge's opinion is in no manner diminished by any failure to mention a matter of fact or law.

The Administrator finds that Respondent holds bachelor degrees in Medicine and Surgery from the

University of Singapore. He became licensed to practice medicine in Massachusetts in 1971. Sometime between 1982 and 1984, Respondent's Massachusetts license to practice medicine expired. Respondent obtained a New Hampshire physician's license in August of 1983.

On December 10, 1986, the Massachusetts Board issued an Order to Show Cause to Respondent based upon acts of professional misconduct. The Order charged that the Respondent was guilty of conduct which placed into question his competence to practice medicine, including but not limited to gross misconduct, practicing medicine fraudulently or beyond its authorized scope, or with gross incompetence, gross negligence, or repeated negligence. The Massachusetts Board held a hearing on May 8, 1987, but suspended the proceeding to permit Respondent to reconsider the effect of a stipulation, and after several continuances the hearing resumed on October 28, 1987. Based upon the evidence presented at the hearing, the Massachusetts Board issued its Final Decision and Order on March 16, 1988, revoking Respondent's license to practice medicine in that State. The Board concluded that Respondent, "by his pattern of substandard practice, his misguided judgment in attempting to cover up his errors and his failure to responsibly address patient care matters brought to his attention, is guilty of conduct which calls into question his competence to practice medicine." On appeal, the Massachusetts Supreme Judicial Court affirmed the Massachusetts Board's action. *Wang* v. *Board of Registration in Medicine*, 405 Mass. 15, 537 N.E.2d 1216 (1989).

The administrative law judge further found that in August 1983, Respondent was licensed by the New Hampshire Board of Registration in Medicine. In June 1988, the New Hampshire Board first learned that Respondent had been disciplined by Massachusetts when it received a copy of the March 16, 1988, Massachusetts Board decision revoking Respondent's privileges to practice medicine in that jurisdiction. The New Hampshire Board elected to issue an order which suspended Respondent's New Hampshire license. A hearing was held on October 5, 1988, with Respondent appearing and represented by counsel. By Decision and Order dated March 5, 1992, the New Hampshire Board revoked Respondent's license to practice medicine, effective April 12, 1992. The New Hampshire Board Order sets forth the procedural history of its proceeding, and discusses at length the basis for its action. Since that order is part of the record, a recapitulation here is unnecessary.

The Administrator finds that effective April 12, 1992, the New Hampshire Board of Registration in Medicine revoked Respondent's State medical license, thereby terminating his authority to handle controlled substances in that State. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances. See 21 U.S.C. 802(21) and 823(f). This prerequisite has been consistently upheld. See *Don H. Cole, M.D.*, 57 FR 34980 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988); *Wingfield Drugs, Inc.*, 52 FR 27070 (1987); *Robert F. Witek, D.D.S.*, 52 FR 47770 (1987); *Avner Kauffman, M.D.*, 50 FR 34208 (1985).

The administrative law judge further found that Respondent initially obtained a DEA registration on May 17, 1973. Respondent renewed his registration annually through 1977. On May 31, 1978, his registration expired. The Drug Enforcement Administration sent Respondent a delinquency notice on August 31, 1978, but Respondent nonetheless failed to submit a renewal application.

In August 1988, the Chief Investigator of the New Hampshire Board of Pharmacy advised DEA that a pharmacist had called him to ascertain whether Respondent's name and DEA registration number on a prescription were legitimate. After learning that the Respondent was not registered with the DEA, the Investigator ordered a pharmacy survey of the areas near Respondent's office to determine whether Respondent had written prescriptions for controlled substances after his DEA registration had expired. The survey disclosed twenty prescriptions issued by Respondent between August 5, 1986 and April 12, 1988. The prescriptions were for Schedule II through V controlled substances, including Tylenol No. 3, Percodan, Valium, Ativan, Phenergan, and Schedule V cough syrups.

At the DEA administrative hearing, Respondent testified that he learned for the first time at the October 1988 New Hampshire medical board hearing that the DEA license was something that had to be renewed yearly. Consequently, Respondent telephoned the DEA Boston office, stated that he did not have a valid DEA license and asked how to reapply for registration.

Respondent signed the application for DEA registration on October 17, 1988. Question 4(a) on the application requires the applicant to provide the applicant's State medical license number. In response to this question, Respondent wrote, "DEA license expired." Question 4(b) asks, in part, whether the applicant has ever had a State or professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation. Respondent answered "no" to this question. The application includes a printed warning against "knowingly or intentionally" furnishing false or fraudulent information, which would subject the applicant to imprisonment, a fine, or both. In Respondent's cover letter he wrote, "with respect to question 4b, I had a Massachusetts State License to practice medicine which was automatically revoked in 1984 when I did not renew it. (I had moved my practice to New Hampshire.)"

At the DEA administrative hearing, a DEA Investigator testified that she called Respondent on January 17, 1989, and asked him whether he was aware that his DEA registration had expired. The DEA Investigator testified that Respondent said that he had learned that his registration expired in October 1988, when he telephoned DEA. Respondent also told the DEA Investigator that he was told by DEA that he could not write prescriptions for controlled substances without a valid DEA registration, and that he had stopped writing such prescriptions after October 1988.

The DEA Investigator further testified that in September 1989, Investigators from the New Hampshire Pharmacy Board found three prescriptions for controlled substances written by Respondent for Schedule V cough syrups in November 1988 and January 1989, after he became aware that he did not have a valid DEA registration. The Respondent testified that he forgot that the medications contained codeine and through inadvertence he wrote the prescriptions. However, as noted by the administrative law judge, Respondent's former DEA registration number was handwritten on two of the three prescriptions. Moreover, were it not for the fact that these cough syrups contained codeine, it appears that no prescription would have been necessary.

Respondent argues that there is no compelling reason for the Drug Enforcement Administration not to issue him a registration and he is not a threat to the public health and safety. Respondent further argues that his failure to renew his DEA registration

was due to his misunderstanding of the DEA's requirements; that the Massachusetts proceedings are irrelevant to his DEA application and have no impact on his suitability for a DEA registration; and, that his answer to question 4(b) was consistent with his belief that his Massachusetts license was automatically revoked when he allowed it to lapse and that he explained his answer in his cover letter to this DEA application.

Pursuant to 21 U.S.C. 823(f), the Administrator may deny an application for DEA registration if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority;

(2) The applicant's experience in dispensing, or conducting research, with respect to controlled substances;

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances;

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances; and,

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive. That is, the Administrator may properly rely on any one or a combination of those factors, giving each the weight he deems appropriate in determining whether a registration should be revoked, or an application denied.

The Administrator finds that the first, second, fourth, and fifth factors are relevant to the adjudication of this matter. The record clearly establishes that Respondent's medical licenses in the Commonwealth of Massachusetts and in the State of New Hampshire were revoked. Further, Respondent prescribed controlled substances while not registered to do so. Additionally, Respondent falsified his DEA application. As far as the record indicates, Respondent has never acknowledged that any of his conduct was improper. The administrative law judge concluded that the record warrants denial of Respondent's application for registration. The Administrator concurs in this evaluation.

Throughout the course of these proceedings, Respondent filed numerous objections, exceptions, and motions to dismiss. On the day before the hearing herein, Respondent filed a motion to dismiss arguing that such relief was required by 5 U.S.C. 558(c) which provides that:

> When application is made for a license required by law, the agency * * * within a reasonable time, shall set and complete proceedings required to be conducted in accordance with sections 556 and 557 of this title or other proceedings required by law and shall make its decision.

The administrative law judge first correctly concluded that pursuant to the Administrative Procedure Act and the rules of this agency, she is without authority to grant such a motion. Then, assuming for the sake of discussion that she had jurisdiction to entertain such a motion, the administrative law judge concluded that the agency's delay in proceeding against Respondent's application was not unreasonable under all of the circumstances and that the Respondent had not shown that he was prejudiced by the agency's failure to act more promptly.

Respondent's application for a DEA registration in the State of New Hampshire was dated October 17, 1988. During the approximately two years prior to that date, Respondent was engaged in litigation with the Commonwealth of Massachusetts with respect to his license to practice medicine in that jurisdiction. The Massachusetts Board revoked Respondent's license on March 16, 1988. That action was appealed by Respondent and was not concluded until May of 1989, when the Supreme Judicial Court of Massachusetts affirmed the Board's action. The New Hampshire Board's initial suspension of Respondent's license there took place on July 20, 1988, and its Order to Show Cause seeking to revoke that license was issued on August 11, 1988. That proceeding continued until March 5, 1992, when the Board finally revoked Respondent's license to practice medicine in New Hampshire. The records of those proceedings show very clearly that they took long and torturous courses as a result of the numerous motions, injunctions, and stays sought by the Respondent. It was in the midst of these State proceedings that Respondent filed his application for DEA registration. That it took until July of 1991, for DEA to commerce its own proceeding is not only not unreasonable under the circumstances, it is completely understandable.

Having reviewed the record herein in its entirely, the Administrator affirms the rulings made by the administrative law judge and denies as without merit Respondent's exceptions to Judge Bittner's opinion and recommended ruling, findings of fact, conclusions of law and decision.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration submitted by John W. Wang, M.D., dated October 17, 1988, be, and it hereby is, denied. The Administrator further orders that any other outstanding applications for registration submitted by John W. Wang, M.D., are also denied. This order is effective October 20, 1992.

Dated: October 14, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92–25392 Filed 10–19–92; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law pertaining to unemployment insurance as part of the fulfillment of its role in the administration of the Federal-State unemployment insurance system. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to State Employment Security Agencies (SESAs). The UIPLs described below are published in the **Federal Register** in order to inform the public.

Unemployment Insurance Program Letter No. 18–92

This UIPL advises SESAs of the Department of Labor's interpretation of the term "work" in Section 3304(a)(7) of the Federal Unemployment Tax Act (FUTA).

Unemployment Insurance Program Letter No. 45–92

This UIPL advises SESAs of the provisions of the amendments made by the Unemployment Compensation Amendments of 1992 which affect the Federal-State Unemployment Compensation Program.

Dated: October 8, 1992.

Robert T. Jones,

Assistant Secretary of Labor.

Directive: Unemployment Insurance Program Letter No. 18–92

To: All State Employment Security Agencies

From: Donald J. Kulick, Administrator for Regional Management
Subject: Definition of "Work" for Purposes of Section 3304(a)(7) of the Federal Unemployment Tax Act

1. *Purpose.* To advise State agencies of the Department of Labor's interpretation of the term "work" in section 3304(a)(7) of the Federal Unemployment Tax Act (FUTA).

2. *References.* Section 3304(a)(7), FUTA; Draft Legislation to Implement the Employment Security Amendments of 1970 * * * H.R. 14705 ("1970 Draft Legislation"); and 29 CFR Part 785.

3. *Background.* Section 3304(a)(7), FUTA, requires, as a condition of employers in a State receiving credit against the Federal unemployment tax, that:

An individual who has received compensation during his benefit year is required to have had work since the beginning of such year in order to qualify for compensation in his next benefit year * * *

This provision is commonly referred to as the "double-dip" provision as it prohibits an individual from collecting compensation in two successive benefit years when there has been only one separation from work. Questions continue to arise concerning the definition of "work" in section 3304(a)(7), especially with several States changing to base periods which required the addition of a double dip provision. This UIPL is issued to restate the Department's position on what constitutes "work" for purposes of section 3304(a)(7) and to provide additional guidance on "on-call" status as it relates to section 3304(a)(7).

Section 3304(a)(7) was added to the FUTA by Public Law 91–373, the Employment Security Amendments of 1970. The Senate committee report stated that:

Payment of benefits in 2 successive benefit years following a single separation from work (the so-called "double dip") is a much criticized and illogical aspect of some State benefit formulas. It is made possible by provisions which, for administrative reasons, provide a lag between the end of the period used to measure a worker's past attachment to the labor force and wage credits for monetary entitlement—called the "base period"—and the period during which rights based on such wage credits may be used—called the "benefit year." If the lag is long or the qualifying wages needed for monetary entitlement are low, the wages or employment in the lag period may be enough to establish monetary entitlement in a new benefit year and a new period of benefits without the individual's having had any intervening employment. In such cases, the absence of a provision requiring employment subsequent to the beginning of a worker's first benefit year allows two periods of benefit payments based upon a single separation from employment. [S. Rep. No. 752, 91st Cong. 2d Sess. 21 (1970)]

Although section 3304(a)(7), FUTA, does not define "work," the committee report indicates that the intent of the provision is to remedy a situation where there is "the absence of a provision requiring employment" and, therefore, a second benefit year is established based on "a single separation from employment." Although the term "employment" is defined in section 3306(c), FUTA, the Senate committee report makes it clear that States need not follow this definition of "covered" employment in defining "work" for purposes of section 3304(a)(7):

The bill does not specify how much work would be required or whether it need be in covered employment. The committee believes that these matters should be left to the judgment of the individual States. The amount of requalifying work specified in the present requalifying provisions of State laws is sometimes expressed in dollar terms and sometimes as a multiple of the weekly benefit amount. It is not always limited to covered employment, inasmuch as the requalifying requirement serves a different purpose from the basic monetary qualifying requirement. [S. Rep. No. 752, 91st Cong. 2d Sess. 21 (1970)]

Section 3304(a)(7) was first discussed on pages 45 through 50 of the 1970 Draft Legislation. Although this UIPL does elaborate on positions taken in the 1970 Draft Legislation, it does not change or rescind any position taken in that issuance.

4. Interpretive Position.

A. *In General.* In accordance with the language of the law and the legislative history, the Department has interpreted "work" as meaning the performance of services for which remuneration is payable. (See page 47 of the 1970 Draft Legislation.) Further, the "work" need not be in covered employment. Although the 1970 Draft Legislation does not specifically address self-employment, "work" need not be limited only to services performed in an employer-employee relationship; individuals in self-employment also may be considered to be performing "work." The "work" performed in self-employment must, however, be bona fide "work;" it does not, for example, include unremunerative work performed as a volunteer. In determining whether "work" is performed by an individual, the actual receipt of remuneration need not be controlling. For example, a door-to-door salesperson may perform services and never be remunerated.

Section 3304(a)(7) applies only to an individual who received compensation "during his benefit year." Such an individual must perform services for remuneration after the beginning of the first benefit year as a condition of receiving compensation in a second benefit year. Remuneration received after the beginning of a benefit year for service performed prior to that year may not be used to meet the requalifying requirement. Disability benefit payments, vacation pay, separation pay or back pay may not be used to satisfy the "work" requirement because, although such pay may be considered remuneration, it is not payable for services performed. Because these payments will likely be reported as wages in a wage record state, the agency must take steps to assure that the wages reported represent remuneration for services performed after the beginning of the benefit year. (See pages 47 and 48 of the 1970 Draft Legislation.)

b. *On-call Status.* Individuals who receive remuneration while in "on-call" status have satisfied the requirement that "work" be performed. (On-call status also may be referred to as "stand-by" status. Payments received while in this status by individuals who must actually report to the job site may be referred to as "report-in" pay. See page 47 of the 1970 Draft Legislation.) For purposes of determining whether an individual has performed "work" within the meaning of Section 3304(a)(7), the Department will use guidelines found at 29 CFR part 785 on the treatment of on-call status as hours worked for purposes of the Fair Labor Standards Act. The issue of "on-call" status has also been addressed by the United States Supreme court.

The Judicial construction of on-call status is addressed in a Department Interpretive Bulletin at 29 CFR 785.7:

* * * all hours are hours worked which the employee is required to give his employer, [and] that "an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer's property may be treated by the parties as a benefit to the employer." (*Armour & Co.* v. *Wantock*, 323 U.S. 126 (1944); *Skidmore* v. *Swift*, 323 U.S. 134 (1944)).

Other provisions of 29 CFR part 785 contain further guidance. Section 785.14 states that whether waiting time is time worked "depends upon particular circumstances * * *. 'Facts may show that the employee was engaged to wait or they may show that he waited to be engaged.' (*Skidmore* v. *Swift*, 323 U.S. 134 (1944))." The key is whether the employee is unable to use the time effectively for his own purposes, or whether the time belongs to and is controlled by the employer. (See § 785.15) More specific guidance on on-call time is provided by § 785.17:

An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while "on call". An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call. (*Armour & Co.* v. *Wantock*, 323 U.S. 126 (1944); *Handler* v. *Thrasher*, 191 F.2d 120 (C.A. 10, 1951); *Walling* v. *Bank of Waynesboro, Georgia*, 61 F. Supp. 384 (S.D. Ga. 1945)).

An employee need not necessarily wait on the employer's premises, but his or her freedom must be effectively curtailed in order for waiting time to be considered hours worked. Generally, a person who waits at home qualifies for on-call status only if the employer requires that he/she remain at home while waiting and engage in no other or only limited outside activities. If a worker is only required to leave a number where he/she can be reached, but is free to go shopping, engage in social activities and the like, he/she will not be in an on-call status.

5. *Action Required.* State agency administrators are requested to review

existing State law provisions and agency practices involving requalifying for compensation in a second benefit year to ensure that Federal law requirements as set forth in this program letter are met. Prompt action, including any necessary corrective legislation, should be taken to assure Federal requirements are met.

6. *Inquiries.* Please direct inquiries to the appropriate Regional Office.

Expiration Date: March 31, 1994.

Classification: UI
Correspondence Symbol: TEU
Date: August 20, 1992
Directive: Unemployment Insurance Program Letter No. 45–92
To: All State Employment Security Agencies
From: Donald J. Kulick, Administrator for Regional Management
Subject: Unemployment Compensation Amendments of 1992 (Pub. L. 102–318)—Provisions Affecting the Federal-State Unemployment Compensation (UC) Program

1. *Purpose.* To advise State agencies of the provisions of the amendments made by the Unemployment Compensation Amendments of 1992 which affect the Federal-State UC Program.

2. *References.* Sections 107, 201, 202, 301, 302, 303, 304, 401, and 531 of Public Law 102–318; titles III and IX of the Social Security Act (SSA); the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA 70)—, the Federal Unemployment Tax Act (FUTA); sections 32 and 6050B(b) of the Internal Revenue Code of 1986 (IRC); sections 101 and 214 of the Immigration and Nationality Act (INA); section 194 of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982; UIPL 1–82; GAL 4–92, Change 4; GAL 10–92.

3. *Background.* On July 3, 1992, the President signed into law the Unemployment Compensation Amendments of 1992, Public Law 102–318, which contained many provisions affecting the UC program. States have already been advised of those provisions affecting the Emergency Unemployment Compensation (EUC) program in GAL 4–92, Change 4, and the Trade Act of 1974 in GAL 10–92. This issuance describes the provisions affecting the Federal-State UC program, including changes to the Extended Benefits (EB) program, and the FUTA and the SSA which pertain to the Federal-State UC program. Following is a brief summary of these amendments:

(a) States may pay EB for weeks beginning March 7, 1993 using an optional trigger based on the total unemployment rate. States using this optional trigger will also be required to pay up to seven additional weeks of EB during a "high unemployment period." (Section 201, Pub. L. 102–318.)

(b) For purposes of determining monetary eligibility for EB, States may now use more than one method to determine the necessary amount of employment and earnings in the base period (Section 202(a), Pub. L. 102–318.)

(c) EB eligibility requirements pertaining to work search, suitable work, and requalification following certain disqualifications are suspended for weeks of unemployment beginning after March 6, 1993, and before January 1, 1995. In addition, the Advisory Council on Unemployment Compensation is directed to study and report on these requirements to the Congress (Section 202(b), Pub. L. 102–318.)

(d) Costs incurred by States in administering the amendments described in (a) through (c) will be paid from general revenues for a limited period of time. (Section 107, Pub. L. 102–318.)

(e) States must provide individuals filing a claim for UC with information concerning the taxation of UC. (Section 301, Pub. L. 102–318.)

(f) The mailing of information concerning the earned income tax credit with UC information (i.e., the Form 1099–G) will not raise issues concerning the use of UC granted funds, provided to additional postage costs are incurred. (Section 302, Pub. L. 102–318.)

(g) The exclusion from the definition of employment of certain agricultural workers, the so-called "H2A" workers, has been extended for two years. In addition, the Advisory Council on Unemployment Compensation is directed to report on its recommendations with respect to the treatment of agricultural labor performed by aliens to the Congress. (Section 303, Pub. L. 102–318.)

(h) The period for repayment of Federal loans to a State's unemployment fund has been extended if a State's UC law is amended in calendar year 1992 or 1993 to increase estimated contributions by at least 25 percent. (Section 304, Pub. L. 102–318.)

(i) A permanent provision has been added to Federal law pertaining to the payment of short-time compensation, more commonly known as "worksharing." (Section 401, Pub. L. 102–318.)

(j) The ceiling of the Extended Unemployment Compensation Account in the Unemployment Trust Fund (UTF) has been raised, while the ceiling of the Federal Unemployment Account has been lowered. In addition, borrowing between Federal accounts in the UTF is authorized under certain conditions. Such borrowing is treated as a noninterest-bearing repayable advance (Section 531, Pub. L. 102–318.)

4. *Action Required.* SESAs are requested to take the necessary action to assure consistency with Federal requirements as amended by Pub. Law 102–318. The effective dates for implementation of these amendments are found in Attachment I.

5. *Inquiries.* Inquiries should be directed to your Regional Office.

6. *Attachments.* I. Text, Explanation and Interpretation of Changes to the Federal-State Unemployment Compensation Program made by the Unemployment Compensation Amendments of 1992, Pub. Law 102–318

II. Draft Language of Implement section 201 of Pub. Law 102–318

III. Draft Information Sheet Concerning Taxation of Unemployment Compensation

Expiration Date: August 31, 1993

Attachment I To UIPL 45–92—Text, Explanation and Interpretation of Changes to the Federal-State Unemployment Compensation Program Made By the Unemployment Compensation Amendments of 1992, Public Law 102–318

Modifications to the Extended Benefits Program

I. Section 201. Modification of Trigger Provisions

A. *Text of Section 201.* (a) IN GENERAL.—Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 is amended by adding at the end thereof the following new subsection:

"Alternative Trigger

"(f)(1) Effective with respect to compensation for weeks of unemployment beginning after March 6, 1993, the State may by law provide that for purposes of beginning or ending any extended benefit period under this section—

"(A) there is a State 'on' indicator for a week if—

"(i) the average rate of total unemployment in such State (seasonally adjusted) for the period consisting of the most recent 3 months for which data for all States are published before the close of such week equals or exceeds 6.5 percent, and

"(ii) the average rate of total unemployment in such State (seasonally adjusted) for the 3-month period referred to in clause (i) equals or exceeds 110 percent of such average rate for either (or both) of the corresponding 3-month periods ending in the 2 preceding calendar years; and

"(B) there is a State 'off' indicator for a week if either the requirements of clause (i) or clause (ii) of subparagraph (A) are not satisfied.

Notwithstanding the provision of any State law described in this paragraph, any week for which there would otherwise be a State 'on' indicator shall continue to be such a week and shall not be determined to be a week for which there is a State 'off' indicator.

"(2) For purposes of this subsection, determinations of the rate of total unemployment in any State for any period (and of any seasonal adjustment) shall be made by the Secretary."

(b) ADDITIONAL WEEKS OF BENEFITS AVAILABLE DURING PERIODS OF HIGH UNEMPLOYMENT.—Subsection (b) of section 202 of such Act is amended by adding at the end thereof the following new paragraph:

"(3)(A) Effective with respect to weeks beginning in a high unemployment period, paragraph (1) shall be applied by substituting—

"(i) '80 per centum' for '50 per centum' in subparagraph (A),

"(ii) 'twenty' for 'thirteen' in subparagraph (B), and

"(iii) 'forty-six' for 'thirty-nine' in subparagraph (C).

"(B) For purposes of subparagraph (A), the term 'high unemployment period' means any period during which an extended benefit period would be in effect if section

203(f)(1)(A)(i) were applied by substituting '8 percent' for '6.5 percent'."

(c) CONFORMING AMENDMENT.—Paragraph (2) of section 204(c) of such Act is amended by inserting ", forty-six in any case where section 202(b)(3)(A) applies" after "thirty-nine".

B. *Discussion.* (1) Optional New Trigger Method. Section 203(d), EUCA 70, provides methods for determining whether an extended benefit (EB) period exists in a State. Under the language of EUCA 70, these methods determine whether there is an "on" indicator or an "off" indicator in a State. These methods are more commonly referred to as the "on" or "off" triggers.

The two "on" and "off" triggers in existence prior to the enactment of Public Law 102–318 have not been changed. These triggers are based on the rate of insured unemployment (IUR). Under the first trigger, which is required to be in State law, a State must trigger "on" if the IUR for a 13 consecutive week period in the State is 5 percent or higher and if such IUR equaled or exceeded 120 percent of the average of the IURs for the corresponding 13-week periods in each of the preceding two calendar years. Under the second trigger, which is an option for a State, a State may trigger "on" with an IUR of 6 percent regardless of the IUR in the preceding two years. The State will trigger "off" when the "on" trigger is no longer met, provided certain conditions are met.

Section 201 of Public Law 102–318 now allows a State to trigger "on" using the seasonally adjusted total unemployment rate (TUR) as determined by the Secretary of Labor. Specifically, new paragraph (f) of section 203, EUCA 70, provides for a State to trigger "on" for a week if the TUR for the most recent three months for which data for all States is published (before the close of such week) equals or exceeds 6.5 percent and the average TUR in the State equals or exceeds 110 percent of the TURs for either or both of the corresponding three month periods in the two preceding calendar years. Except as noted below, the State will trigger "off" EB when either the TUR falls below 6.5 percent or the requirements pertaining to the TUR in the previous two years are not satisfied. The determination of the TUR in any State for any period (and of any seasonal adjustment) will be made by the Secretary of Labor.

As is the case with the other EB triggers, the EB period in a State will begin on the first day of the third calendar week after the EB trigger requirements are satisfied and will end on the last day of the third week after the first week for which the trigger requirements are not met. (Section 203(a), EUCA 70.) The amendment does not change the requirements in section 203(b), EUCA 70, that a state must trigger "on" EB for at least 13 weeks and remain triggered "off" for at least 13 weeks.

The amendment also provides that, if under any other provision of State law the State would remain triggered "on," then the State will remain triggered "on" until no triggering method is met. For example, if the State no longer meets the new TUR method, but does meet another method provided for in State law, the State will not trigger "off" EB. States should note this identical requirement already exists for the optional trigger based on a 6.0 percent IUR.

The use of the new trigger method by States is optional. However, if a State desires to trigger "on" EB using this new trigger, State law must provide for the use of this new trigger.

(2) Payment of Additional Weeks of EB. States electing to use the new trigger method must also provide for the payment of additional weeks of EB during a "high unemployment period" which occurs during an EB period. These additional weeks of EB are available only when State law provides for triggering "on" using the new trigger method. We will refer to these additional weeks of EB as "HEB," short for "high (unemployment) EB."

Paragraph (1) of section 202(b), EUCA 70, provides for the establishment of an EB account; the amount in the account will be the least of one of three specified amounts. Section 201(b) of Public Law 102–318 adds new paragraph (3) to section 202(b), EUCA 70, to increase the amount in these accounts during a high unemployment period. The amount payable in a high unemployment period is equal to whichever of the following is at least:

80 percent (as opposed to 50 percent in a "normal" EB period) of the total amount of regular UC (including dependent's allowances) payable to the individual during the benefit year,

20 (as opposed to 13) times the individual's weekly benefit amount, or

46 (as opposed to 39) times the individual's weekly benefit amount, reduced by the regular UC paid (or deemed paid) during the benefit year.

The term "high unemployment period" is defined in new section 202(b)(3)(B), EUCA 70, as any period during which an EB period would be in effect if the optional trigger were based on an 8 percent TUR. Specifically, if the TUR for the most recent three months for which data for all States are published equals or exceeds 8 percent and the average TUR in the State equals or exceeds 110 percent of the TURs for either or both of the corresponding three month periods in the two previous calendar years, then a high unemployment period will exist.

A State determines whether an HEB period exists in accordance with provisions of State law implementing sections 202(b)(3) and 203(f), EUCA 70, and using the seasonally adjusted TUR determined by the Secretary of Labor. When this determination is made, the State will follow the requirements of sections 203 (a) and (b), EUCA 70, for determining the first and last week for which HEB is payable. Specifically, an HEB period will begin on the first day of the third calendar week after the HEB trigger requirements are satisfied and will end on the last day of the third week after the first week for which the HEB trigger requirements are not met. Further, a State must trigger "on" HEB for at least 13 weeks and remain triggered "off" HEB for at least 13 weeks.

C. *Effective Date.* By its terms, new Section 203(f) is "[e]ffective with respect *to compensation for weeks* of unemployment beginning after March 6, 1993." (Emphasis added.) Thus, an EB period may begin in the State for weeks beginning March 7, 1993 if there is an "on" indicator based on the new optional method for the week ending February 20, 1993.

There is no specific effective date in Public Law 102–318 for new section 202(b)(3). However, since this amendment relates to section 203(f), the amendment will be effective with respect to compensation for weeks of unemployment beginning after March 6, 1993.

II. Section 202. Modification of Eligibility Requirements for Unemployment Benefits

A. *Text of Section 202.* (a) EARNINGS TEST.—

(1) In general.—Paragraph (5) of section 202(a) of the Federal-State Extended Unemployment Compensation Act of 1970 is amended by striking "which one of the foregoing methods" and inserting "which one or more of the foregoing methods".

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the amendment made by paragraph (1) shall apply for purposes of extended unemployment compensation and emergency unemployment compensation to weeks of unemployment beginning on or after the date of the enactment of this Act.

(B) WAIVER OF RECOVERY OF CERTAIN OVERPAYMENTS.—On and after the date of the enactment of this Act, no repayment of any emergency unemployment compensation shall be required under section 105 of the Emergency Unemployment Compensation Act of 1991 (Public Law 102–164, as amended) if the individual would have been entitled to receive such compensation had the amendment made by paragraph (1) applied to all weeks beginning before the date of the enactment of this Act.

(b) SUSPENSION OF CERTAIN ELIGIBILITY REQUIREMENTS.—

(1) IN GENERAL.—Section 202(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(7) Paragraphs (3) and (4) shall not apply to weeks of unemployment beginning after March 6, 1993, and before January 1, 1995, and no provision of State law in conformity with such paragraphs shall apply during such period."

(2) STUDY.—The Federal Advisory Council established under section 908 of the Social Security Act shall conduct a study of the provisions suspended by the amendment made by paragraph (1). Not later than February 1, 1994, such Council shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, a report of its recommendations on such suspended provisions (including whether such provisions should be repealed or revised).

B. *Discussion.* (1) EB Earnings Test.

(a) *In general.* Section 202(a)(5), EUCA 70, provides three methods of measuring employment and earnings for purposes of determining an individual's monetary eligibility for EB. These methods are:

+ 20 weeks of full-time insured employment in the base period which served as the basis for the individual's EB claim.

+ Base period earnings covered by the State law for compensation purposes which exceed 40 times the individual's most recent weekly benefit amount.

+ 1½ times the individual's insured wages in the calendar quarter of the base period in which the individual's insured wages were the highest.

Prior to the amendment made by Public Law 102–318, the concluding sentence of section 202(a)(5) provided that "[t]he State shall by law provide *which one of the foregoing methods* of measuring employment and earnings shall be used in that State." (Emphasis added.) Thus, States were required to specify by law which *one* of the three methods would apply to *all* EB claims in the State. States which did not have an approved method which all individuals must meet to quality for regular compensation were required to amend their State law to specify which one method was applicable to all claims for EB. (See UIPL 1–82, dated October 26, 1981.)

Section 202(a)(1) of Public Law 102–318 amended the last sentence of Section 202(a)(5), EUCA 70, to read "[t]he State shall by law provide *which one or more of the foregoing methods* of measuring employment and earnings shall be used in that State." (Emphasis added.) Under the amendment, States may now apply more than one of the three methods to EB claims. States may now use one method, two methods or all three methods.

If the qualifying requirements for regular compensation equal or exceed those provided for in section 202(a)(5), EUCA 70, the State will automatically meet the requirements of section 202(a)(5), EUCA 70. For example, if a State requires all individuals to have 1.6 times high quarter wages or 50 times the individual's weekly benefit amount to qualify for regular compensation, the requirement of section 202(a)(5), EUCA 70, is satisfied and no special provision is required for EB qualifying purposes.

State law may not use any method not provided for in section 202(a)(5), EUCA 70, to qualify for EB. For example, a method based on a ratio of the individual's base period wages to the average annual wage in the State does not satisfy the requirements of section 202(a)(5), EUCA 70. Section 202(a)(5), as amended, continues to require that State law must specifically provide for the determination of EB eligibility using one or more of the three methods.

The amendment authorizing the use of more than one method is not retroactive for EB purposes. In addition, the provision authorizing the waiver of recovery of certain overpayments does not apply to EB overpayments. This waiver applies only to overpayments made under the EUC program. (See Section 202(a)(2)(B), Public Law 102–318, and GAL 4–92, Change 4.)

Since the amendment to section 202(a)(5) only authorizes States to use more than one method, it is an option for States and amendments to State law are not required if all of the methods that are authorized are consistent with section 202(a)(5), EUCA 70.

(b) *Effective Date.* Under Section 202(a)(2)(A) of Public Law 102–318, "[n]otwithstanding any other provision of law," the amendment is applicable to weeks of unemployment beginning on or after the date of enactment, which was July 3, 1992.

(2) Suspension of Other EB Eligibility Requirements. (a) *In General.* Section 202(a)(3), EUCA 70, provides that no payment of EB will be made to an individual for any week of unemployment during which the individual fails to apply for or accept an offer of suitable work or fails to actively engage in seeking work. Section 202(a)(3) establishes criteria for meeting these requirements and requires the imposition of a "4 by 4" disqualification for failure to meet these requirements. Section 202(a)(4), EUCA 70, provides that an individual will not be eligible for EB unless a disqualification for a voluntary quit, a discharge for misconduct, or a refusal of suitable work is terminated by employment subsequent to the date of disqualification.

Section 202(b)(1) of Public Law 102–318, adds new paragraph (7) to section 202(a), EUCA 70, which suspends the requirements of Sections 202(a) (3) and (4), EUCA 70, for weeks of unemployment beginning after March 6, 1993, and before January 1, 1995. Section 202(b)(2), Public Law 102–318, requires the Advisory Council on Unemployment Compensation (referred to in section 202(b)(2) as the "Federal Advisory Council" established under Section 908, SSA) to study and make recommendations concerning the suspended provisions in a report to Congress. This report is to be submitted by February 1, 1994.

Under new section 202(a)(7), EUCA 70, "no provision of State law in conformity with such paragraphs shall apply during such period." In other words, any provision of State law implementing the requirements of paragraphs (3) and (4) of section 202(a), EUCA 70, will not apply during the suspension period.

States do not have the option of applying sections 202(a) (3) and (4), EUCA 70, during the suspension period. Instead, the requirements of paragraph (2) of section 202(a), EUCA 70, will apply:

Except where inconsistent with the provisions of this title, the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for extended compensation and to the payment thereof.

Thus, under the requirements of section 202(a)(2), EUCA 70, States are required to apply the provisions of State law applicable to claims for regular compensation in lieu of the suspended provisions.

States will need to review their laws to determine if amendments are necessary to suspend the above provisions. If so, then amendments are necessary to assure the law remains in conformity with Federal law. States needing to amend their laws may wish to consider adding provisions giving them the flexibility to apply provisions of State law consistent with EUCA 70 at all times.

(b) *Effective Date.* By its own terms, new paragraph (7) of section 202(a) is applicable to weeks of unemployment beginning after March 6, 1993, and before January 1, 1995.

III. Section 107, Financing Provisions

A. *Text of Section 107.* Section 104 of the Emergency Unemployment Compensation Act of 1991 (Public Law 102–164, as amended) is amended by adding at the end thereof the following new subsection:

"(e) TRANSFER OF FUNDS.—Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated)—

"(1) to the extended unemployment compensation account (as established by Section 905 of the Social Security Act) such sums as are necessary to make payments to States under this Act by reason of the amendments made by sections 101 and 102 of the Unemployment Compensation Amendments of 1992, and

"(2) to the employment security administration account (as established by section 901 of the Social Security Act) such sums as may be necessary for purposes of assisting States in meeting administrative costs by reason of the amendments made by sections 101, 102, 201, 202 of the Unemployment Compensation Amendments of 1992.

There is hereby appropriated from such accounts the sums referred to in the preceding sentence and such sums shall not be required to be repaid."

B. *Discussion.* Section 107 of Public Law 102–318 added subsection (e) to section 104 of the Emergency Unemployment Compensation Act of 1991 (Pub. L. 102–164) to provide that amounts necessary for purposes of assisting States in meeting administrative costs incurred by certain amendments, including section 201 (pertaining to the new optional trigger) and section 202 (pertaining to the monetary qualifying methods and suspension of other EB requirements), will be paid from general revenues.

Since the EUC program created by Public Law 102–164 is not effective for weeks beginning after June 19, 1993, the Department deems Section 107 of Public Law 102–318 to be effective only through June 19, 1993.

C. *Effective Date.* Since Public Law 102–318 does not contain an effective date for Section 107, that provision took effect on the date of enactment, July 3, 1992. Therefore, expenditures of administrative funds from general revenues are authorized for weeks of unemployment beginning after July 3, 1992 in the case of Section 202(a), Public Law 102–318, and for weeks of unemployment beginning after March 6, 1993 in the case of Sections 201 and 202(b), Public Law 102–318.

IV. Section 301. Information Required With Respect To Taxation of Unemployment Benefits

A. *Text of Section 301.* (a) INFORMATION ON UNEMPLOYMENT BENEFITS.—(1) GENERAL RULE.—The State agency in each State shall provide to an individual filing a claim for compensation under the State unemployment compensation law a written explanation of the Federal and State income taxation of unemployment benefits and of the requirements to make payments of estimated Federal and State income taxes.

(2) STATE AGENCY.—For purposes of this subsection, the term "State agency" has the meaning given such term by section 3306(e) of the Internal Revenue Code of 1986.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1992.

B. *Discussion.* Since 1978, UC has been taxable for income tax purposes. It has not been certain that all individuals receiving UC were aware that UC was considered taxable income. Section 301 of Public Law 102–318 requires each State to provide a written explanation of Federal and State income taxation of UC and the requirements pertaining to making estimated tax payments to each individual filing a claim for compensation. Section 301 does not amend any provision of Federal law relating to certification for tax credits or administrative grants.

The phrase "filing a claim for compensation" is not defined. The Department interprets this phrase to mean that information must be provided at the time the initial claim is filed or at the time the individual files a claim for the first week. In addition, because only individuals who receive UC must pay income tax, the requirements of this new section will be satisfied if the State first advises the individual of the required information at the time the first check is issued.

As this provision relates to the administration of a State's UC law, grants provided for the administration of the UC program (i.e., "Title III grants") may be used to supply this information. Penalty mail may be used to transmit this information. States agencies may not, however, use Title III grants or penalty mail to transmit other tax information, except as described in V. below.

Although the new provision was not added to sections of the FUTA or SSA relating to certification for tax credits or administrative grants, the Department does not believe that this indicates any Congressional intent that the provision not be enforced. Congress was aware that the Secretary has broad authority to implement and enforce provisions of Federal law; presumably Congressional silence on a specific enforcement provision was based on that awareness. Because Section 301 relates to the administration of the State's UC law, the Department will treat it as a conformity/compliance requirement under section 303(b), SSA, and 20 CFR part 601.

It is anticipated that States will not need to amend their laws to implement this provision. If an amendment is necessary, States should seek any necessary legislation.

A suggested information sheet is attached as Attachment III.

C. *Effective Date.* Under section 301(b) of Public Law 102–318, this amendment takes effect on October 1, 1992. Therefore, States must provide the required information as described above beginning October 1, 1992. As of this date, providing the information is a conformity/compliance requirement.

V. Section 302. Mailing of Certain Information Permitted

A. *Text of Section 302.* (a) GENERAL RULE.—Section 302 of the Social Security Act (42 U.S.C. 502) is amended by adding at the end thereof the following new subsection:

"(c) No portion of the cost of mailing a statement under section 6050B(b) of the Internal Revenue Code of 1986 (relating to unemployment compensation) shall be treated as not being a cost for the proper and efficient administration of the State unemployment compensation law by reason of including with such statement information about the earned income credit provided by section 32 of the Internal Revenue Code of 1986. The preceding sentence shall not apply if the inclusion of such information increases the postage required to mail such statement."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

B. *Discussion.* Section 302, SSA, requires the Secretary of Labor to certify for payment to each State which has a UC law approved under FUTA, "such amounts as the Secretary of Labor determines to be necessary for the proper and efficient administration of such law * * *." These amounts are commonly referred to as Title III grants. Section 303(a)(8), SSA, limits the use of such funds "solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law * * *."

Section 6050B(b), IRC, requires the State agency to provide a statement to each individual who has received at least $10 in UC showing what information has been reported to the Internal Revenue Service (IRS) concerning receipt of UC for income tax purposes. (This information is provided to the taxpayer on the IRS Form 1099–G.) The cost of providing this information has been accepted as part of the administration of the State's UC law and is, therefore, payable from Title III grants. The earned income credit (EIC) established under Section 32, IRC, is not, however, related to the administration of a UC law. Therefore, as discussed in IV. above, prior to this amendment Title III grants and penalty mail could not be used to prepare or mail this information.

Section 302(a) of Public Law 102–318 amends section 302, SSA, to provide that no portion of the cost of mailing UC tax information shall be treated as not being a cost of administration by reason of including EIC information in the UC tax mailing. This exception does not, however, apply if the inclusion of EIC information increases the postage required to mail the IRS Form 1099–G. The practical effect of the amendment is that, unless additional postage costs are incurred, costs of mailing EIC information may be treated as a cost of administering the UC program. This amendment applies only to costs of mailing EIC information, including staff and/or machine time spent on handling or inserting the information into envelopes. It does not apply to other costs such as the preparation or printing of the information. Penalty mail may be used to transmit this information with the IRS Form 1099–G.

States agencies may not use Title III grants or penalty mail to transmit any tax information other than that expressly referred to in sections 301(a) and 302(a) of Public Law 102–318.

It is not necessary for States to take any action to implement this amendment.

C. *Effective Date.* Under section 302(b) of Public Law 102–318, this amendment takes effect on the date of enactment. Therefore, the amendment is effective July 3, 1992.

VI. Section 303. Extension of Existing Treatment of Certain Agricultural Workers.

A. *Text.* (a) GENERAL RULE.—Subparagraph (B) of section 3306(c)(1) of the Internal Revenue Code of 1986 is amended by striking "January 1, 1993" and inserting "January 1, 1995".

(b) REPORT.—Not later than February 1, 1994, the Advisory Council on Unemployment Compensation shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on its recommendations with respect to treatment of agricultural labor performed by aliens.

B. *Discussion.* Section 3306(c)(1)(B), FUTA, exempts from the definition of employment, and therefore from the tax established by the FUTA, agricultural workers who are aliens admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act. These workers are commonly referred to as "H–2A" workers because they are admitted under 8 U.S.C. 1101(a)(15)(H)(ii)(a).

Under current law, this exemption from the term employment applies only to agricultural labor performed before January 1, 1993. Section 303(a) of Public Law 102–318, extends this exemption to services performed before January 1, 1995. In addition, the Advisory Council on Unemployment Compensation is required to submit a report with recommendations to the Congress concerning the treatment of agricultural labor performed by aliens. This report is due February 1, 1994.

C. *Effective Date.* By its terms, the exemption made by Section 303 of Public Law 102–318 is applicable to taxable years beginning January 1, 1993. The exemption is applicable only to taxable years 1993 and 1994.

VII. Section 304. Extension of Period for Repayment of Federal Loans to State Unemployment Funds

A. *Text of Amendments.* (a) GENERAL RULE.—If the Secretary of Labor determines that a State meets the requirements of subsection (b), paragraph (2) of section 3302(c) of the Internal Revenue Code of 1986 shall be applied with respect to such State for taxable years after 1991—

(1) by substituting "third" for "second" in subparagraph (A)(i),

(2) by substituting "fourth or fifth" for "third or fourth" in subparagraph (B), and

(3) by substituting "sixth" for "fifth" in subparagraph (C).

(b) REQUIREMENTS.—A State meets the requirements of this subsection if, during calendar year 1992 or 1993, the State amended its unemployment compensation law to increase estimated contributions required under such law by at least 25 percent.

(c) SPECIAL RULE.—This section shall not apply to any taxable year after 1994 unless—

(1) such taxable year is in a series of consecutive taxable years as of the beginning

of each of which there was a balance referred to in section 3302(c)(2) of such Code, and

(2) such series includes a taxable year beginning in 1992, 1993, or 1994.

B. *Discussion.* States may obtain advances (commonly called "Title XII loans") from the Federal Unemployment Account in the Unemployment Trust Fund for the payment of UC. If these advances are not repaid within a certain time, the credit available to employers against the FUTA tax is reduced. Specifically, if there is an outstanding balance of Title XII loans on January 1 for two consecutive years, and the loans are not repaid by November 10 of the taxable year, the available credit for that taxable year will be reduced by 5 percent of the tax imposed by section 3301, FUTA. (That is, 5 percent of 6.0 percent, or 0.3 percent.) If there is an outstanding balance of Title XII loans on January 1 for three or more consecutive years, and the loans are not repaid by November 10 of the taxable year, the credit for the taxable year will be further reduced in accordance with the requirements of sections 3302(c)(2)(A)(ii) and 3302(c)(2)(B) or (C), FUTA.

Section 304 of Public Law 102–318 provides that these credit reductions will be deferred for one year if, during calendar year 1992 or 1993, the State amended its UC law to increase estimated contributions required under such law by at lest 25 percent. For example, the five percent reduction will occur only if there is an outstanding balance on January 1 for three (instead of two) consecutive years and the loan has not been repaid by the November 10 of the taxable year.

Section 304 of Public Law 102–318 applies only to increases in estimated employer contributions to the State's unemployment fund. The term "contributions" is defined in Section 3306(g), FUTA, as "payments required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ."

Law changes affecting contributions due include, but are not limited to, increasing the taxable wage base, raising assignable contribution rates, and establishment of special surtaxes to increase fund solvency. Changes to State law affecting employee payments to the unemployment fund or which decrease the amount of compensation paid (e.g., lowering benefit rates, imposing stricter eligibility requirements) do not increase contributions due and may not be used to obtain the deferral. Although a reduction in noncharging will result in increased contributions, this increase will not necessarily occur in the year following the tax year as required by section 304. (See following paragraph.)

According to the Conference Report, the extension applies only "if the State amended its unemployment insurance law in 1992 or 1993 to increase estimated contributions by at least 25 percent *in the first year after enactment of the State legislation.*" (Emphasis added.) Therefore, the extension is available only when the amendments resulting in an increase in estimated contributions are effective in the first year following enactment.

Section 304 requires that the State law change be made in "1992 or 1993." The Department interprets this language to authorize the State to use amendments made in both 1992 and 1993 to qualify for the extension. For example, a State amends its law in 1992. It does not achieve a 25 percent increase in 1993. The State then amends its law in 1993. The 1992 and 1993 amendments, taken together, are compared to the State law for 1994 that would have been in effect had neither amendment been made. (For purposes of this situation, the "first year after enactment" will be considered to be tax year 1994.) If the amendments result in a 25 percent increase in estimated contributions due for tax year 1994, then the extension is available for tax year 1993. This same approach will be used for States which amend their laws in 1992, but phase in the amendment through tax year 1994. A State may make amendments effective in the year of enactment.

To give States the full advantage of section 304's provisions, calculations will be made on an accrual basis, that is with respect to taxable wages paid in a taxable year rather than contributions paid.

The Department will need to verify whether a State has met the requirements necessary to obtain a deferral. States will, therefore, be required to submit fully documented applications indicating how the State has increased estimated contributions by at least 25 percent. The application must contain an estimate of contributions due for the relevant year based on both the prior law and the amendments made in 1992 and/or 1993. Since the Department must supply information on credit reduction to the Department of Treasury as of November 10, the Department will require submission of this application by September 1 of the year for which the first deferral is sought. (E.g., deferrals for tax year 1992 are due September 1, 1992.)

The purpose of the amendment was to permit States which had taken action to improve solvency through an increase in contributions, an opportunity to obtain some relief from the Federal credit reduction. Therefore, if the State repeals the legislation creating the estimated increase in contributions, or modifies the legislation so that the estimated increase is less than 25 percent, there is no basis for the extension. For example, if a State enacts legislation in 1992 which results in an estimated 25 percent increase in contributions due for 1993, the State will qualify for the extension for tax year 1992. However, if the amendments are repealed or modified to reduce the increase in contributions to less than 25 percent in 1993, the State will lose the extension for 1992 and will be entitled to no extension for 1993 or subsequent years.

C. *Effective Date.* Section 304 is effective for taxable years beginning after 1991. If a State has an outstanding advance on January 1991 and 1992, provided that, in 1992, it increased estimated contributions by at least 25 percent effective for calendar year 1993.

Under section 304(c), section 304 is not effective for any taxable year after 1994 unless the year is in a series of consecutive taxable years (containing a taxable year beginning in 1992, 1993, or 1994) for which there was a balance of title XII loans as of January 1 of such year.

VIII. Section 401. Treatment of Short-Time Unemployment Compensation Programs

A. *Text of amendments.* (a) Authorization of programs.—

"(1) Paragraph (4) of section 3304(a) of the Internal Revenue Code of 1986 is amended by striking "and" at the end of subparagraph (C), by inserting "and" at the end of subparagraph (D), and by adding at the end thereof the following new subparagraph:

"(E) amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor;"

(2) Subsection (f) of section 3306 of such Code is amended by striking "and" at the end of paragraph (2) by striking the period at the end of paragraph (3) and inserting "; and", and by adding at the end thereof the following new paragraph:

"(4) amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor."

(3) Section 303(a)(5) of the Social Security Act is amended by inserting before "; and" the following ": Provided further, That amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor".

(b) Assistance in Implementing Programs.—In order to assist States in establishing and implementing short-time compensation programs—

(1) the Secretary of labor (hereinafter in this section referred to as the "Secretary") shall develop model legislative language which may be used by States in developing and enacting short-time compensation programs and shall propose such revisions of such legislative language as may be appropriate, and

(2) the Secretary shall provide technical assistance and guidance in developing, enacting, and implementing such programs.

The initial model legislative language referred to in paragraph (1) shall be developed not later than January 1, 1993.

(c) Reports.—

(1) Initial Report.—Not later than January 1, 1995, the Secretary shall submit to the Congress a report on the implementation of this section. Such report shall include an evaluation of short-time compensation programs and shall contain such recommendations as the Secretary may deem advisable.

(2) Subsequent reports.—After the submission of the report under paragraph (1), the Secretary shall submit such additional reports on the implementation of short-time compensation programs as the Secretary deems appropriate.

(d) Definitions.—For purposes of this section—

(1) Short-time compensation program.—The term "short-time compensation program" means a program under which—

(A) Individuals whose workweeks have been reduced by at least 10 percent are eligible for unemployment compensation;

(B) the amount of unemployment compensation payable to any such individual is a pro rata portion of the unemployment compensation which would be payable to the individual if the individual were totally unemployed;

(C) eligible employees are not required to meet the availability for work or work search test requirements while collecting short-time compensation benefits, but are required to be available for their normal workweek;

(D) eligible employees may participate in an employer-sponsored training program to enhance job skills if such program has been approved by the State agency; and

(E) there is a reduction in the number of hours worked by employees in lieu of imposing temporary layoffs.

(2) State.—The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

B. *Discussion.* Under the provisions of section 194 of Public Law 97–248, the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), the Secretary of Labor was directed to develop model legislative language which could be used by the States in developing and enacting short-time unemployment compensation (STC) or "worksharing" programs. As a means of assuring minimum uniformity throughout the States, the Congress specified certain guidelines for those programs which it encouraged the States to utilize in carrying out the intent and purpose of section 194. That purpose was to encourage the States to experiment in the implementation of an STC program. Section 194 was an experimental provision which was in effect for a three-year period beginning on September 4, 1982, and ending on September 3, 1985.

The TEFRA provisions gave the States broad authority to consider, as elements of an STC program, factors not related to the fact or cause of the individual's unemployment. When these provisions expired in 1985, the authority for introducing these factors also expired. A precedent for limiting relevant factors to the fact or cause or unemployment was a 1964 decision by the Secretary of Labor. In that decision, the Secretary rules that a "condition of entitlement not reasonably related to the [unemployment] insurance program or to the insured risk, involuntary unemployment" is not consistent with the withdrawal standard in sections 3304(a)(4), FUTA, and 303(a)(5), SSA.

Section 401(a) of Public Law 102–318 amends the withdrawal standard, and the definition of the term "unemployment fund" found in section 3306(f), FUTA, to provide that amounts may be withdrawn from the unemployment fund of a State for the payment of STC under a plan approved by the Secretary. This amendment gives States authority to continue to operate STC programs approved by the Secretary of Labor as meeting the requirements of the withdrawal standard.

The term "short-time compensation" is defined in new subsection (t) of Section 3306, FUTA. STC is defined as cash benefits payable to individuals under a plan approved by the Secretary of Labor under which:

(1) Individuals whose workweeks have been reduced by at least 10 percent are eligible for UC;

(2) The amount of UC payable to such individual is based on a pro rata portion of the UC which would be payable if the individual were totally unemployed;

(3) Eligible individuals are not required to meet availability or work search requirements while collecting STC, but are required to be available for their normal workweek;

(4) Eligible employees may participate in an employer-sponsored training program to enhance job skills if the program has been approved by the State agency; *and*

(5) There is a reduction in the number of hours worked by employees in lieu of imposing temporary layoffs.

States may not operate a program that does not meet criteria (1) through (3) and (5). Criterion (4), pertaining to employer-sponsored training programs, is optional; however, if included in an STC plan, such program must enhance job skills and be approved by the State agency. Finally, States are also prohibited from imposing any additional requirement inconsistent with the Secretary's 1964 decision.

Section 401(b) of Public Law 102–318 directs the Secretary of Labor to develop model legislative language for use by the States in developing and enacting STC programs by January 1, 1993. Section 401(c) requires an initial report be submitted to Congress by January 1, 1995 on the implementation of section 401 as well as the submission of any additional reports as the Secretary deems appropriate.

The Department will issue a Change 1 to this UIPL providing a more detailed discussion on the above amendments, criteria which a State's STC plan must contain to be approved by the Secretary, and draft language for the STC program. In the meantime, no new STC plan may be put into effect. No plan in effect at this time has been approved under the new authority.

C. *Effective Date.* Section 401 of Public Law 102–318 does not contain an effective date. The Department will therefore treat the date of enactment, July 3, 1992, as the effective date.

IX. Section 531. Modifications to Federal Unemployment Accounts

A. *Text of Section 531.* (a) Modifications to extended unemployment compensation account.—

(1) Transfers to account.—Paragraph (1) of section 905(b) of the Social Security Act is amended to read as follows—

"(b)(1) Except as provided in paragraph (3), the Secretary of the Treasury shall transfer (as of the close of each month), from the employment security administration account to the extended unemployment compensation account established by subsection (a), an amount determined by him to be equal to the sum of—

"(A) 100 percent of the transfers to the employment security administration account pursuant to section 901(b)(2) during such month on account of liabilities referred to in section 901(b)(1)(B) [sic*], plus

"(B) 20 percent of the excess of the transfers to such account pursuant to section 901(b)(2) during such month on account of amounts referred to in section 901(b)(1)(A) [sic*] over the payments during such month from the employment security administration account pursuant to section 901(b)(3) and (d).

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (B), proper adjustments shall be made in the amounts subsequently transferred."

(2) Increase in ceiling.—Subparagraph (B) of section 905(b)(2) of such Act is amended by striking "three-eighths of 1 percent" and inserting "0.5 percent."

(b) Reduction of ceiling on federal unemployment account.—Paragraph (2) of section 902(a) of such Act is amended by striking "five-eighths of 1 percent" and inserting "0.25 percent."

(c) Borrowing between federal accounts.—Title IX of such Act is amended by adding at the end the following new section:

"Borrowing Between Federal Accounts

"Sec. 910. (a) In general.—Whenever the Secretary of the Treasury (after consultation with the Secretary of Labor) determines that—

"(1) the amount in employment security administration account, Federal unemployment account, or extended unemployment compensation account, is insufficient to meet the anticipated payments from the account,

"(2) such insufficiency may cause such account to borrow from the general fund of the Treasury, and

"(3) the amount in any other such account exceeds the amount necessary to meet the anticipated payments from each other account,

the Secretary shall transfer to the account referred to in paragraph (1) from the account referred to in paragraph (3) an amount equal to the insufficiency determined under paragraph (1) (or, if less, the excess determined under paragraph (3)).

"(b) Treatment of advance.—Any amount transferred under subsection (a)—

"(1) shall be treated as a noninterest-bearing repayable advance, and

"(2) shall not be considered in computing the amount in any account for purposes of the application of sections 901(f)(2), 902(b), and 905(b).

"(c) Repayment.—Whenever the Secretary of the Treasury (after consultation with the Secretary of Labor) determines that the amount in the account to which an advance is made under subsection (a) exceeds the amount necessary to meet the anticipated payments from the account, the Secretary shall transfer from the account to the account from which the advance was made an amount equal to the lesser of the amount so advanced or such excess."

(d) Repeal of expired provisions.—

*A version of the proposal which eventually became Public Law 102–318 would have amended section 901(b)(1), SSA, to create new subparagraphs (A) and (B). This amendment was not enacted. As section 901(b)(1), SSA, does not refer to any liabilities, new subparagraph (A) of section 905(b)(1) has no current effect.

(1) Paragraph (2) of section 901(f) of such Act is amended—

(A) by striking "(A) Except as provided in subparagraph (B), the" and inserting "The", and

(B) by striking subparagraph (B).

(2) Section 901 of such Act is amended by striking subsection (g).

(3) Subsection (g) of section 904 is amended by striking all of such subsection that follows the 1st sentence.

(e) Effective Dates.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of enactment of this Act.

(2) Changes in ceiling amounts.—The amendments made by subsection (a)(2) and (b) shall apply to fiscal years beginning after September 30, 1993.

B. *Discussion.* Section 531 of Pubic Law 102–318 amends Title IX, SSA, as it relates to aspects of the Unemployment Trust Fund (UTF). These amendments pertain only to the Federal management of the UTF and do not require any action on the part of the States. The following is provided for informational purposes only.

The amendments made by section 531 affect three accounts in the UTF: the Employment Security Administration Account (ESAA) which funds the administration of the UC and employment service programs; the Extended Unemployment Compensation Account (EUCA) which funds EB (and has been used to fund EUC); and the Federal Unemployment Account (FUA) which is the funding source for advances to States for the payment of UC. These accounts are funded through revenues generated by the tax established by section 3301(a), FUTA.

Title IX specifies a statutory ceiling for each of these three accounts. If this ceiling is reached in a particular account, the excess is distributed according to the provisions of Title IX. When the ceiling is reached in all three accounts, States receive the excess as a "Reed Act" distribution.

Under section 531(a) of Public Law 102–318, the ESAA will retain 80 (formerly 90) percent of the sums appropriated by section 901(b)(1), and 20 (formerly 10) percent is transferred to the EUCA. (The FUA continues to be funded through transfers from ESAA and EUCA.) In addition, section 531 lowers the ceiling in the FUA from 0.625 percent to 0.25 percent of total annual wages and raises the ceiling on the EUCA from 0.375 percent to 0.5 percent of total annual wages.

Section 531(c), Public Law 102–318, adds new Section 910 to Title IX of the SSA. This new section authorizes borrowing, in the form of noninterest-bearing repayable advances, between the ESAA, EUCA, and FUA when the Secretary of the Treasury (in consultation with the Secretary of Labor) determines that:

+ The amount in the "borrowing" account is insufficient to meet anticipated payments;
+ The "borrowing" account may need to borrow from general revenues; and
+ The amount in the "lending" account exceeds the amount necessary to make anticipated payments from the "lending" account.

Any borrowed amount will not be considered in determining whether the borrowing account or lending account has reached its statutory ceiling. The borrowed amount will be repaid when the Secretary of Treasury (in consultation with the Secretary of Labor) determines that the amount in the borrowing account exceeds the amount necessary to meet anticipated payments from the account.

C. *Effective Dates.* Under section 531(e) of Public Law 102–318, all changes made by section 531, *except* the changes made in the ceiling amounts, are effective on the date of enactment, which is July 3, 1992. The changes in the ceiling amounts are effective for Federal fiscal years beginning after September 30, 1993.

Attachment II to UIPL No. 45–92—Draft Language to Implement section 201 of Public Law 102–318

States wishing to amend their Unemployment Compensation law to add the optional EB "on" and "off" indicator provided for by section 201 of Public Law 102–318 may wish to use the following draft language.

This language replaces the draft language for paragraphs (2) through (5) of subsection (a) of an unnumbered section found on pages 75 through 77 of the Draft Language to Implement the Employment Security Amendments of 1976–Public Law 94–566. It also replaces subsection (e) of the same unnumbered section found on pages 125 through 127 of the Draft Language to Implement the Employment Security Amendments of 1970–H.R. 14705.

The following language incorporates both the required trigger mechanism and the two optional triggers and is designed to satisfy the requirements of EUCA 70, as amended, addressing the trigger methods. States wishing to use only one of the optional triggers, or neither of the optional triggers, should delete the language pertaining to the trigger(s) not used.

I. Section ____(a) (2) and (3).

(a)(2) There is a State "on" indicator for a week if—

(A) (i) the rate of insured unemployment under this Act for the period consisting of such week and the immediately preceding twelve weeks equaled or exceeded 120 percent of the average of such rates for the corresponding 13-week period ending in each of the preceding calendar years, and

(ii) equaled or exceeded 5 percent; or

(B) The rate of insured unemployment under this Act for the period consisting of such week and the immediately preceding twelve weeks equaled or exceeded 6 percent, regardless of the rate of insured unemployment in the two previous years; or

(C) With respect to benefits for weeks of unemployment beginning after March 6, 1993 [or any later date selected by the State]—

(i) The average rate of total unemployment (seasonally adjusted), as determined by the United States Secretary of Labor, for the period consisting of the most recent 3 months for which data for all States are published before the close of such week equals or exceeds 6.5 percent, and

(ii) The average rate of total unemployment in the State (seasonally adjusted), as determined by the United States Secretary of labor, for the 3-month period referred to in clause (i), equals or exceeds 110 percent of such average for either or both of the corresponding 3-month periods ending in the 2 preceding calendar years.

(3) There is a State "off" indicator for a week only if, for the period consisting of such week and the immediately preceding twelve weeks, none of the options specified in paragraph (2) result in an "on" indicator.

II. Section ____(e).

(e) *Total extended benefit amount.* (1) The total extended benefit amount payable to any eligible individual with respect to the applicable benefit year shall be the least of the following amounts:

(A) fifty percent of the total amount of regular benefits (including dependents allowances) [1] which were payable to the individual under this Act in the individual's applicable benefit year;

(B) thirteen times his weekly benefit amount [2] (including dependents' allowances) [1] which was payable to an individual under this Act for a week of total unemployment in the applicable benefit year; or

(C) [3] Thirty-nine times the individual's weekly benefit amount [2] (including dependents allowances) [1] which was payable to such individual under this Act for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid (or deemed paid) to such individual under this Act with respect to the benefit year.

(2) Provided,[4] That the amount determined under subsection (1) shall be reduced by the total amount of additional benefits paid (or deemed paid) to the individual under the provisions of section _____ [5] of this Act for weeks of unemployment in the individual's benefit year which began prior to the effective date of the extended benefit period which is current in the week for which the individual first claims extended benefits.

(3)(A) Effective with respect to week beginning in a high unemployment period, paragraph (1) shall be applied by substituting

(i) "eighty percent" for "fifty percent" in subparagraph (A),

(ii) "Twenty" for "thirteen" in subparagraph (B), and

(iii) "Forty-six" for "thirty-nine" in subparagraph (C).

(B) For purposes of subparagraph (A), the term "high unemployment period" means any period during which an extended benefit period would be in effect if subsection (a)(2)(C) were applied by substituting "8 percent" for "6.5 percent".

Notes on Draft Language

[1] In State laws with no provisio for payment of dependents' allowances references to such allowances should be omitted.

[2] If, under the State law, the weekly benefit amount may fluctuate during the benefit year, the word "average" should be added before the words "weekly benefit amount."

[3] This paragraph is necessary only in a State law under which regular benefits payable to an individual in a benefit year

may exceed 26 times the weekly benefit amount.

[4] This proviso is pertinent only in States in which the State law provides for the payment of wholly State-financed additional benefits. Such States, under the Federal law, may (but do not have to) provide for the reduction of the total amount of extended benefit payable to an individual by the amount of additional benefits which were paid (or deemed paid) to the individual in his applicable benefit year before he becomes entitled to extended benefits.

[5] Include reference to section of State law under which wholly State-financed additional benefits are payable.

UC Tax Liability

Any Unemployment Compensation you receive is fully taxable provided you are required to file a tax return.

- ☐ Tax will not be withheld from unemployment compensation benefits; it is your responsibility to determine the amount of your tax and pay the amount due on your annual tax return.
- ☐ It may be necessary for you to make estimated tax payments. For more information on when you should make estimated tax payments, see IRS Publication 505, Tax Withholding and Estimated Tax, or the instructions for Form 1040–ES.
- ☐ You will be furnished a statement, Form 1099–G, at the end of January, reporting benefits paid to you. The Internal Revenue Service will be given the same information.
- ☐ Sufficient information will be furnished to meet your federal, state and personal income tax needs. Benefits paid on interstate claims will be reported by the paying state.

Notify your local unemployment compensation office if you change your address.

Address all questions to the Internal Revenue Service.

[FR Doc. 92–25345 Filed 10–19–92; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

Vermont State Standards; Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On October 16, 1973, notice was published in the **Federal Register** (38 FR 28658) of the approval of the Vermont State Plan and the adoption of subpart U to part 1952 containing the decision.

The Vermont State Plan provides for the adoption of Federal standards as State standards after:

a. Publishing for two (2) successive weeks, in three (3) newspapers having general circulation in the center, northern and southern parts of the State, an intent to amend the State Plan by adopting the standard(s).

b. Review of standards by the Interagency Committee on Administrative Rules, State of Vermont.

c. Approval by the Legislative Committee on Administrative Rules, State of Vermont.

d. Filing in the Office of the Secretary of State, State of Vermont.

e. The Secretary of State publishing, not less than quarterly, a bulletin of all standard(s) adopted by the State.

The Vermont State plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6, of the Act. By letters dated July 14, 1992 and August 20, 1992, from Dana J. Cole-Levesque, Commissioner, Vermont Department of Labor and Industry, to John B. Miles, Jr., Regional Administrator; and incorporated as part of the plan, the State submitted updated State standards identical to 29 CFR part 1910 and subsequent amendments thereto, as described below:

(1) Amendment to 29 CFR 1910.1001, Asbestos, Tremolite, Anthophyllite, and Actinolite (53 FR 35625, dated 9/14/88).

(2) Amendment to 29 CFR 1910.20, Access to Employee Exposure and Medical Records (53 FR 38163, dated 9/29/88).

(3) Amendment to 29 CFR 1910.1000, Air Contaminants; Corrections (54 FR 47513, dated 11/15/88).

(4) Addition of 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories (55 FR 3327, dated 1/31/90).

(5) Addition of 29 CFR 1910.1030, Bloodborne Pathogens (56 FR 64175, dated 12/6/91).

(6) Amendment to 29 CFR 1910, Process Safety Management of Highly Hazardous Chemicals; Explosive and Blasting Agents; Final Rule (57 FR 6403, dated 2/24/91).

These standards became effective on July 25, 1992; August 4, 1992 and June 4, 1992, pursuant to section 224 of State Law.

2. Decision.

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards, and are accordingly approved.

3. Location of Supplement for Inspection and Copying.

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 133 Portland Street, Boston, Massachusetts, 02114; Office of the Commissioner, State of Vermont, Department of Labor and Industry 120 State Street, Montpelier, Vermont 05602, and the Office of State Programs, Room N3700, 200 Constitution Avenue, NW., Washington, DC. 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Vermont State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. This standard is identical to the Federal standard which was promulgated in accordance with Federal law including meeting requirements for public participation.

2. The Standard was adopted in accordance with the procedural requirements of the State Law which included public comment, and further public participation would be repetitious.

This decision is effective October 20, 1992.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at Boston, Massachusetts, this 14th day of August 1992.

John B. Miles, Jr.

Regional Administrator.

[FR Doc. 92–25343 Filed 10–19–92; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (92-64)]

NASA Advisory Council (NAC), Aerospace Medicine Advisory Committee (AMAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 46605, Notice Number 92-62, October 9, 1992.

PREVIOUSLY ANNOUNCED DATES AND ADDRESSES OF MEETING: October 19, 1992, 8:30 a.m. to 5 p.m.; October 20, 1992, 8:30 a.m. to 5 p.m.; and October 21, 1992, 8:30 a.m. to 2 p.m.; The National Aeronautics and Space Administration, 300 E Street, room MIC-5, Washington, DC 20546-0001.

CHANGES IN THE MEETING: Dates changed to October 19, 1992, 8:30 a.m. to 5 p.m.; and October 20, 1992, 8:30 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. J. Richard Keefe, Code SB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1530).

Philip D. Waller,

Deputy Director, Management Operations Division.

[FR Doc. 92-25433 Filed 10-19-92; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL CAPITAL PLANNING COMMISSION

Privacy Act; Publication of Proposed Changes to Systems of Records

AGENCY: National Capital Planning Commission.

ACTION: Notice for publication of altered systems, deleted systems, and expanded systems.

SUMMARY: In accordance with the Privacy Act of 1974 this document amends the systems of records maintained by the Commission. Since the last completed publication of records on February 8, 1977 (42 FR 8028) and the addition of NCPC-4, Grievance Records, on August 28, 1980 (45 FR 57604), NCPC-1, Commission Members and Alternates, has been eliminated and combined with NCPC-3, Payroll Records, which is being expanded and renamed "Personnel/Payroll."

DATES: Comments by December 21, 1992. If no comments are received at the end of the comment period, these systems of records will become effective December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Dodd-Major (General Counsel), 202-724-0187.

SUPPLEMENTARY INFORMATION: The National Capital Planning Commission has not published a complete system of records since September 23, 1977 (42 FR 48768). As a result of the deletion of one system of record and the expansion of another system of record, the Commission is giving notice of changes in NCPC-2, and -4 and publication of NCPC-3, which has been expanded to include NCPC-1. As a result of these proposed changes, NCPC now has 3 systems of records.

The following system is eliminated:

NCPC-1

SYSTEM NAME:

Commission Members and Alternates.

The following changes are made in NCPC Systems of Record:

NCPC-1 (PREVIOUSLY NCPC-2)

SYSTEM NAME:

Mailing lists.

SYSTEM LOCATION:

National Capital Planning Commission, 801 Pennsylvania Avenue, NW, Washington, DC 20576.

SYSTEM MANAGER(S) AND ADDRESS:

Secretariat, National Capital Planning Commission, 801 Pennsylvania Avenue, NW., Washington, DC 20576.

NCPC-2 (previously NCPC-3)

SYSTEM NAME:

Personnel/Payroll-NCPC.

SYSTEM LOCATION:

General Services Administration, Region 3, 7th and D Streets, SW., Washington, DC 20407; copies held by Commission (GSA holds records for the Commission under Memorandum of Agreement).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commission Employees and Commission Members and Alternates.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll records including time and attendance cards, payment vouchers, comprehensive listings of employees, health benefits and Government life insurance records, requests for deductions, tax forms, W-2 forms, leave data, retirement records, notification of personnel actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 31, U.S.C. generally, and National Capital Planning Act of 1952 as amended (40 U.S.C. 71a(c)).

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

Preparation of salary checks and maintenance of leave records; records are also released to GAO for audits, to the IRS for investigations, to Office of Personnel Management (OPM) concerning pay, benefits, retirement deductions and other information necessary for the OPM to carry out its Government wide personnel management functions. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. Routine uses of records maintained in this system shall include providing a copy of an employee's Department of the Treasury Form W-2, Wage and Tax Statement, to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the state, city or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5515, 5517, or 5520, on in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction of the Executive Officer, Administration, National Capital Planning Commission, 801 Pennsylvania Avenue, NW, Washington, DC 20576. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both.

Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished the city in response to a written request from an appropriate city official to the Executive Officer (Administration).

In the absence of a withholding agreement, the social security number will be furnished only to a taxing jurisdiction which has furnished this agency with evidence of its independent authority to compel disclosure of the social security number, in accordance with section 7 of the Privacy Act, Pub. L. 93-579.

Also see appendix.

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

STORAGE:

NCPC files consist of paper records maintained in folders, and on automated data storage devices.

RETRIEVABILITY:

Name and/or Social Security Number.

SAFEGUARDS:

Stored in secured building in locked files, code control computers; released only to authorized personnel in Administrative Office responsible for maintaining these files.

RETENTION AND DISPOSAL:

In accordance with the GSA General Records Schedule 2 and the GAO Manual for Guidance of Federal Agencies.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer, Administration, National Capital Planning Commission 801 Pennsylvania Avenue, NW., Washington, DC 20576.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURE:

Generally by submitting written request to the System Manager. A copy of the Commission's Privacy Act procedures will be sent upon request.

CONTESTING RECORD PROCEDURES:

Generally by submitting written request to the System Manager. A copy of the Commission's Privacy Act procedures will be sent upon request.

RECORD SOURCE CATEGORIES:

Individuals on whom records are maintained.

EXEMPTIONS CLAIMED FROM THE SYSTEM:

None.

NCPC-3 (previously NCPC-4)

SYSTEM NAME:

Grievance Records.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer, National Capital Planning Commission, 801 Pennsylvania Avenue, NW., Washington, DC 20576.

Linda Dodd-Major,

Federal Register Liaison Officer.

[FR Doc. 92-25432 Filed 10-19-92; 8:45 am]

BILLING CODE 7502-02-M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

Dated: October 13, 1992.

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On September 8, 1992, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued to R.G. Koger, on October 8, 1992.

John B. Talmadge,

Permit Office, Division of Polar Programs.

[FR Doc. 92-25326 Filed 10-19-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Industrial Innovation Interface; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Date and Time: November 4-5, 1992; 8:30 a.m. to 5 p.m.

Place: Room 502-V, National Science Foundation, 1110 Vermont Avenue, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Richard L. Schoen, Deputy Division Director of Industrial Innovation Interface, 1110 Vermont Avenue, NW., rm. V-502, Washington, DC 20550. Telephone: (202) 653-5202.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the Small Business Innovation Research Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) and (4) and (6) of the Government in the Sunshine Act.

Dated: October 15, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-25355 Filed 10-19-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: Proposed Rule, "10 CFR Parts 31 and 32: Requirements Concerning the Accessible Air Gap for Generally Licensed Devices.".

3. The form number if applicable: NRC Form 313 and NRC Form 314.

4. How often the collection is required: An initial application for specific license would be required of affected licensees. Applications for renewal would be required at 5-year intervals thereafter. A number of other reports would be required on occasion.

5. Who will be required or asked to report: All general licensees who have the type of gauge identified in the rule as needing additional regulatory control.

6. An estimate of the number of responses annually: 857.

7. An estimate of the total number of hours annually needed to complete the requirements or request: 11,982 hours of reporting burden is estimated and 316 hours of recordkeeping burden is estimated.

8. The average burden per response: 14 hours (11,982 hours ÷ 857 responses).

9. An indication of whether section 3504(h), Public Law 96-511 applies: Applicable..

10. Abstract: The Nuclear Regulatory Commission (NRC) is amending its regulations to require that any NRC general licensee who uses a gauge which has a large accessible air gap associated with it to either physically modify the gauge to reduce the air gap or obtain a specific license authorizing use of the gauge. The applications for

specific licenses are submitted on NRC Form 313, "Application for Material License." The rule would also expand the universe of respondents subject to various information collection requirements contained in 10 CFR part 30 including requirements for the "Certification of Disposition of Materials," NRC Form 314.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0120, 3150–0028, and 3150–0017), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–9132.

Dated at Bethesda, Maryland, this 8th day of October, 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92–25352 Filed 10–19–92; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collections: Proposed appendix B, "Criteria for the Seismic and Geologic Siting of Nuclear Power Plants on or After [EFFECTIVE DATE OF THIS REGULATION]," to 10 CFR part 100, and Proposed appendix S, "Earthquake Engineering Criteria for Nuclear Power Plants," to 10 CFR part 50. (Revision of appendix A, "Seismic and Geologic Siting Criteria for Nuclear Power Plants," to 10 CFR part 100.)

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Applicants for a construction permit, operating license, early site permit, design certification, or combined license for nuclear power plants.

6. An estimate of the number of responses annually: 1.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 154,350.

8. An indication of whether section 3504(h), Public Law 96–511 applies: Applicable.

9. Abstract: Proposed appendix B to 10 CFR part 100 contains criteria associated with the selection of the nuclear power plant site and the establishment of the safe shutdown earthquake ground motion. Proposed appendix S to 10 CFR part 50 contains earthquake engineering criteria for nuclear power plants. In combination, these appendices will replace the criteria contained in appendix A to 10 CFR part 100.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0093 and 3150–0011), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland this 8th day of October 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92–25351 Filed 10–19–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on November 4, 1992, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that will be closed to discuss the qualifications of candidates nominated for appointment to the ACRS. This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6). The purpose of this meeting will be to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

The agenda for the subject meeting shall be as follows:

Wednesday, November 4, 1992–3 p.m. until 5:30 p.m.

The Subcommittee will discuss proposed ACRS activities, practices and procedures for conduct of Committee business, and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Raymond F. Fraley (telephone 301/492–4516) between 7:30 a.m. and 4:15 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 13, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–25347 Filed 10–19–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Plant Operations; Meeting

The ACRS Subcommittee on Plant Operations will hold a meeting on November 4, 1992, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, November 4, 1992—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss proposed changes to the Systematic Assessment of Licensee Performance (SALP) program included in SECY–92–290 as well as issues and concerns associated with the overall SALP process. The purpose of this meeting is

to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, the nuclear industry, their respective consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Douglas Coe (telephone 301/492–8972) between 7:30 a.m. and 4:15 p.m. (e.s.t.). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 14, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–25348 Filed 10–19–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–336–OLA; Fol No. DPR–65; (ASLBP No. 92–665–02–OLA) (Spent Fuel Pool Design)]

Atomic Safety and Licensing Board; Notice of Prehearing Conference

Before Administrative Judges: Ivan W. Smith, Chairman Dr. Charles N. Kelber Dr. Jerry R. Kline

In the Matter of Northeast Nuclear Energy Company (Millstone Nuclear Power Station, Unit No. 2)

October 13, 1992.

Please take notice that a prehearing conference shall take place on Thursday, November 5, 1992 commencing at 9 a.m. in room 301 of the Gold Building, 234 Church Street, New Haven, Connecticut.

Bethesda, Maryland, October 13, 1992.

For The Atomic Safety and Licensing Board.

Charles N. Kelber,

Administrative Judge.

[FR Doc. 92–25349 Filed 10–19–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–280 and 50–281]

Surry Power Station, Units 1 and 2; Consideration of Issuance of Amendments to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–32 and DPR–37, issued to Virginia Electric and Power Company (the licensee), for operation of the Surry Power Station, Units 1 and 2 located in Surry County, Virginia.

The proposed amendments would modify Technical Specification Table 3.7–2, Item 5, "NON-ESSENTIAL SERVICE WATER," to include operability requirements for the actuation logic. Specifically, Item 5.b, "Automatic actuation logic," is being added to indicate total number of channels, minimum operable channels, channels to trip, and Operator Action 14. The action statement will require the unit to be placed in hot shutdown within 12 hours when the minimum channels operable requirement is not met and allow one channel of the actuation logic to be bypassed for up to 8 hours for surveillance testing.

The proposed changes, which would also modify Technical Specification Table 4.1–1, Item 40, "Intake Canal Low," are for clarity and consistency with the rest of Table 4.1–1, as well as with the comparable item in Table 3.7–2.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By November 19, 1992, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the

petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Herbert N. Berkow: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, Post Office box 1535, Richmond, Virginia 23213, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated September 4, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 13th day of October.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–25350 Filed 10–19–92; 8:45 am]

BILLING CODE 7590–01–M

SMALL BUSINESS ADMINISTRATION

Investment Advisory Council; Meeting—Amendment 1

The Investment Advisory Council Meeting scheduled for 9 a.m.–5 p.m., Wednesday, October 21, 1992, is hereby canceled.

Dated: October 14, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–25419 Filed 10–19–92; 8:45 am]

BILLING CODE 8025–01–M

Region V Advisory Council; Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Minneapolis/St. Paul, will hold a public meeting at 12 Noon on Friday, November 13, 1992 at the Decathlon Athletic Club, 7800 Cedar Avenue South, Bloomington, Minnesota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Edward A. Daum, District Director, U.S. Small Business Administration, 610–C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota 55403, (612) 370–2306.

Dated: October 8, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–25415 Filed 10–19–92; 8:45 am]

BILLING CODE 8025–01–M

Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Sioux Falls, will hold a public meeting from 9 a.m. to 3 p.m. on Friday, November 6, 1992, at the U.S. Small Business Administration, Security Building, suite 101, 101 South Main, Sioux Falls, South Dakota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Chester B. Leedom, District Director, U.S. Small Business Administration, Security Building, Suite 101, 101 South Main, Sioux Falls, South Dakota 57102, (605) 330–4231.

Dated: October 8, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–25414 Filed 10–19–92; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Houston, will hold a public meeting at 9 a.m. on Wednesday, October 28, 1992, in the conference room, at the U.S. Small Business Administration, 9301 Southwest Freeway, suite 550, Houston, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Milton Wilson, Jr., District Director, U.S. Small Business Administration, 9301 Southwest Freeway, Suite 550, Houston, Texas 77074–1591, (713) 953–6255.

Dated: October 8, 1992.

Caroline J. Beeson,

Assistant Administrator Office of Advisory Councils.

[FR Doc. 92–25417 Filed 10–19–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Mesaba Aviation, Inc.; d/b/a/ Mesaba Airlines; d/b/a Mesaba Northwest Airlink, for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 92–10–20) Docket 48327.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Mesaba Aviation, Inc. d/b/a/ Mesaba Airlines d/b/a Mesaba Northwest Airlink fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than October 23, 1992.

ADDRESSES: Objections and answers to objections should be filed in Docket 48327 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 366–2340.

Dated; October 13, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–25317 Filed 10–19–92; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[Summary Notice No. PE–92–29]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 9, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on October 13, 1992.

Deborah E. Swank,

Acting Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 24256.
Petitioner: Dalfort Training.
Sections of the FAR Affected: 14 CFR part 61, appendix A; part 121, appendix H.
Description of Relief Sought: To amend the language of Condition 6(c)(2)(ii) of Exemption No. 4955C by requiring simulator instructors to perform 4 hours of line-oriented flight training in the simulator vice 2 hours of line-observation flight training in the airplane.

Docket No.: 25052.
Petitioner: TEMSCO Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.203(a)(1)
Description of Relief Sought: To extend Exemption No. 4760, as amended, from § 135.203(a)(1) of the Federal Aviation Regulations (FAR) which allows TEMSCO Helicopters, Inc., Ketchikan Air Service, Inc., Taquan Air Service, Inc., and Misty Fjords Air and Outfitting to conduct seaplane operations inside the Ketchikan, Alaska, control zone under Special Visual Flight Rules below 500 feet above the surface.

Docket No.: 26939.
Petitioner: Northern Air Cargo, Inc.
Sections of the FAR Affected: 14 CFR 43.4(f), 43.7(e), and 121.379.
Description of Relief Sought: To allow Northern Air Cargo, Inc. to perform maintenance, preventive maintenance, inspections, major repairs, and alterations under the authority of its Part 121 air carrier certificate number NACA002A on Douglas DC–6A aircraft N7780B S/N 45372 while such aircraft is leased to and operated by Ward Cove Packing Co., which is a FAR part 91 operator.

Docket No. 26969.
Petitioner: Miami Air International, Inc.
Sections of the FAR Affected: 14 CFR 91.855.
Description of Relief Sought: To allow Miami Air International, Inc. (Miami Air), to import, modify, and operate for a limited time prior to hush-kitting, a Boeing 727–200 Advanced aircraft, which is owned by a foreign company and leased by Miami Air.

Docket No.: 26975.
Petitioner: P. T. Garuda Indonesia.
Sections of the FAR Affected: 14 CFR 145.35 and 145.37(b)
Description of Relief Sought: To allow Garuda Indonesia to perform maintenance on large aircraft in its semi-enclosed facilities.

Disposition of Petitions

Docket No.: 23358.
Petitioner: Clarke Environmental Mosquito Management, Inc.
Sections of the FAR Affected: 14 CFR 91.313(c)
Description of Relief Sought/ Disposition: To extend Exemption No. 5010, as amended, which allows Clarke Outdoor Spraying Company, Inc., (now known as Clarke Environmental Mosquito Management, Inc.) under certain condition, to carry passengers in restricted category aircraft, namely two Bell 47–G helicopters, while performing aerial-site survey flights.
Grant, September 28, 1992, Exemption No. 5010B

Docket No.: 25053.
Petitioner: Crew Pilot Training, Inc.
Sections of the FAR Affected: 14 CFR 61.55(b)(2), 61.56(b)(1); 61.57 (c) and

(d); 61.58 (c)(1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.157 (d) (1) and (2) and (e) (1) and (2); and Part 61, Appendix A

Description of Relief Sought/ Disposition: To extend and amend Exemption No. 5011B from various sections of Part 61 which permits Crew Pilot Training, Inc. to use FAA-approved simulators to meet certain training and testing requirements and allow Crew Pilot Training, Inc. simulator instructors to substitute an aircraft observation program for an actual flight requirement.

Partial Grant, September 23, 1992, Exemption No. 5011D

Docket No.: 25080.

Petitioner: Aeroservice Aviation Center, Inc.

Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(b)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.157 (d) (1) and (2) and (e) (1) and (2); and Part 61, Appendix A

Description of Relief Sought/ Disposition: To extend the expiration date of Exemption No. 4745, as amended, which permits Aeroservice Aviation Center, Inc. (AAC) to use FAA-approved simulators to meet certain training and testing requirements of Part 61 of the FAR.

Grant, September 23, 1992, Exemption No. 4745C

Docket No.: 26011.

Petitioner: Memphis Airships.

Sections of the FAR Affected: 14 CFR 61.135 (b)(2) and (c).

Description of Relief Sought/ Disposition: To permit pilots trained by Memphis Airships to obtain commercial pilot, lighter-than-air airships ratings without those pilots meeting the pilot experience requirements of 10 hours of night flight time in airships and 10 hours of instrument flight time in airships.

Grant, October 2, 1992, Exemption No. 5530

Docket No.: 2635.

Petitioner: Detroit Metropolitan Airport.

Sections of the FAR Affected: 14 CFR 21.197(a)(1).

Description of Relief Sought/ Disposition: To extend Exemption No. 5136, as amended, which permits General Motors Corporation to operate its Cessna Model 650 aircraft, when flaps fail in the up position, without obtaining a special flight permit.

Grant, October 2, 1992, Exemption No. 5136B

Docket No.: 26559.

Petitioner: Helicopter Association International and The Association of Air Medical Services.

Sections of the FAR Affected: 14 CFR 43.3.

Description of Relief Sought/ Disposition: To allow properly trained personnel to exchange medial oxygen cylinders after such cylinders have been depleted.

Partial Grant, September 25, 1992, Exemption No. 5526

Docket No.: 26855.

Petitioner: Academics of Flight.

Sections of the FAR Affected: 14 CFR 141.65.

Description of Relief Sought/ Disposition: To allow Academics of Flight to hold examining authority for the airline transport pilot written tests.

Grant, September 21, 1992, Exemption No. 5524

Docket No.: 26888.

Petitioner: Aretz Flying Service, Inc.

Sections of the FAR Affected: 14 CFR part 141, appendix A, paragraph 5(c).

Description of Relief Sought/ Disposition: To permit Aretz Flying Service, Inc. to administer Stage II checks before a student's first solo cross country flight instead of after the first solo cross country flight.

Grant, October 5, 1992, Exemption No. 5529

[FR Doc. 92–25371 Filed 10–19–92; 8:45 am]

BILLING CODE 4910–13–M

Intent to Rule on Application to Impose and Use Revenue From a Passenger Facility Charge (PFC) at Walker Field Airport, Grand Junction, CO

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 Walker Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 19, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Weichmann, Manager, Denver Airports District Office, DEN–ADO, Federal Aviation Administration, 5440 Roslyn, suite 300, Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Jeffrey T. Wendland of the Walker Field Airport at the following address: 2828 Walker Field Drive, Suite 211, Grand Junction, Colorado 81506.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Walker Field Colorado Public Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Phillip Braden, Colorado Project Engineer, Denver Airports District Office, 5440 Roslyn, Suite 300, Denver, CO 80216–6026. 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 Walker Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 9, 1992 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Walker Field Colorado Public Airport Authority, Grand Junction, Colorado Public Airport Authority, Grand Junction, Colorado 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 January 20, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 1993.

Proposed charge expiration date: December 31, 1997.

Total estimated PFC revenue: $2,100,000.00.

Brief description of proposed projects: AIP Project No. 11, Remove and Replace Retaining Wall (Phase II), Airport Signage, Reconstruct and Overlay West Star Apron, Construct General Aviation Apron, BLM Fence, Master Plan Update, Rehabilitate Runway 11/29, Grade Safety Area of Runway 11/29, Pave Shoulders of Runway 11/29, Reconstruct General Aviation Apron (Phase I & II), Rehabilitate Taxiway "A", Airport Fencing, Installation of navaids on Runway 11 and Runway 4/22, Rehabilitate Runway 4/22, and Pave Air Carrier Apron.

Class of classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"** and at the FAA Regional Airports office located at: Federal Aviation Administration, Airports Division, 1601 Lind Avenue, Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Walker Field Airport, Grand Junction, Colorado.

Issued in Renton, Washington on October 9, 1992

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 92–25375 Filed 10–19–92; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

Approval of Applicant as Trustee

Notice is hereby given that NationsBank of Georgia, National Association, Atlanta, Georgia, with offices 600 Peachtree Street, NE., suite 900, Atlanta, Georgia, has been approved as Trustee pursuant to Public Law 100–710 and 46 CFR part 221.

Dated: October 13, 1992.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 92–25318 Filed 10–19–92; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 14, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550–0021.
Form Number: None.
Type of Review: Extension.
Title: Loan Application Register.
Description: Fair Housing and Nondiscrimination recordkeeping (Loan Application Register), required of all Bank System member institutions, enables OTS to implement Equal Credit Opportunity, Fair Housing, Home Mortgage Disclosure, and Community Reinvestment Acts with minimum examination burden costs.
Respondents: Businesses or other for-profit.
Estimated Number of Recordkeepers: 2,200.
Estimated Burden Hours Per Recordkeeper: 41 hours, 22 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 90,992 hours.
Clearance Officer: Colleen Devine (202) 906–605, Office of Thrift Supervision, 2nd Floor, 1700 G. Street, NW., Washington, DC 20552.
OMB Reviewer: Gary Waxman (0) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–25390 Filed 10–19–92; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 14, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0019.
Form Number: ATF F 6A (5330.3C).
Type of Review: Extension.
Title: Release and Receipt of Imported Firearms, Ammunition and Implements of War.
Description: This information collected is needed to verify importation of firearms, ammunition and implements of war. ATF Form 6A is completed by Federal firearms licensees, active duty military members, nonresident United States citizens returning to the U.S. and aliens immigrating to the United States.
Respondents: Individuals or households, Businesses or other for-profit, Small Businesses or organizations.
Estimated Number of Recordkeepers: 20,000.
Estimated Burden Hours Per Respondent: 24 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 8,000 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–25391 Filed 10–19–92; 8:45 am]

BILLING CODE 4810–31–M

Office of Thrift Supervision

Piedmont Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole conservator for Piedmont Federal Savings Association, Manassas, Virginia, on October 9, 1992.

Dated: October 14, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–25335 Filed 10–19–92; 8:45 am]

BILLING CODE 6720–01–M

Piedmont Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Piedmont Federal Savings Bank, Manassas, Virginia, OTS No. 2742, on October 9, 1992.

Dated: October 14, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–25336 Filed 10–19–92; 8:45 am]

BILLING CODE 6720–01–M

[AC–59: OTS No. 0563]

American Federal Savings Bank, Reno, Nevada; Approval of Conversion Application

Notice is hereby given that on October 8, 1992, the Assistant Director for Supervisory Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of American Federal Savings Bank, Reno, Nevada, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the West Regional Office, Office of Thrift Supervision, 1 Montgomery Street, suite 400, San Francisco, California 94104.

Dated: October 14, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–25337 Filed 10–19–92; 8:45 am]

BILLING CODE 6720–01–M

[AC–58: OTS No. 1708]

Midwest Federal Savings and Loan of Eastern Iowa, Burlington, Iowa; Approval of Conversion Application

Notice is hereby given that on September 24, 1992, the Assistant Director for Supervisory Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Midwest Federal Savings and Loan Association of Eastern Iowa, Burlington, Iowa, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: October 14, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–25338 Filed 10–19–92; 8:45 am]

BILLING CODE 6720–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–88]

Termination of Section 301 Investigation Regarding Certain Market Access Barriers of the People's Republic of China

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination of investigation pursuant to section 301 of the Trade Act of 1974, as amended (Trade Act), and notice of monitoring pursuant to section 306 of the Trade Act.

SUMMARY: Pursuant to section 304(a)(1)(A)(ii) of the Trade Act, the United States Trade Representative (USTR) has determined that the acts, policies, and practices of the Government of the People's Republic of China (Chinese Government) create market access barriers that are unreasonable and burden or restrict United States commerce. Having reached a satisfactory agreement to resolve the matters under investigation, however, the USTR has determined, pursuant to section 301(b), that the appropriate action in this case is to terminate the investigation. The USTR will monitor the Chinese Government's compliance with this agreement in accordance with section 306 of the Trade Act.

DATES: This investigation was terminated on October 10, 1992.

ADDRESS: Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Catherine Field, Associate General Counsel (202) 395–3432, or Lee Sands, Director, China and Mongolian Affairs (202) 395–5050, for general information; Christopher Allen, Director of Press Relations (202) 395–6120, for media inquiries.

SUPPLEMENTARY INFORMATION: On October 19, 1991, at the direction of the President, the USTR initiated an investigation pursuant to section 302(b) of the Trade Act to determine whether specific market access barriers in China are unreasonable or discriminatory and burden or restrict United States commerce.

The investigation included the following practices of the Chinese Government, which affected major U.S. export interests: (1) Failure to publish, among other things, laws, regulations, judicial decisions, and administrative rulings of general application pertaining to customs requirements, or to requirements, restrictions or prohibitions upon imports or affecting their sale or distribution in China; (2) selected product-specific and sector-specific import prohibitions and quantitative restrictions; (3) selected restrictions upon imports made effective through restrictive import licensing requirements; and (4) selected technical barriers to trade, including standards, testing, and certification requirements, and policies toward veterinary and phytosanitary standards that create unnecessary obstacles to trade.

The USTR selected these barriers for investigation because they appeared to be inconsistent with the multilateral rules and trade liberalization principles of the General Agreement on Tariffs and Trade (GATT) and to the multilateral codes negotiated under GATT auspices, all of which would apply if China were a contracting party to the GATT and its related codes. Additionally, these practices appeared to constitute significant barriers to United States trade.

Officials of USTR and other U.S. agencies have conducted extensive negotiations with Chinese Government officials in Beijing and Washington, DC, throughout the last twelve months. These investigations have encompassed all of the matters under investigation.

On August 21, 1992, the USTR issued a notice requesting public comment concerning a proposed determination and action in this investigation. As explained in the notice, the USTR proposed to determine pursuant to section 304 of the Trade Act that the acts, policies and practices under investigation were unreasonable and burdened or restricted United States commerce. The USTR further proposed to determine that, in the absence of an acceptable agreement, action in the form of increased duties upon certain products of China would be appropriate. Annexed to the notice was a list of products from which a final list of products subject to increased duties could be drawn.

In response to the notice, USTR received numerous public comments concerning the proposed determination and action. On September 23–25, 1992, the interagency section 301 Committee held a public hearing regarding the products to be subjected to increased duties, should action become necessary. Rebuttal comments were submitted by interested parties after the hearing.

On October 10, 1992, the United States reached an agreement with the Chinese Government in which that Government agreed to eliminate barriers to imports from the United States. Among other things, China committed to eliminate a

vast number of quotas, licensing requirements, controls, and other restrictions upon imports of industrial and agricultural products. Key sectors affected include wheat and other grain, fruit, chemicals, steel products, machinery products, automobile parts, computers, integrated circuits, electrical products, medical and telecommunications equipment, and instant cameras and film. The elimination of barriers will begin on December 31, 1992, with the final phase-out of restrictions occurring on December 31, 1997.

In addition to eliminating market access barriers, the Chinese Government has agreed to reduce tariffs applicable to a number of products, including certain agricultural products, photo film products, machinery, cosmetics, and electrical parts. The Chinese Government has also agreed to apply the same testing and certification standards to domestic and imported nonagricultural products. An expert working group will be established to discuss sanitary and phytosanitary standards requirements and the Chinese Government has agreed to eliminate unjustifiable phytosanitary restrictions on fruit, wheat and tobacco products.

The Agreement also includes important obligations to liberalize the operation of the Chinese trading system. Among other things, the Chinese Government agreed that it (1) will publish all laws, regulations, policies, and guidance regarding the operation of its import and export system; (2) will not apply import substitution measures, nor require the transfer of technology or local investment as a condition for granting import licenses; and (3) will make public commercially important information concerning sales and marketing opportunities in that country. The Chinese Government will also provide an opportunity for administrative and judicial appeals of decisions relating to the importation of products.

The obligations that the Chinese Government has accepted in this Agreement bring China's trade regime closer to the international trade standards required by the GATT. Accordingly, as a result of this Agreement, the United States has agreed to support China's accession to the GATT and to work with the Chinese Government to reach acceptable terms for acceding to the GATT.

Based upon the commitments contained in this Agreement and in the expectation that these commitments will be fully implemented, the USTR has decided to terminate this investigation. Consequently, although the acts, policies, and practices under investigation are unreasonable and burden or restrict U.S. commerce and would have been actionable if an agreement had not been reached, the USTR has decided that the appropriate action is to terminate the investigation. Thus, the action proposed on August 21, 1992, will not be taken. The USTR will monitor Chinese Government's compliance with this Agreement in accordance with section 306 of the Trade Act.

Jeanne E. Davidson,

Chairman, Section 301 Committee.

[FR Doc. 92-25363 Filed 10-19-92; 8:45 am]

BILLING CODE 3190-01-M

Trade Policy Staff Committee; Public Comments on U.S. Negotiations With Taiwan in the Context of the Accession of the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu to the General Agreement on Tariffs and Trade (GATT)

AGENCY: Office of the United States Trade Representatives.

ACTION: Notice and request for comments.

SUMMARY: Notice is hereby given that the Trade Policy Staff Committee (TPSC) is requesting written public comments on the announced intention of the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu (also known as "Chinese Taipei") to accede to the GATT. Comments received will be considered by the Executive Branch in developing the U.S. position and objectives for the bilateral and multilateral negotiations that will determine Taiwan's terms of accession to the General Agreement.

DATES: Public comments are due by 12 noon, November 13, 1992.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Cecilia Leahy Klein, Director for GATT Affairs (telephone: 202-395-3063), or Francis F. Ruzicka, Director for Taiwan and South Asia, (telephone: 202-395-6381), Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION:

1. Written Comments

The Chairman of the Trade Policy Staff Committee invites written public comments on the issues that will be addressed in the course of negotiations with Taiwan to determine the Protocol and tariff terms of Taiwan's accession to the General Agreement.

These terms will be negotiated in bilateral meetings with Taiwan and in meetings of the Working Party established by the Contracting Parties to the GATT on September 29, 1992. The Committee is particularly interested in views on the impact of Taiwan's accession to the GATT on U.S. trade, on any trade measures applied by Taiwan subject to the provisions of the General Agreement, on tariff levels applied by Taiwan to imports of specific interest to U.S. exporters, and on the experiences of U.S. firms in trading with Taiwan. The Committee is seeking information on the structure and conduct of Taiwan's trade policies, on barriers to trade with Taiwan, or on any other measure that inhibits imports or artificially stimulates exports.

All comments will be considered by the Executive Branch in developing the U.S. position and objectives for GATT examination of Taiwan's accession and for bilateral negotiations concerning both the substantive terms of Taiwan's Protocol of Accession and the establishment of Taiwan's GATT schedule of tariff concessions. Information on products or practices subject to these negotiations should include, whenever appropriate, Taiwan's import tariff classification number for the product concerned.

Persons wishing to submit written comments should provide a statement, in twenty copies, by noon, Friday, November 13, 1992, to Carolyn Frank, TPSC Secretary, Office of the U.S. Trade Representative, room 523, 600 17th Street, NW., Washington, DC 20506. Non-confidential information received will be available for public inspection by appointment, in the USTR Reading Room, 600 17th Street, NW., room 101, Washington, DC, Monday through Friday, 10 a.m. to 12 noon and 1 p.m. to 4 p.m. For an appointment call Brenda Webb on 202-395-6186. Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such, and must be accompanied by a non-confidential summary thereof.

2. Background

On September 29, 1992, the GATT Contracting Parties established a Working Party to examine a request by the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu, to accede to the General Agreement pursuant to Article XXXIII. This Working Party, composed of interested GATT members, will examine Taiwan's

foreign trade regime and submit to the GATT Council recommendations that may include a draft Protocol of Accession. The United States will be a major participant in these deliberations, and will engage in bilateral negotiations with Taiwan to develop the terms of its accession to the General Agreement contained in the Protocol and in a schedule of tariff concessions.

The Protocol of Accession that Taiwan negotiates with the Contracting Parties will set forth the agreed terms of its GATT membership, including the relationship of its foreign trade regime to the Articles of the General Agreement. Aspects of the foreign trade regime that are normally examined in such negotiations include: national treatment of imports, licensing requirements, quantitative trade restrictions, subsidy practices, non-tariff charges and taxes, customs valuation and classification procedures, transparency in trade regulation and administration, and state trading practices and monopolies.

In addition, as part of the accession process, Taiwan will also conduct bilateral negotiations with interested GATT members to formulate a schedule of tariff concessions that will become part of its Protocol of Accession. These concessions will consist of Taiwan's agreement to bind the tariffs applied to certain imports, restricting its ability to increase the tariff rate applied to those items without offering appropriate compensatory tariff concessions on other items. The rates of duty negotiated bilaterally will apply to the trade of other GATT contracting parties after Taiwan's accession to the GATT.

As a GATT member, Taiwan will enjoy a multilateral guarantee of unconditional most favored nation treatment from other GATT contracting parties that is more comprehensive than that available through bilateral agreements. The bindings on tariffs maintained in the tariff schedules of other GATT contracting parties will be extended to Taiwan's exports as obligations under the GATT. Taiwan will also have recourse to GATT procedures to protect itself from unfair or unreasonable trade actions by its trading partners. Through the dispute settlement provisions of the General Agreement, members are able to utilize a multilateral forum, largely independent of the political pressures influencing bilateral relationships, to resolve disputes. As a GATT contracting party, Taiwan will also have the opportunity to join with other members in Multilateral Trade Negotiations.

In return for these benefits, Taiwan will be expected to grant similar benefits to the trade of the other GATT contracting parties, to conduct its trade policies in accordance with the rules set out in the General Agreement, and to establish its own schedule of tariff concessions.

Authority: 15 CFR 2002.2.

Frederick Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 92-25362 Filed 10-19-92; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF VETERANS AFFAIRS

Intent To Prepare Environmental Impact Statement

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent.

SUMMARY: The Department of Veterans Affairs (VA) intends to prepare an Environmental Impact Statement (EIS) on the proposed establishment of a national cemetery to serve the area of Oklahoma City, OK. The cemetery site is projected to require a minimum of 50 acres, providing space for approximately 37,000 gravesites, interment service shelters, administrative and maintenance buildings, roads, and buffer areas. Physical characteristics and location of the land will determine the actual acreage necessary to develop the desired cemetary.

DATES: Written comments must be received on or before November 19, 1992. Comments will be available for public inspection until November 30, 1992.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections to the Secretary of Veterans Affairs (217A), 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 132 at the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, until November 30, 1992.

FOR FURTHER INFORMATION CONTACT: Jon E. Baer, Director, Site Development and Environmental Service (088B4), at (202) 233-8453.

SUPPLEMENTARY INFORMATION: In accordance with section 102(2)(C) of the National Environmental Policy Act, VA publishes this Notice of Intent pursuant to 40 CFR 1501.7.

The proposed national cemetery, if ultimately approved as a project by VA, would involve land acquisition, site preparation, building and road construction, and possibly would have traffic, economic, and ecological impacts on the local area. Major environmental issues have not been identified as of the date of this notice.

VA has identified possible site alternatives for the proposed national cemetery within a 50 mile radius of the I-35 and I-40 intersections. VA will evaluate each site alternative in an Environmental Impact Statement (EIS) that will assess the environmental impact of construction and operation of a national cemetery.

This notice is part of the process used for scoping the pertinent environmental issues for the EIS. Individuals, private organizations, and local, state, and Federal Agencies are invited to participate in the scoping process. VA will use any comments it receives to further identify and clarify significant environmental issues.

Dated: October 9, 1992.

Anthony J. Principi,

Acting Secretary of Veterans Affairs.

[FR Doc. 92-25330 Filed 10-19-92; 8:45 am]

BILLING CODE 8320-01-M

Federal Interagency Committee on Noise (FICON); Report and Recommendations

AGENCY: Department of Veterans Affairs.

ACTION: Notice of availability of FICON report and recommendations.

SUMMARY: At the direction of the Environmental Protection Agency and the Federal Aviation Administration the FICON was formed in December 1990 with a basic charter to review specific elements of the assessment of airport noise impacts contained in documents prepared pursuant to the National Environmental Policy Act (NEPA); to review the relationship of Federal Aviation Regulation (FAR) part 150 to NEPA; and to make recommendations regarding potential improvements. The FICON is composed of representatives of the Departments of Transportation (Office of the Secretary and the Federal Aviation Administration), Defense, Justice, Veterans Affairs, Housing and Urban Development; the Environmental Protection Agency; and the Council on Environmental Quality. The FICON has completed its charter and has issued its report, which contains technical findings and the conclusions, and policy recommendations. This notice of the availability of the FICON Report is

being published separately by all FICON member agencies.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Greaves, Assistant Director for Construction & Valuation (262), Loan Guaranty Service, Department of Veterans Affairs, 810 Vermont Avenue, Washington, DC 20420 (202) 233–2691.

SUPPLEMENTARY INFORMATION:

Availability of FICON Report

Any person may obtain a copy of the FICON Report by submitting a written request to the point of contact listed above.

Background

The FICON was formed to review Federal policies which are used in the assessment of airport noise impacts. The FICON review focused primarily on:

- The manner in which noise impacts are determined, including whether aircraft noise impacts are fundamentally different from other transportation noise impacts;
- The manner in which noise impacts are described;
- The extent of impacts outside of Day-Night Average A-Weighted Sound Level (DNL) 65 decibels (dB) that should be reviewed in a National Environmental Policy Act (NEPA) document;
- The range of FAA controlled mitigation options (e.g., noise abatement and flight track procedures) analyzed; and,
- The relationship of the Federal Aviation Regulation (FAR) part 150 process to the NEPA process: including ramifications to the NEPA process if they are separate, and exploration of the means by which the two processes can be handled to maximize benefits.

The FICON was organized into three subgroups to appropriately focus on the technical, legal and policy issues associated with the assessment of airport noise impacts. The Technical subgroup was tasked to reviewed the body of science associated with methodologies and metrics for assessing airport noise impacts which have evolved since the 1980 meetings of the Federal Interagency Committee on Urban Noise (FICON). The Policy subgroup was tasked to review Federal policies which are used in the assessment of airport noise impacts. The Legal subgroup reviewed the legal aspects of current and proposed Federal policies for assessing airport noise impacts. The Technical subgroup's products were used as a basis for the policy findings, conclusions and recommendations in the report.

FICON Report Conclusions

General

- There are no new descriptors or metrics of sufficient scientific standing to substitute for the present DNL cumulative noise exposure metric.
- The methodology employing DNL as the noise exposure metric and appropriate dose relationships (primarily the Shultz curve for Percent Highly Annoyed) to determine noise impact is considered the proper one for civil and military aviation scenarios in the general vicinity of airports.
- Federal agencies generally conduct noise assessments at DNL levels of 65 dB. For a variety of reasons, noise predictions and interpretations are frequently less reliable below DNL 65 dB. DNL prediction models tend to degrade in accuracy at large distances from the airport. Therefore, predictions of noise exposure and impact below DNL 65 dB should take the possibility of such inaccuracy into account.
- On a case-by-case basis, DNL can be supplemented by other metrics.
- Noise analysis is used to address impacts in the following areas: (1) Health and welfare, (2) environmental degradation/impact and (3) land use planning.
- Complaints are an inadequate indicator of the full extent of noise effects on a population.

Health and Welfare

- The dose-effect relationship, as represented by DNL and "Percent Highly Annoyed" (%HA), remains the best available approach for analyzing overall health and welfare impacts for the vast majority of transportation noise analysis situations.
- The 10 dB nighttime penalty levied against noise during 10 p.m. to 7 a.m. period is specifically designed to account for the intrusiveness of noise during this period, and its potential impact on sleep. There are no new hard data which would justify a change in this penalty.
- If supplemental analysis for sleep disturbance is desired, use may be made of an interim dose-response model developed by the AF Armstrong Laboratories. Although this relationship is described in terms of Sound Exposure Level (SEL), single event metrics are of limited use in predicting and interpreting cumulative noise exposure impacts.
- Annoyance is a summary measure of the general adverse reaction of people to noise that causes speech interference; sleep disturbance; desire for a tranquil environment; and the inability to use the telephone, radio or television satisfactorily.
- No definitive evidence of non-auditory health effects from aircraft noise exist, particularly below DNL 70 dB.
- For supplemental analysis Long-Term Equivalent Sound Level or Time Above may be used for analysis of school and communications requirements indoors during specific hours.
- Public health and welfare effects below DNL 60 dB have not been established, but are assumed to decrease according to the decrease in percent of people highly annoyed.

Environmental Degradation/Impact

- Under NEPA, environmental degradation might have to be assessed around airports even if there is no clear effect on public health and welfare. Other criteria might be appropriate.
- A 3 dB increase in the DNL environment represents a doubling of sound energy, and clearly is an indicator of the need for further analysis, although smaller increases may indicate similar need. In other words, the impact of a given incremental amount of change in noise levels depends, in part, upon the existing level of the noise environment.
- Recent technology and software advances in geographic information systems, noise methodology and Census data present an enhanced potential for detailed analysis of sound impacts on population and noise-sensitive areas. These technologies should be considered for use to determine noise impacts of present and proposed actions.

Land Use Planning

- DNL represents the accepted noise methodology for input to compatible land use planning.
- For cumulative speech interference. Table 3–2 "Effects of Noise on People" contained in FICON Volume II: Technical Report, provides a rough approximation of both outdoor and indoor predicted speech interference metrics for various levels of noise exposure as measured in DNL for residential land use only.
- There is a need for selective updating of land-use compatibility guidelines and for enhancing public understanding of them through incentives and other programs.

Education of the Public

Education of the pupils should concentrate on the following frequently misunderstood issues:

- Environmental noise exposure is measured and described most generally by Day-Night Average A-Weighted

Sound Level (DNL). DNL should be defined clearly and its significance and use explained clearly.

• Relation of DNL to Percent Highly Annoyed describes long-term community response to the overall sound environment (indices of health and welfare effects).

• Although the A-Weighted Maximum Sound Level for a single fly over is easily understood, it is useful only for analyzing short-term responses.

• No definite evidence of non auditory health effects from aircraft noise exists, particularly below DNL 70 dB.

• Every change in the noise environment does not necessarily impact public health and welfare.

FICON Report Recommendations

• Continue use of the DNL metric as the principal means for describing long-term noise exposure of civil and military aircraft operations.

• Continue agency discretion in the use of supplemental noise analysis.

• Improve public understanding of the DNL, supplemental methodologies and aircraft noise impacts.

• If screening analysis shows that noise sensitive areas that will be at or above DNL 65 dB would have an increase of DNL 1.5 dB or more, further analysis should be conducted of noise sensitive areas between DNL 60–65 dB having an increase of DNL 3 dB or more due to the proposed airport noise exposure.

• If the DNL 65 dB screening test calls for further analysis between DNL 60–65 dB, agency mitigation options should include noise sensitive areas between DNL 60–65 dB that are projected to have an increase of 3 dB or more as a result of the proposed airport noise exposure.

• If an FAA FAR part 150 program is included by the FAA as a NEPA mitigation measure, the FAA and the airport operator are responsible for ensuring the commitment is carried out and the part 150 study scope conforms to the NEPA scope of noise analysis.

• Increase research (R&D) on methodology development and on the impact of aircraft noise. To foster this, a standing Federal interagency committee should be established to assist agencies in providing adequate forums for discussions of public and private sector proposals identifying needed research and in encouraging R&D in these areas. The following initial R&D issues are recommended:

• Evaluate potential modifications to the 1980 FICON land use compatibility table to improve its usefulness for both routine land use planning and planning for noise-sensitive land uses.

• Continue research into community reaction to aircraft noise, including sleep disturbance, speech interference, and non-auditory health effects of noise.

• Investigate differences in perceptions of aircraft noise, ground transportation noise (highways and railroads), and general background noise.

• Continue and expand research on the airport noise impacts of rotary-wing operations.

• It is the FICON's belief that these recommendations will provide both immediate and long-term improvements in airport noise analysis. Federal interagency encouragement of a continuing review of airport noise analysis will provide a forum to address related public concerns.

While the FICON is seeking to achieve improved uniformity among Federal agencies in airport noise analysis, it must also recognize that agencies have differing legislative mandates and operating environments. These recommendations should be viewed as general guidance. Each Federal agency must determine how it can best use this guidance, supplementing it as appropriate to meet agency needs, within the framework of the NEPA requirements. The FICON Report neither addresses the adequacy of compliance with NEPA to date by the participating agencies, attempts to redefine thresholds of significance of impact under NEPA, nor modifies the NEPA regulations or procedures of those agencies.

Public Review and Comment

Any person may express his or her views on the FICON Report by submitting written comments to the Federal Aviation Administration, Office of Environment and Energy, AEE–300, 800 Independence Avenue, Washington, DC 20591. Since the primary impact of the Report's recommendations will be on the assessment of civil airport noise impacts for which the FAA is responsible, the FAA is serving as the focal point for the receipt of public comments. Copies of such written responses will be provided to all agencies participating in FICON. Additionally, the process of revising participating agencies' regulations in response to the FICON Report will follow individual agencies' rules for public comment.

The Department of Veterans Affairs is reviewing its procedures for evaluating airport noise impacts based on the Report findings, conclusions, and recommendations, and any resulting change in procedures will be published for public comment prior to adoption.

Approved: October 8, 1992.

Anthony J. Principi,

Acting Secretary of Veterans Affairs.

[FR Doc. 92–25329 Filed 10–19–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 203
Tuesday, October 20, 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).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, October 21, 1992.

STATUS: (Meeting will start after conclusion of oral presentation on cigarette lighters.)

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

MATTERS TO BE CONSIDERED:

Open to the Public

FY 93 Operating Plan

The Commission will consider the Operating Plan for Fiscal Year 1993.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504–0800.

Dated: October 16, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92–25560 Filed 10–16–92; 2:52 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

TIME AND DATE: Full Board 9:00 a.m., November 2, 1992.

PLACE: Uniformed Services University of the Health Sciences, Room A1005, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED: 9:00 a.m. Meeting—Board of Regents.

(1) Approval of Minutes—August 10, 1992; (2) Faculty Matters; (3) Report—Admissions; (4) Financial Report; (5) Associate Dean for Graduate Medical Education; (6) Report—President, USUHS; (7) Comments—Members, Board of Regents; (8) Comments—Chairman, Board of Regents; (9) Reports of Subcommittees on Planning and Oversight; New Business.

CONTACT PERSON FOR MORE INFORMATION: David S. Trump, M.D., Executive Secretary of the Board of Regents, 301/295–3886.

Dated: October 16, 1992.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–25570 Filed 10–16–92; 3:04 pm]

BILLING CODE 3810–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice to be published in the **Federal Register** on Friday, October 16, 1992.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, October 21, 1992.

CHANGES IN THE MEETING: Deletion of the following open item from the agenda:

Proposed amendments to Regulations K (International Banking Operations) and Y (Bank Holding Companies and Change in Bank Control) to implement the Foreign Bank Supervision Enhancement Act of 1991. (Proposed earlier for public comment; Docket No. R–0765.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

October 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–25576 Filed 10–16–92; 3:45 pm]

BILLING CODE 6210–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, October 26, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., 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: October 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–25577 Filed 10–16–92; 3:45 pm]

BILLING CODE 6210–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 19, 26, November 2, and 9, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 19

Wednesday, October 21

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Referral of Hearing Request on License Revocation Order in Atomic Safety and Licensing Board Panel (In the Matter of Geo-Tech Associates) (Tentative)
b. Final Rule Regarding Clarification of Statutory Authority for Purposes of Criminal Enforcement

Week of October 26—Tentative

Tuesday, October 27

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule on "Licenses and Radiation Safety Requirements for Irradiators" (Tentative)
b. Final Rule, 10 CFR Part 20, "Disposal of Waste Oil by Incineration"—Response to Petition for Rulemaking from Edison Electric Institute and the Utility Nuclear Waste Management Group (Tentative)

Week of November 2—Tentative

Monday, November 2

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 9—Tentative

Friday, November 13

10:00 a.m.
Briefing on Regulatory Oversight of Materials Program (Public Meeting) (Contact: John Greeves, 301–504–3334)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Current Reactor Technical Issues, e.g. Thermo-Lag Barriers and

Reactor Water Level Indicators (Public Meeting) (Contact: Ashok Thadani, 301–504–2884)

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: October 14, 1992.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 92–25497 Filed 10–16–92; 10:31 am]

BILLING CODE 7590–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, October 27, 1992.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, DC 20594.

STATUS: The first two items are open to the public. The last item is closed to the public under Exemption 10 of the government in Sunshine Act.

MATTERS TO BE CONSIDERED:

5891—Railroad Accident Summary Report: Derailment of NYCTA Train 4–2333 at Union Square Station, New York City New York, August 28, 1991

5884—Safety Study: Locomotive Fuel Tank Integrity

5870—Opinion and Order: Administrator v. D'Attilio, Docket SE–10905: disposition of respondent's appeal

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: October 16, 1992.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 92–25510 Filed 10–16–92; 11:53 am]

BILLING CODE 7533–01–M

Corrections

Federal Register
Vol. 57, No. 203
Tuesday, October 20, 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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Financial Reporting by Introducing Brokers; Valuation of Investments of Customer Funds by Futures Commission Merchants

Correction

In proposed rule document 92-24154 beginning on page 45999 in the issue of Tuesday, October 6, 1992, make the following corrections:

1. On page 45999, in the 3rd column, in the 1st full paragraph, in the 16th line, "IMB^3 While" should read "IBG^3 while".

§ 1.10 [Corrected]

2. On page 46002, in the third column, in § 1.10(b)(1)(ii), in the 15th and 16th lines, " –FR–IB f/" should be deleted.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER92-575-000, et al.]

Wisconsin Electric Power Co., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 92-24430 beginning on page 46380 in the issue of Thursday, October 8, 1992, make the following correction:

On page 46381, in the first column, under the heading "**10. The Union Light, Heat and Power Co.**, in the next line, the docket number should read as set forth below: [Docket No. ES92-61-000]

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA-9-3-5385; A-1-FRL-4509-1]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Revised Regulations Controlling Volatile Organic Compound Emmissions for the Solvent Metal Degreasing, Surface Coating of Miscellaneous Metal Parts and Products, and Organic Material Storage and Distribution

Correction

In proposed rule document 92-22940 beginning on page 43651 in the issue of Tuesday, September 22, 1992, make the following correction:

1. On page 43652, in the first column, under the heading, "**Content of Revised Regulations**", in the second paragraph, in the fifth line from the bottom, "CMR 7.18(9)(b)4.b." should read "CMR 7.18(8)(b)4.b."

2. On the same page, in the second column, in paragraph designation 7., in the ninth line, "not" should read "now" and in the last paragraph, "Aor" should read "For".

BILLING CODE 1505-01-D

Federal Register

Tuesday
October 20. 1992

Part II

State Justice Institute

Final Grant Guidelines; Notice

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Final grant guideline.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 1993 State Justice Institute grants, cooperative agreements, and contracts.

EFFECTIVE DATE: October 20, 1992.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684–6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, et seq., as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the administration of justice in the State courts of the United States. Approximately $11½ million is available for award in FY 1993.

Funding Schedule

The FY 1993 concept paper deadline is December 2, 1992. Papers must be postmarked or bear other evidence of submission by that date. With two exceptions noted immediately below, the FY 1993 funding cycle will be substantially similar to the FY 1992 cycle: the Board will meet in early March, 1993 to invite formal applications based on the most promising concept papers; applications will be due in May; and awards will be approved by the Board in July.

The exceptions to this schedule pertain to proposals to follow up on the National Conference on Substance Abuse and the Courts that was sponsored by the Institute in November, 1991 and the National Conference on Family Violence and the Courts scheduled for March 1993.

In FY 1992, the Institute established a special deadline for concept papers seeking to implement the State plans developed at the Substance Abuse conference. Eleven of the 33 State teams that attended the conference submitted concept papers by that deadline. Because the Board of Directors is aware of the continuing need for SJI support to assist the State courts in coping with their drug caseloads, the Institute is renewing its solicitation of proposals to implement post-conference activities. An October 16, 1992 concept paper deadline has been established for those proposals; the concept papers will be considered in November, 1992 and invited applications will be considered in March, 1993.

Subject to the availability of appropriations in FY 1994, the Institute also contemplates establishing an accelerated timetable for proposals seeking to implement State plans arising from the Family Violence conference. The deadline for mailing concept papers will be October 8, 1993. The papers will be considered by the Board at its meeting in November 1993. The remainder of the application schedule will be published in the Institute's Proposed Grant Guideline for FY 1994.

Changes in the Final Guideline

On August 31, 1992, the Institute published its proposed FY 1993 Grant Guideline in the **Federal Register** for public comment. 57 FR 38486. In response to comments received on the proposed Guideline, the Institute has clarified several sections and made technical changes in sections X. and XI. regarding fiscal audits.

In addition, since publication of the proposed Guideline, Congress enacted several pieces of legislation affecting the Institute's grant program. In S. 1569 and H.R. 6185, Congress reauthorized SJI through FY 1996, and amended the State Justice Institute Act to eliminate an express funding priority for certain categories of applicants. That amendment is reflected in section IV. of the Guideline.

H.R. 1252, as passed by Congress, authorizes SJI to support projects to collect information and provide training pertaining to the admissibility of expert testimony on behalf of battered women on trial for killing or assaulting their abusive partners. H.R. 1253 authorizes SJI to support up to five projects at an aggregate cost of $600,000 to study and provide training on appropriate judicial responses to domestic violence issues arising in the course of child custody litigation. A solicitation of proposals in these areas can be found in section II.B.2.l. of the Guideline.

Other technical changes and corrections of typographical and grammatical errors also have been made, including the addition of a requirement that recipients of FY 1993 grants prepare a one page abstract summarizing the products resulting from each grant. These abstracts will be disseminated to increase the awareness of the SJI grants and will be included on the Institute's electronic bulletin board, which will become operational this fall.

Types of Grants Available From the Institute

Since SJI's establishment in 1987, it has sought to develop a grant program that would be responsive to the most pressing needs of the State courts. As a result, the Institute has initiated several different types of grant programs. The types of grants available in FY 1993 and a reference to the appropriate Guideline sections is provided below:

Project Grants

These grants are awarded to support education, research, demonstration and technical assistance projects to improve the administration of justice in the State courts. As provided in section V., project grants ordinarily will not exceed $200,000. Applicants must ordinarily submit a concept paper (see section VI.) and an application (see section VII.) in order to obtain a project grant. As indicated in section VI.C., the Board may make a project grant of less than $40,000 on the basis of the concept paper alone when the need for the project is clear and little additional information would be provided in an application.

Package Grants

This grant program is new in FY 1993. It is intended to promote efficiency in the application and review process, and in grant administration. The Guideline permits applicants to submit one concept paper (or application) for a "package" of related grants rather than separate proposals for each related component of the package. Annual package grants of up to $750,000 each may be awarded to support projects that address interrelated topics or the core elements of a multifaceted program, or that require the services of all or some of the same key staff persons. Package grants must enhance (not merely maintain) an applicant's services and must otherwise meet the Institute's grant criteria. The Board retains the discretion to support all, none, or selected portions of the proposed package. See sections III.J., V.C. and D., VI.A.2.b. and 3.b., VII.A.3., VII.C and VII.D.

Technical Assistance Grants

This grant program also is new in FY 1993. As described in section II.C.2, a State or local court may receive a grant of up to $30,000 to engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems. The Guideline allocates up to $500,000 to support technical assistance grants in FY 1993.

Curriculum Adaptation Grants

A grant of up to $20,000 for up to one year may be awarded to a State or local court to replicate or modify a model training program developed with SJI funds. See section II.B.2.b.i.(b).

Scholarships

In FY 1992, the Institute established an experimental $100,000 scholarship program to enable judges to attend out-of-State education and training programs. The Board of Directors has enlarged the FY 1993 funding pool to up to $250,000 and has made scholarships available to court personnel as well as judges. See section II.B.2.b.v.

Renewal Grants

There are two types of renewal grants available from SJI: continuation grants (see sections III.H., V.C. and D., and IX.A.) and on-going support grants (see sections III.I., V.C. and D., and IX.B.). Continuation grants are intended to support limited duration projects that involve the same type of activities as the original project. On-going support grants may be awarded for up to a three-year period to support national-scope projects that provide the State courts with importantly needed services, programs, or products.

As in FY 1992, the Guideline establishes a target for renewal grants of no more than 25% of the amount available for grants in FY 1993. The proposed FY 1993 Guideline divided the target allocation equally between continuation grants and on-going support grants. The final Guideline, however, eliminates these sub-allocations in order to afford the Board more discretion in allocating limited renewal grant funds. See section IX.

Special Interest Categories

The Guideline contains 13 Special Interest categories, i.e., those project areas that the Board has identified as being of particular importance to the State courts. Two categories in last year's Guideline have been eliminated ("Methods of Judicial Selection" and "Eliminating Unnecessary Barriers to the Courts") and four categories have been added ("Enhancing Court-Community Relations," "Application of Performance-Based Standards and Measures to the Courts," "Use of Juries," and "Family Violence and the Courts"; see section II.B.2.a., i., k. and l., respectively). Other special interest categories have been modified, and three new national conference topics are announced ("Court Management of Mass Tort Cases," "The Funding Crisis in the Courts," (section II.B.2.b.iv.) and "Increasing Public Confidence in the Courts" (section II.B.2.IV.a.).

Interagency Agreements

Persons interested in the SJI program should also be aware that the Institute has entered into a number of Interagency Agreements (IAA's) that will support projects during Fiscal Year 1993. It is anticipated that the following IAA's will be operational in FY 1993:

Substance Abuse Case Management Education and Technical Assistance

Under this agreement, it is expected that SJI and the Bureau of Justice Assistance (BJA) of the Department of Justice will provide $150,000 each to The American University to identify and assess case management methods through which courts may process substance abuse cases fairly and effectively, develop and test a curriculum for judges and court managers based on these methods, and provide technical assistance that would help training participants improve their ability to handle these cases.

Substance Abuse Treatment Training

The Center for Substance Abuse Treatment (CSAT) of the Department of Health and Human Services and SJI will support six regional training programs for State judges and legislators on alcohol and drug treatment. CSAT is providing approximately $1.1 million to support this program over a three-year period. Subject to the availability of appropriations, SJI will provide an additional $300,000 over the same period to enhance and expand the program.

Substance Abuse Conference State Plan Implementation

SJI and BJA are providing $208,000 ($108,000 from SJI; $100,000 from BJA) to the National Center for State Courts to provide technical assistance to the State teams that attended the 1991 National Conference on Substance Abuse and the Courts.

Intermediate Sanctions Training and Technical Assistance

In FY 1993, SJI and the National Institute of Corrections plan to continue their jointly supported national training and technical assistance project, helping teams of judges and criminal justice system officials plan and develop intermediate sanctions in their jurisdictions. Since the project's inception in 1989, the project has enabled the Center for Effective Public Policy to train and assist teams from 24 jurisdictions. SJI has contributed $390,000 to the project since FY 1989; NIC, $590,000.

Pro Se Modifications of Child Support Awards

SJI and the Office of Child Support Enforcement of the Administration on Children and Families (HHS) are supporting a pilot project to develop, demonstrate, and evaluate effective techniques that courts can use in proceedings to review and modify child support orders involving litigants not represented by counsel. This $70,000 project is being conducted by the American Bar Association Center for Children and the Law in two counties in South Carolina. The Institute is contributing $35,000 to support this project; OCSC/ACF is providing $25,000 plus $10,000 in in-kind services.

Recommendations to Grant Writers

Over the past five years, Institute staff have reviewed approximately 2,000 concept papers and 1,000 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this Guideline.

The Institute suggests that applicants make certain that they address the questions and issues set forth below when preparing a concept paper or application. Concept papers and applications should, however, be presented in the formats specified in sections VI. and VII. of the Guideline, respectively.

1. What is the Subject or Problem You Wish to Address?

Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote or a reference list.

2. What Do You Want to Do?

Explain the goal(s) of the project in simple, straightforward terms. The goals should describe the intended consequences or expected overall effect of the proposed project (e.g., to enable judges to sentence drug-abusing offenders more effectively, or to dispose of civil cases within 24 months), rather than the tasks or activities to be conducted (e.g., hold three training sessions or install a new computer system).

To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper.

3. How Will You Do It?

Describe the methodology carefully so that what you propose to do and how you would do it is clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, err on the side of caution and provide the additional information. A description of project tasks also will help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. How Will You Know It Works?

Every project design must include an evaluation component to determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should describe the criteria that will be used to evaluate the project's effectiveness and identify program elements which will require further modification. The description in the application should include how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

The Institute has also prepared a more thorough list of recommendations to grant writers regarding the development of project evaluation plans. Those recommendations are available from the Institute upon request.

5. How Will Others Find Out About It?

Every project design must include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination as well as the types of recipients should be identified. Reproduction and dissemination costs are allowable budget items.

6. What are the Specific Costs Involved?

The budget in both concept papers and applications should be presented clearly. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be identified clearly. The components of "Other" or "Miscellaneous" items should be specified in the application budget narrative, and should not include set asides for undefined contingencies.

7. What, If Any, Match is Being Offered?

Courts and other units of State and local government (not including publicly supported institutions of higher education) are required by the State Justice Institute Act, as amended, to contribute a match (cash, non-cash, or both) of not less than 50 percent of the grant funds requested from the Institute. All other applicants also are encouraged to provide a matching contribution to assist in meeting the costs of a project. The match requirement works as follows: if, for example, the total cost of a project is anticipated to be $150,000, a State or local court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. It does not include income generated from tuition fees or the sale of project products. Non-cash match refers to in-kind contributions by the applicant, or other public or private sources. This includes, for example, the monetary value of time contributed by existing personnel or members of an advisory committee (but not the time spent by participants in an educational program attending program sessions). When match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

8. Which of the Two Budget Forms Should Be Used?

Section VII.A.3. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the funding request exceeds $100,000. Form C1 also works well for projects with discrete tasks, no matter what the dollar value of the project. Form C, the tabular format, is preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, applicants should use the form that best lends itself to representing most accurately the budget estimates for the project.

9. How Much Detail Should Be Included in the Budget Narrative?

The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VII.D. of the SJI Grant Guideline. To avoid common shortcomings of application budget narratives, the following information should be included:

- Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (e.g., Project Director, 50% for one year, annual salary of $50,000=$25,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.
- Estimates for supplies and expenses supported by a complete description of the supplies to be used, nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (e.g., 100 reports×75 pages each×.05/page=$375.00). Supply and expense estimates offered simply as "based on experience" are not sufficient.

In order to expedite Institute review of the budget, applicants should make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion.

10. What Travel Regulations Apply to the Budget Estimates?

Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which regulations are in force for the project and should include the estimated fare, the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, ground transportation, and other subsistence should be listed separately. When combined, the subtotals for these categories should equal the estimate listed on the budget form.

11. May Grant Funds Be Used to Purchase Equipment?

Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The budget narrative must list such equipment and explain why the equipment is necessary. Written prior approval of the Institute is required when the amount of automated data processing equipment to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3,000.

12. To What Extent May Indirect Costs Be Included in the Budget Estimates?

It is the policy of the Institute that all costs should be budgeted directly; however, if an applicant has an indirect cost rate that has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. A copy of the approved rate agreement should be submitted as an appendix to the application.

If an applicant does not have an approved rate agreement, an indirect cost rate proposal should be prepared in accordance with Section XI.H.4. of the Grant Guideline, based on the applicant's audited financial statements for the prior fiscal year (applicants lacking an audit must budget all project costs directly). If an indirect cost rate proposal is to be submitted, the budget should reflect estimates based on that proposal. Obviously, this requires that the proposal be completed for the applicant's use at the time of application so that the appropriate estimates may be included; however, grantees have until three months after the project start date to submit the indirect cost proposal to the Institute for approval. An indirect cost rate worksheet is available from the Institute on computer diskette upon request.

13. Does the Budget Truly Reflect All Costs Required to Complete the Project?

After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (e.g., development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

Recommendations To Grantees

The Institute's staff works with grantees to help assure the smooth operation of the project and compliance with the SJI Guidelines. On the basis of monitoring more than 600 grants, the Institute staff offers the following suggestions to aid grantees in meeting the administrative and substantive requirements of their grants.

1. After the Grant Has Been Awarded, When are the First Quarterly Reports Due?

Progress and financial status reports must be submitted within 30 days after the end of every calendar quarter—i.e. no later than January 30, April 30, July 30, and October 30—regardless of the project's start date. The reporting periods covered by each quarterly report end 30 days before the respective deadline for the report. When an award period begins December 1, for example, the first quarterly report describing project activities between December 1 and December 31 will be due on January 30. A financial status report should be submitted even if funds have not been obligated or expended.

Progress reports are intended as a way of documenting what has happened over the past three months, providing an opportunity to resolve any questions before they become problems, and making any necessary changes in the project time schedule, budget allocations, etc. Thus, the project report should describe project activities, their relationship to the approved timeline, any problems encountered and how they were resolved, and outline the tasks scheduled for the coming quarter. It is helpful to attach copies of relevant memos, draft products, or other requested information. Two copies of the progress report and attachments should be submitted to the Institute.

Additional quarterly program or financial reporting forms may be obtained from the grantee's Program Manager at SJI, or photocopies may be made from the supply received with the award.

2. Do Reporting Requirements Differ for Renewal Grants or Package Grants?

Recipients of a continuation, on-going support, or package grant are required to submit quarterly progress and financial status reports on the same schedule and with the same information as recipients of a grant for a single new project.

A continuation or an on-going support grant should be considered as a supplement to and extension of the original award, and the reports numbered accordingly. For example, if the last quarterly report filed under the original award is report number six, the first report including a portion of the renewal grant should be report number seven.

Recipients of a package grant should file a summary financial status report covering the entire package as well as separate financial reports for each of the projects in the package, identified by number (e.g., SJI–93–15R–J–001–G1; SJI–93–15R–J–001–G2; SJI–93–15R–J–001–G3).

3. Why is it Important to Address the Special Conditions That are Attached to the Award Document?

In most instances, a list of special conditions is attached to the award document. The special conditions are imposed to establish a schedule for reporting certain key information, to assure that the Institute has an opportunity to offer suggestions at critical stages of the project, and to provide reminders of some, but not all of the requirements contained in the Grant Guideline. Accordingly, it is important for grantees to check the special conditions carefully and discuss with their Program Manager any questions or problems with the conditions they may have. Most concerns about timing, response time, and the level of detail required can be resolved in advance through a telephone conversation. The Institute's primary concern is to work with grantees to assure that their projects accomplish their objectives, not to enforce rigid bureaucratic requirements. However, if a grantee fails to comply with a special condition or with other grant requirements, the Institute may, after proper notice,

suspend payment of grant funds or terminate the grant.

Sections X., XI., and XII. of the Grant Guideline contain the Institute's administrative and financial requirements. Institute staff are always available to answer questions and provide assistance regarding these provisions.

4. What is a Grant Adjustment?

A Grant Adjustment is the Institute's form for acknowledging the satisfaction of special conditions, approving changes in grant activities, schedule, staffing, sites, or budget allocations requested by the project director. It also may be used to correct errors in grant documents, add small amounts to a grant award, or deobligate funds from the grant.

5. What Schedule Should Be Followed in Submitting Requests for Reimbursements or Advance Payments?

Requests for reimbursements or advance payments may be made at any time after the project start date and before the end of the 90-day close-out period. However, the Institute follows the U.S. Treasury's policy limiting advances to the minimum amount required to meet immediate cash needs. Given normal processing time, grantees should not seek to draw down funds for periods greater than 30 days from the date of the request.

6. Do Procedures for Submitting Requests for Reimbursement or Advance Payment Differ for Renewal Grants or Package Grants?

The basic procedures are the same for any grant.

A continuation or an on-going support grant should be considered as a supplement to and extension of the original award, and the payment requests numbered accordingly. For example, if the last payment request under the original award is number nine, then the first request for funds from the continuation award should be number ten.

Recipients of a package grant should file separate requests for each project in the package. For example, if there are three projects within a package grant, a grantee should prepare three separate payment requests, each identified by the project number designated in the award document (e.g., SJI–93–15R–J–001–G1; SJI–93–15R–J–001–G2; SJI–93–15R–J–001–G3). Subsequent payment requests should be numbered consecutively for each project within the package (e.g., project SJI–93–15R–J–001–G1 payment number 2; SJI–93–15R–J–001–G2 payment number 4; etc.).

7. If Things Change During the Grant Period, Can Funds Be Reallocated From One Budget Category to Another?

The Institute recognizes that some flexibility is required in implementing a project design and budget. Thus, grantees may shift funds among direct cost budget categories. When any one reallocation or the cumulative total of reallocations are expected to exceed five percent of the approved budget, a grantee must specify the proposed changes, explain the reasons for the changes, and request Institute approval.

The same standard applies to renewal grants and package grants. However, prior written Institute approval is required to shift leftover funds from the original award to cover activities to be conducted under the renewal award, or to use renewal grant monies to cover costs incurred during the original grant period. Prior written Institute approval also is needed to shift funds between projects included in a package grant.

8. What Information About Project Activities Should Be Communicated to SJI?

In general, grantees should provide prior notice of critical project events such as advisory board meetings or training sessions so that the Institute Program Manager can attend if possible. If methodological, schedule, staff, budget allocations or other significant changes become necessary, the grantee should contact the Institute's program monitor prior to implementing any of these changes, so that possible questions may be addressed in advance. Questions concerning the financial requirements section of the Guideline, quarterly financial reporting or payment requests, should be addressed to the Chief or Deputy Chief of the Institute's Finance and Management Division.

It is helpful to include the grant number assigned to the award on all correspondence to the Institute.

9. What is the 90-Day Close-Out Period?

Following the last day of the grant, a 90-day period is provided to allow for all grant-related bills to be received and posted, and grant funds drawn down to cover these expenses. No obligations of grant funds may be incurred during this period. The last day on which an expenditure of grant funds can be obligated is the end date of the grant period. Similarly, the 90-day period is not intended as an opportunity to finish and disseminate grant products. This should occur before the end of the grant period.

Starting the day after the end of the award period, and during the following 90 days, all monies that have been obligated should be expended. All payment requests must be received by the end of the 90-day "close-out-period." Any unexpended monies held by the grantee that remain after the 90-day follow-up period must be returned to the Institute. Any funds remaining in the grant that have not been drawn down by the grantee will be deobligated.

State Justice Institute Grant Guideline

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Summary

This Guideline sets forth the programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private, nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements and contracts to improve the administration and quality of justice in the State courts.

Grants may be awarded to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments. The Institute may also award grants to other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial

administration if the objectives of the funded program can be better served by such an entity. Funds may be awarded, as well, to Federal, State or local agencies and institutions other than courts for services that cannot be provided for adequately through nongovernmental arrangements. In addition, the Institute may provide financial assistance in the form of interagency agreements with other grantors.

The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. However, the Board of Directors of the Institute has designated certain program categories as being of special interest.

The Institute has established one round of competition for FY 1993 funds. The concept paper submission deadline for all but two funding categories is December 2, 1992. Concept papers to implement the plans developed at the November 1991 National Conference on Substance Abuse and the Courts must be mailed by October 16, 1992. Concept papers on projects that follow up on March 1993 National Conference on Family Violence and the Courts must be mailed by October 8, 1993.

It is anticipated that between $11 million and $12 million will be available for award. This Guideline applies to all concept papers and formal applications submitted for FY 1993 funding.

The awards made by the State Justice Institute are governed by the requirements of this Guideline and the authority conferred by Public Law 98–620, title II, 42 U.S.C. 10701, *et seq.*, as amended.

I. Background

The State Justice Institute ("Institute") was established by Public Law 98–620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an eleven-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator, and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

During FY 1993, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated certain program categories as being of "special interest." See section II.B.

A. Authorized Program Areas

The State Justice Institute Act authorizes the Institute to fund projects addressing one or more of the following program areas:

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards; and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

14. Other programs, consistent with the purposes of the Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will not be made available for the ordinary, routine operation of court systems in any of these areas.

B. Special Interest Program Categories

1. General Description

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 1993, the Institute is especially interested in funding those projects that:

a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of serious attention;

c. Have national significance in terms of their impact or replicability in that they develop products, services and techniques that may be used in other States;

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a "Special Interest" project if it meets the four criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below, or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Concept papers and applications which address a "Special Interest" category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI.B., "Concept Paper Submission Requirements for New Projects," and VIII.B., "Application Review Procedures.")

2. Specific Categories

The Board has designated the areas set forth below as "Special Interest" program categories. The order of listing does not imply any ordering of priorities among the categories.

a. Enhancing court-community relations. This category includes research, demonstration, evaluation and education projects designed to encourage greater public knowledge of and confidence in the courts, and to test innovative methods for eliminating economic, racial, ethnic, cultural or gender-based barriers to justice.

The Board is particularly interested in supporting a national conference or national town meeting on improving public confidence in the justice system which would bring together judges, court managers, representatives of community and public interest groups, attorneys, criminal justice system officials, and legislative and executive branch leaders. The conference should be designed to enable those in attendance to exchange information and opinions about effective ways to: (1) Improve practices in the courts (and court-connected programs and services) in order to better respond to the public's concept of justice; (2) increase the public's access to the courts, and (3) enhance public's knowledge about the courts. The conference also should provide an opportunity to explore the court-related needs and interests of racial and ethnic minorities. The conference should be designed to produce a national agenda of priorities for improving the public's confidence in, access to, and use of the courts as well as preliminary action plans for implementing this agenda at the State and local levels. The format could be either a large single-site conference or multi-site gatherings linked through videoconferencing technology.

Examples of other possible projects include but are not limited to the development and testing of: innovative methods that trial or appellate courts may use in fairly and effectively handling cases involving pro se litigants; the innovative use of volunteers; and other innovative approaches to respond to the needs of the culturally, demographically, economically and physically diverse public the courts serve. However, Institute funds may not be used to support legal representation of individuals in specific cases.

Projects previously funded by the Institute that address these issues include: Development of a manual for management of court interpretation services; preparation of glossaries of American legal terms in Spanish and five Asian languages; development of materials in English and six other languages to assist pro se litigants in emergency proceedings before the probate and family courts; a survey model to measure the impact of racial, ethnic and gender bias on trial court users; a study of differential usage patterns among minority and non-minority populations; a conference on gender-bias in the courts to follow-up on the work of the many State gender bias task forces; a demonstration of the use of volunteers to monitor guardianships; studies of effective and efficient methods of providing legal representation to indigent parties in criminal and family cases; a study of model court-annexed day care systems; studies of methods to improve the retention and productivity of volunteer community mediators, and the applicability of various dispute resolution procedures to different cultural groups; the development of comprehensive guidelines for courthouse facilities; preparation of public education materials and systems including a documentary series based on an actual appellate case and a videotape developed in ten languages for new immigrants to the United States; the testing telephone-based systems for obtaining general court information and case-specific information; development of touchscreen computer systems, videotapes and other materials to assist litigants in domestic relations, small claims, landlord-tenant and other types of cases; and preparation of a curriculum for media representatives and judges on reporting on the courts and the law, and a curriculum for secondary school students on the importance and operation of the jury system.

b. Education and training for judges and other key court personnel. The Institute continues to be interested in supporting an array of projects to strengthen and broaden the availability of court education programs at the State, regional and national levels. Accordingly, this category is divided into five subsections: (i) State Initiatives; (ii) National and Regional Education Programs; (iii) Judicial Education Technical Assistance; (iv) Conferences; and (v) Scholarships. All Institute-supported conferences and education and training seminars should be accessible to persons with disabilities in accordance with the Americans with Disabilities Act.

i. State initiatives. This category includes support for training projects developed or endorsed by a State's courts for the benefit of judges and other court personnel in that State. Funding of these initiatives does not include support for training programs conducted by national providers of judicial education unless such a program is designed specifically for a particular State and has the express support of the State Chief Justice, State Court Administrator, or State Judicial Educator. The types of programs to be supported within this category should be defined by individual State need but may include:

(a) Development of State court education programs. Projects to assist development of State court education programs include, but are not limited to:

- Seed money for the creation of an ongoing State-based entity for planning, developing, and administering judicial education programs;
- The development of a pre-bench orientation program and other training for new judges;
- The development of benchbooks and other educational materials;
- Seed money for innovative continuing education and career development programs, including seminars based on Institute-supported research, and training which brings together teams of judges, court managers and other court personnel to develop strategies for improving the quality and administration of justice;
- The preparation of State plans for judicial education, including model plans for career-long education of the judiciary (e.g., new judge training and orientation followed by continuing education and career development); and
- The development of innovative faculty training programs.

(b) Adaptation of model curricula for in-state training. The Board is reserving up to $250,000 to provide support for in-State adaptation and implementation of model curricula and/or model training programs previously developed with SJI support. The exact amount to be awarded for adaptation grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline.

Adaptation projects may include an in-State replication or State-specific modification of a model educational program, model curriculum, or course module developed with SJI funds by any other State or any national organization; an adaptation of a curriculum or a portion of a curriculum developed for a national or regional conference; or an adaptation of a curriculum for use as part of a State judicial conference or State training program for judges and other court personnel. Only State or local courts may apply for in-State adaptation funding. Grants to support in-State adaptation of educational programs previously developed with SJI funds are limited to no more than $20,000 each. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount requested.

In-State adaptation grants will be awarded on the basis of criteria including: The need for outside funding; the certainty of effective implementation; and expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project. The Institute will also consider factors such as the reasonableness of the amount requested, compliance with the statutory match requirements, diversity of subject matter and geographic diversity in making implementation awards.

In lieu of concept papers and formal applications, applicants for in-State adaptation grants may submit, at any time, a detailed letter describing the proposed project and addressing the criteria listed above. Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria is addressed:

- *Project description.* What is the model curriculum or training program to be tested? Who developed it? How will it complement existing education and training programs? Who will the participants be and how will they be recruited? From where are they (e.g., from across the State, from a single local jurisdiction)? How many participants are anticipated and what limits, if any, will be placed on the number of participants? What are the proposed dates of the grant period?
- *Need for funding.* Why is this particular education program needed at the present time? Why cannot State or local resources fully support the modification and presentation of the model curriculum? What is the potential for replicating the program in the future using State or local funds, once it has been successfully adapted and tested?
- *Certainty of effective implementation.* What date has been set for presenting the program? What types of modifications in the length, format and content of the model curriculum are anticipated? Who will be responsible for adapting the model curriculum? Will the presentation of the program be evaluated, and if so, how and by whom?
- *Expressions of interest by the judges and/or court personnel.* A demonstration (e.g., by attaching letters of support) that the proposed program has the support of the judges, court managers, and judicial education personnel who are expected to attend.
- *Budget and matching State contribution.* An outline of the anticipated costs of the program, the amount of funding requested (including the basis for any travel), the amount of match to be contributed, and the sources of the match.

Letters of application may be submitted at any time. It is anticipated that they will be acted upon within 45 days of receipt. The Board of Directors has delegated its authority to approve these grants to its Judicial Education Committee.

Applicants seeking other types of funding for developing and testing educational programs must comply with the requirements for concept papers and applications set forth in Sections VI and VII or the requirements for renewal applications set forth in section IX.

ii. National and regional education programs. This category includes support for national or regional training programs developed by any provider, e.g., national organizations, State courts, universities, or public interest groups. Within this category, priority will be given to training projects which address issues of major concern to the State judiciary and other court personnel. Programs to be supported may include:

- Training programs or seminars on topics of interest and concern that transcend State lines;
- Multi-State or regional training programs sponsored by national organizations, non- profit groups, State courts or universities; and
- Specialized training programs for State trial and appellate court judges, State and local court managers, or other court personnel, including seminars

based on Institute-supported research and training which brings together teams of judges, court managers and other court personnel to develop strategies for improving the quality and administration of justice.

iii. Judicial education technical assistance. Unlike the preceding categories which support direct training, "Technical Assistance" refers to services necessary for the development of effective educational projects for judges and other court personnel. Projects in this category should focus on the needs of the States, and applicants should demonstrate their ability to work effectively with State judicial educators.

The Institute is currently funding the following judicial education technical assistance projects: The Judicial Education Reference, Information and Technology Transfer Project (JERITT), which collects and disseminates information (as well as providing technical assistance) on continuing education programs for judges and court personnel; the Judicial Education/Adult Education Project (JEAEP), which provides expert assistance on the application of adult and continuing education theory and practices to court education programs; the Leadership Institute in Judicial Education, which offers an annual training program and follow-up assistance to State judicial education leadership teams to help them develop improved approaches to court education; and NASJE NEWS, a newsletter of the National Association of State Judicial Educators.

iv. Conferences. This category includes support for regional or national conferences on topics of major concern to the State judiciary and court personnel. Applicants are encouraged to consider the use of videoconference and other technologies to increase participation and limit travel expenses in planning and presenting conferences. Applicants also are reminded that conference sites should be accessible to persons with disabilities in accordance with the Americans With Disabilities Act. In planning a conference, applicants should provide for a written, video, or other product that would widely disseminate the information, findings, and any recommendations resulting from the conference.

The Institute is particularly interested in supporting national conferences on the topics listed below (Management of Mass Tort Litigation, and the Crisis in Funding for the Courts) and in paragraph II.B.2.a. (Enhancing Public Confidence in the Courts).

(a) National conference on court management of mass tort cases. The Institute and the Federal Judicial Center, are interested in supporting a national conference which would bring together State and Federal judges, court managers, attorneys, legal scholars, policy makers, and representatives of business and public interest groups to exchange ideas and information on the efficient, fair and effective judicial management of mass tort cases. Among the issues that may be addressed by the conference and in the materials prepared for it are:

- The impact of mass tort litigation on the courts, litigants, business, consumers and the general public;
- Judicial management of mass tort litigation;
- The use of special masters, alternative dispute resolution, and specialized juries;
- Methods of coordination and cooperation among State judges hearing similar or related cases;

o Methods for cooperation among State and Federal courts hearing similar or related cases;

- The impact on the parties, settlements and verdicts of various coordination and disposition methods; and
- Identifying and planning for the next areas of mass tort litigation that reach the State courts (e.g., repetitive stress injuries; silicone breast implants; illness caused by insecticides; illness caused by leakage of electro-magnetic energy).

The Institute is currently funding three projects that address these topics: A study of the judicial management of mass tort litigation in the State and Federal courts; the Chief Justices' Special Committee of State Judges on Asbestos Litigation; and an American Law Institute study of complex litigation.

(b) National conference on the funding crisis in the courts. The Institute is interested in supporting a national conference which would bring together teams of judges, State and local legislators, executive branch leaders, court managers, and attorneys, as well as legal, public administration and other scholars to share information about the current fiscal crisis faced by many State and local judicial officials, and identify effective approaches for securing adequate funding for the courts.

Among the issues that may be addressed by the conference and in the materials prepared for it are:

- The impact of inadequate funding on the ability of the courts to provide justice in civil, criminal, family, and probate cases;
- Approaches for enhancing interbranch cooperation and communication within the limits established by the separation of powers doctrine;
- The approaches States and local jurisdictions have used to attempt to provide adequate resources for the courts;
- The methods courts have used to assure the delivery of justice through effective management of limited resources;
- Techniques for determining the resource needs of the judicial branch;
- The effect of inadequate funding on the independence of the judiciary;
- The appropriate use of the inherent powers of the courts as a means of obtaining adequate resources.

v. *Scholarships for judges and court personnel.* The Institute is reserving up to $250,000 to support a scholarship program for State court judges and court managers.

(a) Program description/scholarship amounts. The purposes of the Institute scholarship program are to: enhance the knowledge, skills, and abilities of judges and court managers; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local and personal budgets; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court- related education programs.

Scholarships will be granted to individuals only for the purpose of attending out-of-State programs within the United States. A scholarship may cover the cost of tuition and transportation between the recipient's home and the site of the educational program up to a maximum total of $1,500 per scholarship. (Transportation expenses include coach airfare or train fare, or up to $.25/mile if the recipient drives to the site of the program.) Ordinarily, funds to pay tuition and transportation expenses in excess of $1,500, and other costs of attending the program such as lodging, meals, materials, and local transportation (including rental cars) at the site of the education program, must be obtained from other sources or be borne by the scholarship recipient.

(b) Eligibility requirements. Because of the limited amount of funds available, scholarships are limited to full-time judges of State or local trial and appellate courts, and to full-time professional, State or local court personnel with management responsibilities. Senior judges, part- time judges, quasi-judicial hearing officers, State administrative law judges, staff

attorneys, law clerks, line staff, law enforcement officers and other executive branch personnel will not be eligible to receive a scholarship.

(c) Application procedures. Judges and court managers interested in receiving a scholarship must submit the Institute's Judicial Education Scholarship Application Form (Form S1, see Appendix III). Applications must be submitted by:

October 30, 1992, for programs beginning between December 1, 1992 and January 31, 1993;

November 30, 1992, for programs beginning between February 1 and May 31, 1993;

March 1, 1993, for programs beginning between June 1 and October 31, 1993; and

August 1, 1993, for programs beginning between November 1, 1993 and January 31, 1994.

No exceptions or extensions will be granted.

All scholarship applicants must obtain the written concurrence of the Chief Justice of his or her State (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Certificate of Concurrence (Form S2, see Appendix). Court managers, other than elected clerks of court, also should submit a letter of support from their supervisor.

(d) Review procedures/selection criteria. The Board of Directors has delegated the authority to approve or deny scholarships to its Judicial Education Committee. The Institute intends to notify each applicant whose scholarship has been approved within 45 days after the relevant application deadline. In order to assure the availability of scholarship funds throughout the year, the Committee will limit the amount of the scholarship support awarded in any quarter to no more than $62,500 (in addition to scholarship funds that may not have been awarded in previous quarters).

The factors that the Institute will consider in selecting scholarship recipients are:

- The applicant's need for training in the particular course subject and how the applicant would apply the information/skills gained;
- The absence of educational programs in the applicant's State addressing the particular topic;
- Whether the applicant intends to disseminate the knowledge gained by developing/teaching a course or providing in-service training for judges or court personnel at the State or local level;
- The length of time that the applicant intends to serve as a judge or court manager, assuming reelection or reappointment, where applicable;
- The length of time since the applicant attended a non-mandatory judicial or court management education program;
- The State's need for the applicant to attend the specific educational program, as demonstrated by a description of current legal, procedural, administrative or other problems affecting the State's courts, enactment of new legislation, or other indications of need, in addition to submission of a signed Form S2;
- The unavailability of State or local funds to cover the costs of attending the program;
- The quality of the educational program to be attended as demonstrated by the sponsoring organization's experience in judicial education, evaluations by participants or other professionals in the field, or prior SJI support for this or other programs sponsored by the organization;
- Geographic balance;
- The balance of scholarships among types of applicants and courts; and
- The balance of scholarships among educational programs.

(e) Responsibilities of scholarship recipients. In order to receive the funds authorized by a scholarship award, recipients must submit Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, and a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program). Recipients also must submit to the Institute a certificate of attendance at the program and an evaluation of the educational program they attended. A copy of the evaluation also must be sent to the Chief Justice of their State.

A State or a local jurisdiction may impose additional requirements on scholarship recipients that are consistent with SJI's criteria and requirements, e.g., a requirement to serve as faculty on the subject at a State- or locally-sponsored judicial education program.

c. Court financing and use of resources. This category includes demonstration, evaluation, education, and research projects to improve methods for securing adequate resources for courts and efficiently managing those resources. Among possible topics that could be addressed under this category are: preparation of a thorough "white paper" that documents the extent of the current crisis in court funding and its implications for the ability of the nation's courts to dispense justice and for the independence of the judiciary; the testing of innovative methods for enhancing interbranch communications; documentation and evaluation of effective techniques for managing court resources, services, and personnel and managing reductions of services and personnel levels in a court environment; examinations of the results, benefits and drawbacks of various methods of enhancing the stability and equity of court funding; and dissemination of information regarding these issues to the court community nationally.

In previous funding cycles, the Institute has supported projects that examined State court expenditures and staffing, and trial court reorganization; developed trial court financial management guides; documented methods for determining judgeship needs; and evaluated techniques for improving collection and administration of monetary penalties and restitution in criminal cases.

d. Planning for the future of the courts. The Institute is interested in supporting activities that would enable courts to implement and evaluate long-range strategic planning processes and complementary innovative management approaches in their own jurisdictions.

The types of projects that fall within this category are:

- Development, implementation, and evaluation of long-range planning approaches in individual States and local jurisdictions, e.g., the development or inclusion of strategic planning techniques, environmental scanning, trends analysis and other comprehensive long-range, strategic planning methods as components of courts' current planning processes or as part of the initiation of such a process;
- Adaptation, implementation and evaluation of innovative management approaches established to complement, enhance or support use of a long-range strategic planning process.
- Development, presentation and evaluation of training necessary to enable judges and court staff to participate productively in the implementation of the planning process and/or related innovative management approaches; and
- Symposia or other educational programs dedicated to specific topics or issues (such as the impact of new technologies on established legal principles and traditional notions of due process, or the effect on the courts of changing demographics and other cultures' varied perceptions of justice, conflict, and dispute resolution procedures), identified during the 1990 Future and the Courts Conference or other futures activities.

The Institute has supported futures commissions in seven States. Because the Board of Directors believes that a sufficient variety of commission models now exists, the Institute will not support the development or implementation of any State futures commissions in FY 1993. The Institute also has supported planning and futures projects including: Computer-assisted facilitation of court innovation; national and State-wide "future and the courts" conferences and training; a symposium on the future of the family court; an examination of the effect of demographic changes on variations in the cultural perceptions and expectations of justice; seminars exploring judicial decision-making in the 21st century; analysis and recommendations of alternative methods of involving expert witnesses in court proceedings; development of a curriculum and guidebook to assist courts to conduct visioning exercises; development of a curriculum and guide on trial court-based long-range planning; preparation of training and materials on developing issues regarding court-ordered health care; and training and technical assistance in conducting futures and long-range planning activities.

e. Improving communication and coordination among courts. This category includes the development, implementation and evaluation of innovative procedural, administrative, technological, and organizational methods to improve communication and coordination among State trial and appellate courts and between State and Federal courts and State and Tribal courts hearing related cases. Among the circumstances in which such improved communication and coordination are particularly needed are:

- Instances in which a litigant in a State civil, criminal or domestic relations case is subject to a Federal bankruptcy proceeding;
- Instances in which coordination of cases among different courts would significantly enhance the services provided to citizens;
- Instances in which a defendant has charges pending in both State and Federal court, in both State and Tribal court, or in more than one State court;
- Post-conviction challenges in capital cases; and
- Civil cases in which State and Tribal courts have overlapping jurisdiction.

In previous funding cycles, grants have been awarded to support a study of States with coordinated family court systems, followed by a symposium for States which have or are interested in establishing family courts; a study of the nature and extent of cases that involve the same family within or across courts, and how best to integrate or coordinate these proceedings; the development of case management teams of court professionals to handle all cases pertaining to members of a family; development of guidelines for improving the process for preparing and transferring the record on appeal in a timely manner; and an evaluation of the effect of the California court coordination program. (See also paragraph II.B.2.m., The Relationship Between State and Federal Courts.)

f. Application of technology. This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels.

The Board seeks to support local experiments with promising but untested applications of technology in the courts that include a structured evaluation of the impact of the technology in terms of costs, benefits, and staff workload. In this context, "untested" refers to novel applications of technology developed for the private sector and other fields that have not previously been applied to the courts.

The Board is particularly interested in demonstrations and evaluations of innovative technologies and related issues presented at the Third National Conference on Court Technology held in March, 1992 in Dallas, Texas, including but not limited to: The evaluation of optical imaging as a tool for transferring information; preparation of staff for technological change, including innovative training on methods for avoiding or limiting work-related injuries; the development of policies and procedures regarding access by individuals, the media, commercial enterprises, and others to automated court records; and the use of videoconferencing and other innovative communications technologies to expedite the hearing and disposition of cases. (See paragraph XI.H.2.b. regarding the limits on the use of grant funds to purchase equipment and software.)

In previous funding cycles, grants have been awarded to support:

Demonstration and evaluation of communications technology, e.g.: Interactive computerized information systems to assist pro se litigants; an electronic mail system and computer-based bulletin board to facilitate information transfer among criminal justice agencies in adjoining local jurisdictions; the effects of telephone conferencing in interstate child support cases; the use of FAX technology by courts; a multi-user "system for judicial interchange" designed to link disparate automated information systems and share court information among judicial system offices throughout a State without replacement of the various hardware and software environments which support individual courts; a computerized voice information system permitting parties to access by telephone information pertaining to their cases; an automated public information directory of courthouse facilities and services; the use of a microcomputer local area network to foster communication among judges and promote a team approach to handling caseloads; and a computer-integrated courtroom that provides full access to the judicial system for hearing-impaired jurors, witnesses, crime victims, litigants, attorneys, and judges;

Demonstration and evaluation of records technology, e.g.: The effects, costs, and benefits of videotape as a technique for making the record of trial court proceedings; an automated microfilm system and an optical disk system for maintaining and retrieving court records; an automated Statewide records management system; the integration of bar-coding technology with an existing automated case management system; an on-bench automated system for generating and processing court orders; development of an information retrieval and analysis system specifically designed for court management; detailed specifications for construction of an automated judicial education management system; testing of a document management system for small courts that uses imaging technology; evaluation of the use of automated teller machines for paying jurors; and development of a multi-user, integrated State database of child abuse and neglect case files;

Court technology assistance services, e.g.: circulation of a court technology bulletin designed to inform judges and court managers about the latest developments in court-related technologies; creation of a court technology laboratory to provide judges and court managers with the opportunity to test automated court-related systems; enhancement of a data base and circulation of reports documenting automated systems currently in use in courts across the country; establishment of a technical information service to respond to specific inquiries concerning court-related technologies; development of court automation performance standards; a manual for court managers

on practical issues relating to the use of computer-aided transcription; a handbook on appellate case management information systems; and an assessment of programs that allow public access to electronically stored court information.

Grants also support the development of a seminar for judges and court managers on the "courtroom of the future"; implementation and evaluation of a Statewide automated integrated case docketing and record-keeping system; a prototype computerized benchbook using hypertext technology; computer simulation models to assist State courts in evaluating potential strategies for improving civil caseflow; and a national assessment of the efforts to develop and implement Statewide automation of trial courts.

g. Reduction of litigation expense and delay. This category includes projects to adapt, implement, and evaluate methods developed through research and demonstration projects supported by the Institute and other funders for fairly and effectively managing dockets and reducing the time from the filing of a case to its final disposition (including the pretrial, adjudicatory, post-trial, and appellate stages of the litigation process) and the reduction of the cost and complexity of litigation. This category does not include the provision of operational support for mediation, arbitration or other dispute resolution programs.

In previous funding cycles, grants have been awarded to support the examination of the causes of delay and the methods for improving case processing in trial courts in rural jurisdictions, limited jurisdiction urban trial courts, and in intermediate appellate courts. In addition, grant support has been awarded to projects demonstrating the use of differentiated case management in trial and appellate courts, and examining the impact of innovative procedures for: screening civil cases, handling medical malpractice cases, and expediting appellate decisions.

The Institute has also supported development of a case management review process; studies of case processing in civil and domestic relations cases; the extent of case processing problems caused by discovery; methods for effectively managing motions practice in civil cases; and assistance to trial courts in major urban areas and to appellate courts to improve case processing, adopt and implement time standards, and otherwise reduce litigation delay.

h. Substance abuse. This category includes the development and evaluation of innovative techniques for courts to handle the increasing volume of substance abuse-related criminal, civil, juvenile and domestic relations cases fairly and expeditiously; the planning and presentation of seminars or other educational forums for judges, probation officers, caseworkers, and other court personnel to examine court-related issues concerning alcohol and other drug abuse and develop specific plans for how individual courts can respond to the impact of the increasing volume of substance abuse-related criminal, civil, juvenile, and domestic relations cases on their ability to manage their overall caseloads fairly and efficiently.

The Board of Directors is particularly interested in funding innovative projects which establish coordinated efforts between local courts and treatment providers; enhance inter-branch communication regarding the effective disposition of cases involving substance abuse; and evaluate the effectiveness of various methods for treating substance abuse. Proposals should demonstrate a direct impact on the ability of State courts to handle cases involving substance abuse fairly and effectively. The Institute will not fund projects focused on developing additional assessment tools for substance abusers, or providing support for basic court or treatment services.

Follow-up Projects to the November 1991 Substance Abuse and the Courts Conference

In order to further enhance the impact of the November, 1991 National Conference on Substance Abuse and the Courts and facilitate wider implementation of the developed State strategies developed at that Conference, the Board has established an accelerated schedule for considering projects to implement the action plans and strategies developed by the State teams that attended the National Conference. The deadline for mailing concept papers proposing such projects is October 16, 1992. The Board will review the concept papers at its November, 1992 meeting and invite applications for consideration at its March, 1993 meeting.

In previous funding cycles, the Institute has supported projects to evaluate the drug court procedures initiated by the Dade County, Florida, and New York City courts, and the effectiveness of other court-based alcohol and drug assessment programs; replicate the Dade County program in non-urban sites; implement the plans developed by State teams at the National Conference on Substance Abuse and the Courts; assess the impact of legislation and court decisions dealing with drug-affected infants, and strategies for coping with increasing caseload pressures; develop a benchbook to assist judges in child abuse and neglect cases involving parental substance abuse; and present local and regional educational programs for judges and other court personnel on substance abuse and its treatment.

The Institute and the Bureau of Justice Assistance (BJA) also are supporting two technical assistance projects: One by the National Center for State Courts to assist courts in implementing the plans developed at the National Conference; and the other by the American University Court Technical Assistance Project to identify successful drug case management strategies, conduct seminars on drug case management, and develop a guidebook for implementing drug case processing initiatives. In addition, the Institute expects to supplement a program supported by the Department of Health and Human Services, Center for Substance Abuse Treatment (CSAT) to conduct regional training programs for State judges and legislators on substance abuse treatment.

i. Application of performance-based standards and measures to the courts. This category includes the development and testing of standards and techniques to enable trial and appellate court officials to conduct user-oriented evaluations of the quality of court services and to use measures of public satisfaction to improve court performance.

In previous funding cycles, the Institute has supported a test in four States of the feasibility of implementing the Trial Court Performance Standards; demonstration of a court-based consumer research and service development process; and adaptation of "total quality management" principles to court operations.

j. Responding to the court-related needs of elderly persons and persons with disabilities. This category includes research, demonstration, education, and evaluation projects on issues related to the fair and effective handling of cases affecting persons who are elderly and persons who are physically or mentally disabled including those requiring long-term health care. The issues that may be addressed include but are not limited to:

- Development of materials and training programs on the Americans with Disabilities Act and its implementation in the State courts;
- Implementation of the recommendations of the National

Conference on Court Related Needs of Elderly Persons and Persons with Disabilities held February, 1991 in Reno, Nevada;

• Development and testing of innovative techniques for improving the physical accessibility, convenience and security of court facilities and services to the public, including persons with mobility or communications impairments or other physical or mental disabilities;

• The assessment of the impact on State courts of the judicial review of administrative decisions made under Medicaid and similar State authorized health care programs and the use of "medical practice guidelines" as a new standard of care in health-related litigation; and

• The definition of the basis for determining health-care related issues such as: the competency of individuals; what constitutes clear and convincing evidence of a person's wish not to initiate or continue life-sustaining treatment, including the implications of the Federal Patient Self-Determination Act; the allocation of costs for routine and extraordinary health care; the appropriate use of experimental and other health care procedures; and other health-care related legal issues.

In previous funding cycles, the Institute has supported projects to: Examine, identify and test procedures to improve the monitoring and enforcement of guardianship orders; develop guidelines for judges in considering cases regarding the withdrawal of life-sustaining treatment, and national standards for probate courts; and prepare benchbooks, handbooks, videotapes and training materials on guardianship, the Americans with Disabilities Act and AIDS. The Institute also supported a national conference on the court-related problems of elderly persons and persons with disabilities in February, 1991, and is supporting technical assistance and educational programs to disseminate and help implement the findings and recommendations of that conference.

k. Improving the use of juries. This category includes innovative research, demonstration, evaluation, and education projects to assist courts to improve juror comprehension, the structure of jury decisionmaking, public understanding of jury decisions, and attitudes toward jury service. Among the topics that could be addressed are:

i. Demonstrations and evaluations of the effect on outcome, deliberation time, and juror satisfaction of innovative procedures including:

• The use of "plain English" preliminary and final instructions;

• Permitting juries, during their deliberations, to use or have on-line access to videotaped testimony, computerized transcripts, copies or videotapes of the instructions, any computer simulations used in the trial, and other similar materials;

• Permitting jurors to discuss the case during trial;

• Permitting attorneys to present brief, periodic "mini-summaries" or explanations of their case; and

• Using structured verdict forms or special verdicts.

ii. Education projects developing and testing curricula to:

• Inform judges and court staff how to manage activities such as juror notetaking, juror questioning, and other jury innovations in their courtrooms; enhance the jury experience, through effective juror orientation procedures and trial management; and encourage public participation on juries; and

• Bring together judges, lawyers, litigants, jurors, scholars and representatives of different segments of American society, (e.g., representatives of business and public interest groups) to discuss common perceptions and misperceptions about the jury system and identify ways to correct the system and/or the misperceptions.

iii. Studies exploring whether juries limited to individuals with certain educational or professional backgrounds are better able to understand and dispense justice in litigation involving complex subject matter than randomly selected juries, or judges.

Proposals for research submitted under this category should demonstrate the direct applicability of the results to court practices and procedures.

1. Family violence and the courts. This category includes:

i. State and local court projects to implement the action plans and strategies developed by the teams participating in the Institute-supported National Conference on Family Violence and the Courts to be held in San Francisco in March, 1993, and projects designed to assist teams in implementing their plans. Concept papers proposing such projects must be mailed by October 8, 1993. They will be considered by the Institute's Board of Directors at its meeting in November, 1993. Applications based on those concept papers will be considered by the Board at its meeting in March, 1994. Support of projects based on those concept papers and applications will be subject to the availability of appropriations to the Institute for Fiscal Year 1994.

ii. Projects to collect information on the admissibility, quality, availability, and cost of expert testimony offered on behalf of battered women on trial for killing or assaulting their alleged abusers, and the development and testing of training materials to assist:

• Battered women, operators of domestic violence shelters, battered women's advocates, and attorneys to use and assess such expert testimony in appropriate cases, particularly cases involving indigent women; and

• Judges court staff, and criminal justice officials in understanding such testimony and assuring the fair adjudication of such cases.

iii. Projects to identify appropriate and effective approaches for courts to adjudicate child custody litigation involving domestic violence, including:

• Research describing and analyzing the extent and nature of State court decisions relating to child custody litigation involving domestic violence; and

• The development, testing, and delivery of training to assist judges and court staff in understanding and fairly adjudicating child custody cases involving domestic violence.

m. The relationship between State and Federal courts. This category includes education, research, demonstration, and evaluation projects designed to build upon the insights and information gained at the Institute-supported National Conference on State- Federal Judicial Relationships held in Orlando in April, 1992.

i. Among the topics that could be addressed in education projects are the development and testing of curricula and other educational materials to:

• Enhance operation of State-Federal Judicial Councils;

• Assist judges and court staff in drawing the attention of the public and the media to the needs of the courts within the bounds of the applicable codes of conduct;

• Illustrate effective methods being used at the trial court, State and Circuit levels to coordinate cases and administrative activities; and

• Conduct regional conferences replicating the National Conference.

ii. Among the topics that could be addressed in other types of projects are the development and testing of new approaches to:

• Coordinate bankruptcy cases with State litigation involving the individual or entity in bankruptcy including improved notice, certification and communication procedures and practices;

• Exchange information and coordinating calendars among State and Federal courts;

• Handle capital habeas corpus cases fairly and efficiently;

• Share jury pools, alternative dispute resolution programs and court services; and

• Facilitate certification of cases from Federal to State courts and explore the implications of certification of cases from State to Federal courts.

In previous funding cycles, the Institute has supported a national and a regional conference on State-Federal judicial relationships and the Chief Justices' Special Committee of State Judges on Asbestos Litigation. In addition, the Institute has supported projects developing judicial impact statement procedures for national legislation affecting State courts, and projects examining the management of mass tort litigation in State and Federal courts, the impact on the State courts of diversity cases and cases brought under section 1983, the procedures used in Federal habeas corpus review of State court criminal cases, the factors that motivate litigants to select Federal or State courts and the mechanisms for transferring cases between Federal and State courts, as well as the methods for effectively consolidating, deciding, and managing complex litigation. The Institute has also supported a clearinghouse of information on State constitutional law decisions.

C. Single Jurisdiction Projects

The Board will consider supporting a limited number of projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. It has established two categories of Single Jurisdiction Projects:

1. Programs Addressing a Critical Need of a Single State or Local Jurisdiction

a. Description of the program. The Board will set aside up to $1,000,000 to support projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. A project under this section may address any of the topics included in the Special Interest Categories or Statutory Program Areas, and may, but need not, seek to implement the findings and recommendations of Institute supported research, evaluation, or demonstration programs. Concept papers for single jurisdiction projects may be submitted by a State court system, an appellate court, or a limited or general jurisdiction trial court. All awards under this category are subject to the matching requirements set forth in section X.B.1.

b. Application procedures. Concept papers and applications requesting funds for projects under this section must meet the requirements of sections VI. ("Concept Paper Submission Requirements for New Projects") and VII. ("Application Requirements"), respectively, and must demonstrate that:

i. The proposed project is essential to meeting a critical need of the jurisdiction; and

ii. The need cannot be met solely with State and local resources within the foreseeable future.

2. Technical Assistance Grants

a. Description of the Program. The Board will set aside up to $500,000 to support the provision of technical assistance to State and local courts. The exact amount to be awarded for these grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline. It is anticipated, however, that at least $125,000 will be available each quarter to support Technical Assistance grants. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and initiate implementation of any needed changes.

Technical Assistance grants are limited to no more than $30,000 each, and the technical assistance must be completed within 12 months after the start-date of the grant. Only State or local courts may apply for Technical Assistance grants. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount. Technical Assistance grant recipients also are subject to the same quarterly reporting requirements as other Institute grantees.

At the conclusion of the grant period, a Technical Assistance grant recipient must complete a Technical Assistance Evaluation Form. The grantee also must submit to the Institute three copies of a final report that explains how it intends to act on the consultant's recommendations as well as three copies of the consultant's written report.

b. Review criteria. Technical Assistance grants will be awarded on the basis of criteria including: Whether the assistance would address a critical need of the court; the soundness of the technical assistance approach to the problem; the qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s); commitment on the part of the court to act on the consultant's recommendations; and the reasonableness of the proposed budget. The Institute will also consider factors such as the level and nature of the match that would be provided, diversity of subject matter, and geographic diversity in awarding Technical Assistance grants.

c. Application procedures. In lieu of concept papers and formal applications, applicants for Technical Assistance grants may submit, at any time, a detailed letter describing the proposed project and addressing the criteria listed above. Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria is addressed:

i. Need for funding. What is the critical need facing the court? How will the proposed technical assistance help the court to meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

ii. Project description. What tasks would the consultant be expected to perform? Who (organization or individual) would be hired to provide the assistance and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdiction's normal procedures for procuring consultant services.) What is the time frame for completion of the technical assistance? How would the court oversee the project and provide guidance to the consultant?

If the consultant has been identified, a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time period and for the proposed cost, should accompany the applicant's letter. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

If the support or cooperation of agencies, organizations, or courts other than the applicant, would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the letter or be submitted under separate cover.

iii. Likelihood of implementation. What steps have been/will be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of a court other than the applicant, agencies, funding bodies or organizations will be needed to adopt the changes recommended by the consultant and approved by the court,

how will they be involved in the review of the recommendations and development of the implementation plan?

iv. Budget and matching State contribution. A completed Form E, "Concept Paper Preliminary Budget" (see appendix IV to the Grant Guideline), must be included with the applicant's letter requesting technical assistance. Please note that the estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/Contractual category. In addition, the budget should provide for submission of three copies of the consultant's final report to the Institute.

v. Support for the project From the State Supreme court or its designated agency or council. Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see appendix V.) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters between October 1 and December 15, 1992 will be notified of the Board's decision by February 15, 1993; those submitting letters between December 16, 1992, and March 15, 1993 will be notified by May 15, 1993. Notification of the Board's decisions concerning letters received between March 16 and June 15, 1993, will be made by August 15, 1993; and applicants submitting letters between June 16 and September 30, 1993, will be notified by November 15, 1993. The Board has delegated its authority to approve these grants to its Technical Assistance Committee.

The Technical Assistance grant program described in this section should not be confused with the Judicial Education Technical Assistance projects described in section II.B.2.b.iii.

III. Definitions

The following definitions apply for the purposes of this guideline:

A. Institute.

The State Justice Institute.

B. State Supreme Court

The highest appellate court in a State, unless, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, *State Supreme Court* shall mean that court which also has administrative responsibility for the State's judicial system. *State Supreme Court* also includes the office of the court or council, if any, it designates to perform the functions described in this guideline.

C. Designated Agency or Council

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

D. Grantor Agency

The State Justice Institute.

E. Grantee

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, grantee refers to the State Supreme Court.

F. Subgrantee

A State or local court which receives Institute funds through the State Supreme Court.

G. Match

The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Cash match is the direct outlay of funds by the grantee to support the project. In-kind match consists of contributions of time, services, space, supplies, etc., made to the project by the grantee or others (e.g., advisory board members) working directly on the project. Match does not include project-related income such as tuition or revenue from the sale of grant products, nor time of participants attending an education program.

H. Continuation Grant

A grant of no more than 24 months to permit completion of activities initiated under an existing Institute grant or enhancement of the programs or services produced or established during the prior grant period.

I. On-going Support Grant

A grant of up to 36 months to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need.

J. Package Grant

A single grant that supports two or more closely-related projects which logically should be viewed as a whole or would require substantial duplication of effort if administered separately. Closely-related projects may include those addressing interrelated topics, or those requiring the services of all or some of the same key staff persons, or the core elements of a multifaceted program. Each of the components of a package grant must operate within the same project period.

K. Human Subjects

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions and/or experiences through an interview, questionnaire, or other data collection technique(s).

IV. Eligibility for Award

In awarding funds to accomplish these objectives and purposes, the Institute has been authorized by Congress to award grants, cooperative agreements, and contracts to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705(b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant will be considered a national education and training applicant under section 10705(b)(1)(C) if: (1) The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the

Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

The Institute may also make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

Finally, the Institute may enter into inter-agency agreements with other public or private funders to support projects consistent with the purpose of the State Justice Institute Act.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section XI.B.2. of this Guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in appendix I.

V. Types of Projects and Grants; Size of Awards

A. Types of Projects

Except as expressly provided in section II.B.2.b. and II.C. above, the Institute has placed no limitation on the overall number of awards or the number of awards in each special interest category. The general types of projects are:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

B. Types of Grants

The Institute has established the following types of grants:

1. New grants (See sections VI. and VII.).
2. Continuation grants (See sections III.H. and IX.A).
3. On-going Support grants (See sections III.I. and IX.B.).
4. Package Grants (See sections III.J., VI.A.2.b., VI.A.3.b., and VII.).
5. Technical Assistance grants (See section II.C.2.).
6. Curriculum Adaptation grants (See section II.B.2.b.i.(b)).
7. Scholarships (See section II.B.2.b.v.).

C. Maximum Size of Awards

1. Except as specified below, concept papers and applications for new projects other than national conferences, and applications for continuation grants may request funding in amounts up to $300,000, although new and continuation awards in excess of $200,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. Applications for on-going support grants may request funding in amounts up to $600,000. At the discretion of the Board, the funds to support on-going support grants may be awarded either entirely from the Institute's appropriations for the fiscal year of the award or from the Institute's appropriations for successive fiscal years beginning with the fiscal year of the award. When funds to support the full amount of an on-going support grant are not awarded from the appropriations for the fiscal year of award, funds to support any subsequent years of the grant will be made available upon (1) the satisfactory performance of the project as reflected in the quarterly Progress Reports required to be filed and grant monitoring, and (2) the availability of appropriations for that fiscal year.

3. An application for a package grant may request funding in an amount up to a total of $750,000.

4. Applications for technical assistance grants may request funding in amounts up to $30,000.

5. Applications for curriculum adaptation grants may request funding in amounts up to $20,000.

6. Applications for scholarships may request funding in amounts up to $1,500.

D. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily will not exceed 24 months.

2. Grant periods for on-going support grants ordinarily will not exceed 36 months.

3. Grant periods for package grants, technical assistance grants and curriculum adaptation grants ordinarily will not exceed 12 months.

VI. Concept Paper Submission Requirements for New Projects

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. This requirement and the submission deadlines for concept papers and applications may be waived for good cause (e.g., the proposed project would provide a significant benefit to the State courts or the opportunity to conduct the project did not arise until after the deadline).

A. Format and Content

All concept papers must include a cover sheet, a program narrative, and a preliminary budget, regardless of whether the applicant is proposing a single project or a "package of projects", or whether the applicant is requesting accelerated award of a grant of less than $40,000.

1. The Cover Sheet

The cover sheet for all concept papers must contain:

a. A title describing the proposed project;

b. The name and address of the court, organization or individual submitting the paper;

c. The name, title, address (if different from that in b.), and telephone number of a contact person(s) who can provide further information about the paper; and

d. The letter of the Special Interest Category (see section II.B.2.) or the number of the statutory Program Area (see section II.B.1.) that the proposed project addresses most directly.

Applicants requesting the Board to waive the application requirement and approve a grant of less than $40,000 based on the concept paper, should add APPLICATION WAIVER REQUESTED to the information on the cover page.

2. The Program Narrative

a. Concept papers proposing a single project. The program narrative of a concept paper describing a single project should be no longer than necessary, but in no case should exceed eight (8) double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch and type no smaller than 12 point and 12 cpi must be used. The narrative should describe:

i. Why this project is needed and how it will benefit State courts? If the project is to be conducted in a specific location(s), applicants should discuss the particular needs of the project site(s) to be addressed by the project, why those needs are not being met through the use of existing materials, programs, procedures, services or other resources, and the benefits that would be realized by the proposed sites(s).

If the project is not site specific, applicants should discuss the problems that the proposed project will address, why existing materials, programs, procedures, services or other resources do not adequately resolve those

problems, and the benefits that would be realized from the project by State courts generally.

ii. What will be done if a grant is awarded? A summary description of the project to be conducted and the approach to be taken, including the anticipated length of the grant period. Applicants requesting a waiver of the application requirement for a grant of less than $40,000 should explain the proposed methods for conducting the project as fully as space allows.

iii. How the effects and quality of the project will be determined? A summary description of how the project will be evaluated, including the evaluation criteria.

iv. How others will find out about the project and be able to use the results? A description of the products that will result, the degree to which they will be applicable to courts across the nation, and the manner in which the products and results of the project will be disseminated.

b. Concept papers requesting a package grant covering more than one project. The program narrative of a concept paper requesting a package grant (see definition in section III.J.) should be no longer than necessary, but in no case should exceed 15 double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch, and type no smaller than 12-point and 12 cpi must be used.

In addition to addressing the issues listed in paragraph VI.A.2.a., the program narrative of a package grant concept paper must describe briefly each component project, as well as how its inclusion enhances the entire package; and explain:

i. How are the proposed projects related?

ii. How would their operation and administration be enhanced if they were funded as a package rather than as individual projects; and

iii. What disadvantages, if any, would accrue by considering or funding them separately.

3. The Budget

a. Concept papers proposing a single project. A preliminary budget must be attached to the narrative that includes the estimates and information specified on Form E included in Appendix IV of this Guideline.

b. Concept papers requesting a package grant covering more than one project. A separate preliminary budget for each component project of the package, as well as a combined budget that reflects the costs of the entire package, must be attached to the narrative. Each of these budgets must include the estimates and information specified on Form E included in Appendix IV of this Guideline.

c. Concept papers requesting accelerated award of a grant of less than $40,000. Applicants requesting a waiver of the application requirement and approval of a grant based on a concept paper under section VI.C., must attach to Form E (see appendix IV) a budget narrative explaining the basis for each of the items listed, and whether the costs would be paid from grant funds or through a matching contribution or other sources. The budget narrative is not counted against the eight page limit for the program narrative.

4. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

5. The Institute will not accept concept papers with program narratives exceeding the limits set in sections VI.A.2.a. and b. The page limit does not include the cover page, budget form, the budget narrative if required under section VI.A.3.c., and any letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

6. Applicants submitting more than one concept paper may include material that would be identical in each concept paper in a cover letter, and incorporate that material by reference in each paper. The incorporated material will be counted against the eight-page limit for each paper. A copy of the cover letter should be attached to each copy of each concept paper.

7. Sample concept papers from previous funding cycles are available from the Institute upon request.

B. Selection Criteria

1. All concept papers will be evaluated by the staff on the basis of the following criteria:

a. The demonstration of need for the project;

b. The soundness and innovativeness of the approach described;

c. The benefits to be derived from the project;

d. The reasonableness of the proposed budget;

e. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B; and

f. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

2. "Single jurisdiction" concept papers submitted pursuant to section II.C. will be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B., and on the special requirements listed in section II.C.1.

3. In determining which concept papers will be selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the submitter's anticipated match; whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or another type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(b) (as amended) and section IV above); and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review Process

Concept papers will be reviewed competitively by the Board of Directors. Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for those concept papers which fall within the scope of the Institute's funding program and merit serious consideration by the Board. Staff will also prepare a list of those papers that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's funding program or are not likely to merit serious consideration by the Board. The narrative summaries, rating sheets, and list of non-reviewed papers will be presented to the Board for their review. Committees of the Board will review concept paper summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants should be invited to submit formal applications for funding.

The decision to invite an application is solely that of the Board of Directors. With regard to concept papers requesting a package grant, the Board retains discretion to invite an application including all, none, or selected portions of the package for possible funding.

The Board may waive the application requirement and approve a grant based on a concept paper for a project requiring less than $40,000, when the need for and benefits of the project are clear, and the methodology and budget require little additional explanation.

D. Submission Requirements

An original and three copies of all concept papers submitted for consideration in Fiscal Year 1993 must be sent by first class or overnight mail or by courier no later than December 2, 1992, except for concept papers proposing to implement an action plan developed during the National Conference on Substance Abuse and the Courts which must be sent by October 9, 1992 (see Special Interest category (h), and concept papers proposing projects that follow-up on the National Conference on Family Violence and the Courts which must be sent by October 8, 1993 (see Special Interest category 1.). A postmark or courier receipt will constitute evidence of the submission date. All envelopes containing concept papers should be marked CONCEPT PAPER and should be sent to: State Justice Institute, 1650 King Street, suite 600, Alexandria, Virginia 22314.

It is preferable for letters of cooperation and support to be appended to the concept paper when it is submitted. However, any such letter received prior to the meeting of the Board of Directors at which the paper is considered will be brought to the attention of the Board.

The Board will meet on November 19–22, 1992 to review the concept papers and invite applications to implement an action plan developed during the National Conference on Substance Abuse and the Courts. It will meet on March 4–7, 1993, to review concept papers and invite applications on other topics, and will meet on November 18–21, 1993, to consider concept papers to follow-up on the National Conference on Family Violence and the Courts.

The Institute will send written notice to all persons submitting concept papers of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to invite an application may not be appealed, but does not prohibit resubmission of the concept paper or a revision thereof in a subsequent round of funding. The Institute will also notify the designated State contact listed in the Appendix when the Board invites applications that are based on concept papers which are submitted by courts within their State or which specify a participating site within their State.

Receipt of each concept paper will be acknowledged in writing. Extensions of the deadline for submission of concept papers will not be granted.

VII. Application Requirements for New Projects

Except as specified in section VI., a formal application for a new project is to be submitted only upon invitation of the Board following review of a concept paper. An application for Institute funding support must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances. These documents are described below.

A. Forms

1. Application Form (FORM A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding support requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. Certificate of State Approval (FORM B)

An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

3. Budget Forms (FORM C or C1)

Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested.

In addition to FORM C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See section VII.D.)

Applications for a package grant must include a separate budget and budget narrative for each project included in the proposed package, as well as a combined budget that reflects the total costs of the entire package.

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. Assurances (FORM D)

This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

5. Disclosure of Lobbying Activities

This form requires applicants other than units of State or local government to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (See section X.D.)

B. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8½ by 11 inch paper.

C. Program Narrative

The program narrative for an application proposing a single project should not exceed 25 double-spaced pages on 8½ by 11 inch paper. The program narrative for an application requesting a package grant for more than one project should not exceed 40 double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch, and type no smaller than 12-point and 12 cpi must be used. The page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to obtaining a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. Project Objectives

A clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on

the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

2. Program Areas To Be Covered

A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed projects.

3. Need for the Project

If the project is to be conducted in a specific location(s), a discussion of the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, a discussion of the problems that the proposed project will address, and why existing materials, programs, procedures, services or other resources do not adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

An application requesting a package grant to support more than one project also must describe how the proposed projects in the package are related; how their operation and administration would be enhanced if they were funded as a package rather than as individual projects; and what disadvantages, if any, would accrue by considering or funding them separately.

4. Tasks, Methods and Evaluation

a. Tasks and methods. A delineation of the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

i. For research and evaluation projects, the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included of the value of the proposed research and the methods to be used to minimize or eliminate such risk.

ii. For education and training projects, the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty will be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars or workshops to be conducted; the materials to be provided and how they will be developed; and the cost to participants.

iii. For demonstration projects, the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they will be identified and their cooperation obtained; how the program or procedures will be implemented and monitored.

iv. For technical assistance projects, the types of assistance that will be provided; the particular issues and problems for which assistance will be provided; how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; and the cost to recipients.

An application requesting a package grant for more than one project must describe separately the tasks associated with each project in the proposed package.

b. Evaluation. Every project design must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide ongoing or periodic feedback on the effectiveness or utility of particular programs, educational offerings, or achievements which can then be further refined as a result of the evaluation process. The plan should present the qualifications of the evaluator(s); describe the criteria, related to the project's programmatic objectives, that will be used to evaluate the project's effectiveness; explain how the evaluation will be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach is appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example:

i. An evaluation approach suited to many research projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

ii. The most valuable approaches to evaluating educational or training programs will serve to reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment on what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented and other relevant factors. Another appropriate approach would be to use an independent observer who might request verbal as well as written responses from participants in the program. When an education project involves the development of curricular materials an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

iii. The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (e.g., how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (e.g., was the program implemented as designed? did it provide the services intended to the targeted population?); the impact of the program (e.g., what effect did the program have on the court? what benefits resulted from the program?); and the replicability of the program or components of the program.

iv. For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided will be determined, and should develop a mechanism for

feedback from both the users and providers of the technical assistance.

v. Evaluation plans involving human subjects should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subjects protection issues ordinarily are not applicable to participants evaluating an education program.

vi. The evaluation plan in a package grant application should address the issues listed above for the particular types of projects included in the package, assessing the strengths and weaknesses of the individual components as well as the benefits and limitations of the projects as a package.

5. Project Management

A detailed management plan including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination will occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

Package grant applications must include a management plan for each project included in the package, as well as a plan embracing the package as a whole.

6. Products

A description of the products to be developed by the project (e.g., training curricula and materials, videotapes, articles. manuals, or handbooks), including when they will be submitted to the Institute. The application must explain how and to whom the products will be disseminated; describe how they will benefit the State courts including how they can be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant will be offered to the courts community and the public at large (i.e. whether products will be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product). Ordinarily, applicant should schedule all product preparation and distribution activities within the project period. Applicants also should provide for the preparation of a one-page abstract summarizing products resulting from a project.

Package grant applications must discuss these issues with regard to the products that would result from each of the projects included in the package.

The type of products to be prepared depend on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that will be disseminated to the project's primary audience, or both. The products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties.

Applicants must provide for submitting a final draft of the final grant product(s) to the Institute for review and approval at least 30 days before the product(s) are submitted for publication or reproduction. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute.

Applicants must also provide for including in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section X.Q. of the Guideline. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless the Institute approves another placement.

Twenty copies of all project products, including videotapes, must be submitted to the Institute. In addition, a copy of each product must be sent to the library established in each State to collect the materials developed with Institute support. (A list of these libraries is contained in appendix II.) To facilitate their use, all videotaped products should be distributed in VHS format. For all word-processed products, grantees must submit a diskette of the text in ASCII. For non-text products, a copy of the summary or a brief abstract in ASCII must be submitted.

7. Applicant Status

An applicant that is not a State or local court and has not received a grant from the Institute within the past two years should include a statement indicating whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. If the applicant is a non-judicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

8. Staff Capability

A summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. Organizational Capacity

Applicants that have not received a grant from the Institute within the past two years should include a statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any), and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly assist in the successful completion of the project.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the current calendar year. If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

Unless requested otherwise, an applicant that has received a grant from

the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

10. Statement of Lobbying Activities

Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form that requires them to state whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts.

11. Letters of Support for the Project

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, written assurances of cooperation and availability should be attached as an appendix to the application.

D. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. An application for a package grant for more than one project must include a separate budget narrative for each project component. Additional background or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should address the items listed below. The costs attributable to the project evaluation should be clearly identified.

1. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who will serve as the staff of the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rate of those individuals. The applicant should explain any deviations from current rates or established written organization policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706(d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds will be supporting only the portion of the employee's time that will be dedicated to new or additional duties related to the project.

2. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

3. Consultant/Contractual Services

The applicant should describe each type of service to be provided. The basis for compensation rates and the method for selection should also be included. Rates for consultant services must be set in accordance with section XI.H.2.c.

4. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose for travel should also be included in the narrative.

5. Equipment

Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section XI.H.2.b.

6. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

7. Construction

Construction expenses are prohibited except for the limited purposes set forth in section X.H.2. Any allowable construction or renovation expense should be described in detail in the budget narrative.

8. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used in developing the monthly and long distance estimates.

9. Postage

Anticipated postage costs for project-related mailings should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the justification material.

10. Printing/Photocopying

Anticipated costs for printing or photocopying should be included in the budget narrative. Applicants should provide the details underlying these estimates in support of the request.

11. Indirect Costs

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (e.g., a percentage of the time of senior managers to supervise product activities), the applicant should specify that these costs are not included within their approved indirect cost rate. These rates must be established in accordance with section XI.H.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

12. Match

The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services or materials actually contributed will be documented. Applicants should be aware that the time spent by participants in education courses does not qualify as in-kind match. (Samples of forms used by current grantees to track in-kind match are available from the Institute upon request.)

Applicants that do not contemplate making matching contributions

continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. (See sections III.G., VIII.B., X.B. and XI.D.1.)

E. Submission Requirements

1. An application package containing the application, an original signature on FORM A (and on FORM B, if the application is from a State or local court or the Disclosure of Lobbying Form if the applicant is not a unit of State or local government), and four photocopies of the application package must be sent by first class or overnight mail, or by courier no later than May 12, 1993. A postmark or courier receipt will constitute evidence of the submission date. Please mark APPLICATION on all application package envelopes and send to: State Justice Institute, 1650 King Street, suite 600, Alexandria, Virginia 22314.

Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted.

2. Applicants invited to submit more than one application may include material that would be identical in each application in a cover letter, and incorporate that material by reference in each application. The incorporated material will be counted against the 25-page (or in the case of package grant applications, the 40-page) limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

3. It is preferable for letters of cooperation or support to be appended to the application when it is submitted. However, any letters received prior to the meeting of the Board of Directors at which the application is considered will be brought to the attention of the Board.

VIII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter inviting submission of a formal application.

B. Selection Criteria

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

a. The soundness of the methodology;

b. The appropriateness of the proposed evaluation design;

c. The qualifications of the project's staff;

d. The applicant's management plan and organizational capabilities;

e. The reasonableness of the proposed budget;

f. The demonstration of need for the project;

g. The products and benefits resulting from the project;

h. The demonstration of cooperation and support of other agencies that may be affected by the project;

i. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B.; and

j. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

2. "Single jurisdiction" applications submitted pursuant to section II.C.1. will also be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B. and on the special requirements listed in section II.C.1.b.

3. In determining which applicants to fund, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(6) (as amended) and section IV above); the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review and Approval Process

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application, and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

The Institute will send written notice to applicants concerning all Board decisions to approve or deny their respective applications and the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but does not prohibit resubmission of a concept paper based on that application in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix I when grants are approved by the Board to support projects that will be conducted by or involve courts in their State.

F. Response to Notification of Approval

Applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) has not been submitted to the Institute within 30 days after notification, the approval will be automatically rescinded and the application presented to the Board for reconsideration.

IX. Renewal Funding Procedures and Requirements

The Institute recognizes two types of renewal funding—"continuation grants" and "on-going support grants." Pursuant to the procedures and requirements set forth below, the Board may, in its discretion and subject to the availability of funds, consider requests for renewal funding at times other than those set for new projects in Sections VI. and VII. The Board of Directors anticipates allocating no more than 25% of available grant funds for FY 1993 for renewal grants.

A. Continuation Grants

1. Purpose and Scope

Continuation grants are intended to support projects with a limited duration that involve the same type of activities as the previous project. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or

more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

In order for a project to be considered for continuation funding, the grantee must have completed the project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks.

A continuation grant may be awarded for either a single project or for more than one project as a package grant (see sections III.J., V.C.1 and 3, and V.D.1 and 3).

2. Application Procedures—Letters of Intent

In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-paced pages on 8½ by 11 inch paper and must contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in scope. focus or audience of the project.

b. Letters of intent will not be reviewed competitively. Institute staff will review the proposed activities for the next project period and, within 30 days of receiving a letter of intent, inform the grantee of specific issues to be addressed in the continuation application and the date by which the application for a continuation grant must be submitted.

3. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, a disclosure of lobbying form from (applicants other than units of State or local government), and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of an application for a continuation grant should address:

a. Need for continuation. Explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the goals and objectives of the project be unfulfilled if the project is not continued, and conversely, how will the findings or results of the project be enhanced by continuing the project?

A continuation application requesting a package grant to support more than one project should explain, in addition, how the proposed projects are related; how their operation and administration would be enhanced by the grant; the advantages of funding the projects as a package rather than individually; and the disadvantages, if any, that would accrue by considering or funding them separately.

b. Report of current project activities. Discuss the status of all activities conducted during the previous project period, identify any activities that were not completed, and explain why. A continuation application requesting a package grant must describe separately the activities undertaken in each of the projects included within the proposed package.

c. Evaluation findings. Describe the key findings or recommendations resulting from the evaluation of the project, if they are available, and explain how they will be addressed during the proposed continuation. If the findings are not yet available, provide the date by which they will be submitted to the Institute.

d. Tasks, methods, staff and grantee capability. Describe fully any changes in the tasks to be performed, the methods to be used, the products of the project, how and to whom those products will be disseminated, the assigned staff, or the grantee's organizational capacity. Include, in addition, the criteria and methods by which the proposed continuation project would be evaluated.

A continuation application for a package grant must address these issues separately for each project included in the proposed package.

e. Task schedule. Present a detailed task schedule and time line for the next project period. A continuation application for a package grant should include a separate task schedule and timeline for each project included in the proposed package, as well as a schedule and time line that covers the package of projects as a whole.

f. Other sources of support. Indicate why other sources of support are inadequate, inappropriate or unavailable.

g. Budget and budget narrative. Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

A continuation application for a package grant must include a separate budget narrative for each project component.

4. References to Previously Submitted Material

An application for a continuation grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

5. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

B. On-Going Support Grants

1. Purpose and Scope

On-going support grants are intended to support projects that are national in scope and that provide the State courts with services, programs or products for which there is a continuing important need. An on-going support grant may also be used to fund longitudinal research that directly benefits the State courts. On-going support grants are subject to the limits on size and duration set forth in V.C.2 and V.D.2. A project is eligible for consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing important need for the services, programs or products provided by the project as indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

For FY 1993, the Institute will consider only single projects for on-going support.

Each project supported by an on-going support grant must include an evaluation component assessing its effectiveness and operation throughout the grant period. The evaluation should be independent, but may be designed collaboratively by the evaluator and the grantee. The design should call for regular feedback from the evaluator to the grantee throughout the project period concerning recommendations for mid-course corrections or improvement of the project, as well as periodic reports to the Institute at relevant points in the project.

An interim evaluation report must be submitted 18 months into the grant period. The decision to obligate Institute funds to support the third year of the project will be based on the interim evaluation findings and the applicant's response to any deficiencies noted in the report.

A final evaluation assessing the effectiveness, operation of, and continuing need for the project must be submitted 90 days before the end of the three-year project period.

In addition, a detailed annual task schedule must be submitted not later than 45 days before the end of the first and second years of the grant period, along with an explanation of any necessary revisions in the projected costs for the remainder of the project period. (See also section IX.B.3.h.)

2. Application Procedures—Letters of Intent

The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award. Funds ordinarily will be made available in annual increments as specified in section V.C.2.

In lieu of a concept paper, a grantee seeking an on-going support grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in section IX.A.2.a.

3. Application Procedures and Format

An application for an on-going support grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of applications for on-going support grants should address:

a. Description of need for and benefits of the project. Provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project.

b. Demonstration of court support. Demonstrate support for the continuation of the project from the courts community.

c. Report on current project activities. Discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why.

d. Evaluation findings. Attach a copy of the final evaluation report regarding the effectiveness and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they will be addressed during the proposed renewal period.

e. Tasks, methods, staff and grantee capability. Describe fully any changes in the tasks to be performed; the methods to be used; the products of the project; how and to whom those products will be disseminated; the assigned staff; and the grantee's organizational capacity.

f. Task schedule. Present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period.

g. Other sources of support. Indicate why other sources of support are inadequate, inappropriate or unavailable.

h. Budget and budget narrative. Provide a complete three-year budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. A complete budget narrative should be provided for each year, or portion of a year, for which grant support is requested. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. The budget should provide for realistic cost-of-living and staff salary increases over the course of the requested project period. Applicants should be aware that the Institute is unlikely to approve a supplemental budget increase for an on-going support grant in the absence of well-documented, unanticipated factors that clearly justify the requested increase.

4. References to Previously Submitted Material

An application for an on-going support grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

5. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for an on-going support grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

X. Compliance Requirements

The State Justice Institute Act (Pub. L. 98–620, as amended) contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

A. State and Local Court Systems

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency

or council. The latter shall receive, administer, and be accountable for all funds awarded to such courts. 42 U.S.C. 10705(b)(4). The Appendix to this guideline lists the agencies, councils and contact persons designated to administer Institute awards to the State and local courts.

B. Matching Requirements

1. All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50 percent of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be $150,000, a State court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both may be provided, but the Institute will give preference to those applicants who provide a cash match to the Institute's award. (For a further definition of match, see III.G.)

The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and a majority of the Board of Directors. 42 U.S.C. 10705(d) (as amended).

2. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project. In instances where a cash match is proposed, the grantee is responsible for ensuring that the total amount proposed is actually contributed. If a proposed cash match contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section VIII.B. above and XI.D.).

C. Conflict of Interest

Personnel and other officials connected with Institute-funded programs shall adhere to the following requirements:

1. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

a. Using an official position for private gain; or

b. Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

D. Lobbying

Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

E. Political Activities

No recipient shall contribute or make available Institute funds, program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Finally, officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

F. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

G. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

H. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity;

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. Solely to purchase equipment.

I. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

J. Human Research Protection

All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the

research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

K. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

L. Reporting Requirements

Recipients of Institute funds, other than scholarships awarded under section II.B.2.b.v., shall submit Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section XI.G.2. of this guideline.

M. Audit

Each recipient must provide for an annual fiscal audit. (See section XI.J. of this guideline for the requirements of such audits.)

Accounting principles employed in recording transactions and preparing financial statements must be based upon generally accepted accounting principles (GAAP).

N. Suspension of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, Institute guidelines, or the terms and conditions of the award. 42 U.S.C. 10708(a).

O. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

P. Original Material

All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

Q. Acknowledgment and Disclaimer

Recipients of Institute funds shall acknowledge prominently on all products developed with grant funds that support was received from the Institute. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute.

Recipients also shall display the following disclaimer on all grant products:

"This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

R. Institute Approval of Grant Products

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each such product to the Institute for review and approval. These drafts shall be submitted sufficiently before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes agreed upon by the grantee and the Institute.

S Distribution of Grant Products to State Libraries

Grantees shall send one copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of these libraries is contained in Appendix II).

T. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

U. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

V. Charges for Grant-Related Products/ Recovery of Costs

When Institute funds fully cover the cost of developing, producing, and disseminating a product (e.g., a report, curriculum, videotape or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may recover its costs for reproducing and disseminating the material to those requesting it.

Applicants should disclose the intent to sell grant-related products in both the concept paper and the application. Grantees must obtain the written, prior approval of the Institute of their plans to recover project costs through the sale of grant products. Written requests to

recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. See sections III.G. and XI.F. for requirements regarding project-related income.

W. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

XI. Financial Requirements

A. Accounting Systems and Financial Records

All grantees, subgrantees, contractors and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget.

1. Purpose

The purpose of this section is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning, management and control of programs; and

d. Facilitating an effective audit of funded programs and projects.

2. References

Except where inconsistent with specific provisions of this Guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied.

a. Office of Management and Budget (OMB) Circular A–21, Cost Principles for Educational Institutions.

b. Office of Management and Budget (OMB) Circular A–87, Cost Principles for State and Local Governments.

c. Office of Management and Budget (OMB) Circular A–88 (revised), Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.

d. Office of Management and Budget (OMB) Circular A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. Office of Management and Budget (OMB) Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations.

f. Office of Management and Budget (OMB) Circular A–128, Audits of State and Local Governments.

g. Office of Management and Budget (OMB) Circular A–122, Cost Principles for Non-profit Organizations.

B. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court shall receive all Institute funds awarded to such courts and shall be responsible for assuring proper administration of Institute funds. The State Supreme Court is responsible for all aspects of the project, including proper accounting and financial recordkeeping by the subgrantee. The responsibilities include:

a. Reviewing financial operations. The State Supreme Court should be familiar with, and periodically monitor, its subgrantees' financial operations, records system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. Recording financial activities. The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court *OR* evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

c. Budgeting and budget review. The State Supreme Court should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

d. Accounting for non-institute contributions. The State Supreme Court will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of this guideline are applied to such funds.

e. Audit requirement. The State Supreme Court is required to ensure that subgrantees have met the necessary audit requirements as set forth by the Institute (see sections X.M. and XI.J).

f. Reporting irregularities. The State Supreme Court and its subgrantees are responsible for promptly reporting to the Institute the nature and circum- stances surrounding any financial irregularities discovered.

C. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. However, the full matching share must be obligated by the end of the award period. Grantees that do not contemplate making matching contributions continuously throughout the course of a project or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. In instances where a proposed cash match is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See Section XI.B.2.)

E. Maintenance and Retention of Records

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

F. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are direct grantees must refund any interest earned. Grantees shall so order their affairs to ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tuition fees may be used for other purposes only with the prior written approval of the Institute.

4. Income From the Sale of Grant Products

When grant funds fully cover the costs of producing and disseminating a limited number of copies of a product, the grantee may, with the written approval of the Institute, sell additional copies reproduced at its expense only at a price that recovers actual reproduction and distribution costs. These costs must be reported on the quarterly financial status reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the concept paper and application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product reproduction and dissemination costs as specified in section X.V.

5. Other

Other project income shall be treated in accordance with disposition

instructions set forth in the project's terms and conditions.

G. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. Request for advance or reimbursement of funds. Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation and on-going support grants should consider these grants as supplements to and extensions of the original award and number their requests on a project rather than a grant basis. (See Recommendations to Grantees in the Introduction for further guidance.)

Payment requests for projects within a package grant should be segregated by project and numbered accordingly. (See Recommendations to Grantees in the Introduction for further guidance.)

b. *Termination of advance and reimbursement funding.* When a grantee organization receiving cash advances from the Institute:

i. Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

ii. Engages in the improper award and administration of subgrants or contracts; or

iii. Is unable to submit reliable and/or timely reports, the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by the use of the Institute check method to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute reserves the right to suspend reimbursement payments until the deficiencies are corrected.

c. Principle of minimum cash on hand. Recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. Financial Reporting

In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

Two copies of the Financial Status Report are required from all grantees, other than recipients of scholarships under section II.B.2.b.v., for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with instructions for its preparation, will be included in the official Institute Award package. In circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

Grantees receiving a continuation or on-going support grant should provide financial information and number their quarterly Financial Status Reports on a project rather than a grant basis.

Grantees receiving a package grant must submit a quarterly financial report summarizing the financial activity for the entire package *and* separate reports for each project within the package.

3. Consequences of Non-Compliance With Submission Requirements

Failure of the grantee organization to submit required financial and program reports may result in a suspension of grant payments or revocation of the grant award.

H. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in *OMB Circulars A–87,* Cost Principles for State and Local Governments; *A–21,* Cost Principles Applicable to Grants and Contracts with Educational Institutions; and *A–122,* Cost Principles for Non-Profit Organizations. No costs may be recovered to liquidate obligations which are incurred after the approved grant period.

2. Costs Requiring Prior Approval

a. Preagreement costs. The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the award date of the grant.

b. Equipment. Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or the software to be purchased exceeds $3,000.

c. Consultants. The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day.

3. Travel Costs

Transportation and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established written travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. Institute funds shall not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

a. Approved plan available. i. The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

ii. Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

iii. Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiation agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. Establishment of indirect cost rates. In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted in a timely manner (within three months after the start of the grant period) to assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved.

c. No approved plan. If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

I. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute is adopting the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* shall be applicable to all grantees and subgrantees of Institute funds except as provided in Section X.O.

All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expendi-tures of grant funds for the acquisition of new property will be considered unnecessary.

J. Audit Requirements

1. Audit Objectives

Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the grantee's or subgrantee's administration of grant funds and required non-Institute contributions for the purpose of determining whether the recipient has:

a. Established an accounting system integrated with adequate internal fiscal and management controls to provide full accountability for revenues, expenditures, assets, and liabilities;

b. Prepared financial statements which are presented fairly, in accordance with generally accepted accounting principles;

c. Prepared Institute financial reports (including Financial Status Reports, Cash Reports, and Requests for Advances and Reimbursements) which contain accurate and reliable financial data, and are presented in accordance with prescribed procedures; and

d. Expended Institute funds in accordance with the terms of applicable agreements and those provisions of Federal law or Institute regulations that could have a material effect on the financial statements or on the awards tested.

2. Implementation

Each grantee (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. The audit may be of the entire grantee organization (e.g., a university) or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and *OMB Circular A–128,* or *OMB Circular A–133* will satisfy the requirement for an annual fiscal audit. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. The audit shall be conducted in compliance with generally accepted auditing standards established by the American Institute of Certified Public Accountants. A written report shall be prepared upon completion of the audit. Grantees are responsible for submitting copies of the reports to the Institute within thirty days after the acceptance of the report by the grantee, for each year that there is financial activity involving Institute funds.

Grantees who receive funds from a Federal agency and who satisfy audit requirements of the cognizant Federal agency, should submit a copy of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section. Cognizant Federal agencies do not send reports to the Institute. Therefore, each grantee must send this report directly to the Institute.

Audit reports from nonprofit organizations which do not receive Federal funds, and which decide to perform an audit of the entire organization, shall include a supplemental schedule depicting a project-by-project summary of Institute grant activity for the audit period. At a minimum, this summary should include the grant award number, project title, award amount, payments received, expenditures made and balances remaining. The auditors should also conduct adequate tests to ensure that the audit objectives listed in sections XI.J.1.c. and d. above have been satisfied.

3. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up, maintaining a record of the actions taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and actions taken.

4. Consequences of Non-Resolution of Audit Issues

It is the general policy of the State Justice Institute not to make new grant awards to an applicant having an unresolved audit report involving Institute awards. Failure of the grantee organization to resolve audit questions may also result in the suspension of payments for active Institute grants to that organization.

K. Close-Out of Grants

1. Definition

Close-out is a process by which the Institute determines that all applicable administrative and financial actions and all required work of the grant have been completed by both the grantee and the Institute.

2. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (revised end date), the following documents must be submitted to the Institute by a grantee other than a recipient of a scholarship under section II.B.2.b.v.

a. Financial status report. The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final financial status report.

b. Final progress report. This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; specify whether all the objectives set forth in the approved application or an approved adjustment thereto have been met; and, if any of the objectives have not been met explain the reasons therefor.

3. Extension of Close-Out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

XII. Grant Adjustments

All requests for program or budget adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments which require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories which, individually or in the aggregate, exceed or are expected to exceed five percent of the approved budget. For the purposes of this section, the Institute will view budget revisions cumulatively.

a. For package grants, reallocations among budget categories of an individual project within the package that total less than five percent of the approved budget for that project do not require a grant adjustment. However, transfers of funds between projects included in the package require prior, written approval by the Institute.

b. For continuation and on-going support grants, funds from the original award may be used during the renewal grant period and funds awarded by a continuation or on-going support grant may be used to cover project-related expenditures incurred during the original award period, with the prior, written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (see section XII.D.).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see section XII.E.).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see sections XII.F. and G.).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section X.W.).

8. A successor in interest or name change agreements.

9. A transfer or contracting out of grant-supported activities (see section XII.H.).

10. A transfer of the grant to another recipient.

11. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

12. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Request for Grant Adjustments

All grantees and subgrantees must promptly notify the SJI program managers, in writing, of events or proposed changes which may require an adjustment to the approved application. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the SJI program managers determine would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his/her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

A grantee/subgrantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany requests for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section XI.K.3.).

F. Temporary Absence of the Project Director

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

State Justice Institute Board of Directors

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Sandra A. O'Connor, States Attorney of Baltimore County, Towson, Maryland
David I. Tevelin, Executive Director (ex officio)

David I. Tevelin,

Executive Director.

Appendix I—List of State Contacts Regarding Administration of Institute Grants to State and Local Courts

Mr. Oliver Gilmore, Acting Administrative Director, Administrative Office of the Courts, 817 South Court Street, Montgomery, Alabama 36130, (205) 834–7990
Mr. Arthur H. Snowden II, Administrative Director, Alaska Court System, 303 K Street, Anchorage, Alaska 99501, (907) 264–0547
Mr. William L. McDonald, Administrative Director, Supreme Court of Arizona, 1501 West Washington Street, Suite 411, Phoenix, Arizona 85007–3330, (602) 255–4359
Mr. James D. Gingerich, Executive Secretary, Arkansas Judicial Department, Justice Building, Little Rock, Arkansas 72201, (501) 371–2295
William C. Vickery, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, California 94107, (415) 396–9100
State Court Administrator, Colorado Judicial Department, 1301 Pennsylvania Street, Suite 300, Denver, Colorado 80203–2416, (303) 861–1111, ext. 585
Ms. Faith A. Mandell, Director, External Affairs, Office of the Chief Court Administrator, Drawer N, Station A, Hartford, Connecticut 06106, (203) 566–8210
Mr. Lowell Groundland, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware 19801, (302) 571–2480
Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue NW., Washington, D.C. 20001, (202) 879–1700
Mr. Kenneth Palmer, State Courts Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900, (904) 488–8621
Mr. Robert L. Doss, Jr., Administrative Director of the Courts, The Judicial Council of Georgia, 244 Washington Street SW., Suite 500, Atlanta, Georgia 30334, (404) 656–5171
Mr. Perry C. Taitano, Administrative Director, Superior Court of Guam, Judiciary Building, 110 West O'Brien Drive, Agana, Guam 96920, 011 (671) 472–8961 through 8968
Dr. Irwin I. Tanaka, Administrative Director of Courts, The Judiciary, Post Office Box 2560, Honolulu, Hawaii 96804, (808) 548–4605
Mr. Carl F. Bianchi, Administrative Director of the Courts, Supreme Court Building, 451 West State Street, Boise, Idaho 83720, (208) 334–2246
Mr. William M. Madden, Acting Director, Administrative Office of the Courts, 30 N. Michigan Avenue, Suite 2017, Chicago, Illinois 60602, (312) 793–3250
Mr. Bruce A. Kotzan, Executive Director, Supreme Court of Indiana, State House, Room 323, Indianapolis, Indiana 46204, (317) 232–2542
Mr. William J. O'Brien, State Court Administrator, Supreme Court of Iowa, State House, Des Moines, Iowa 50319, (515) 281–5241
Dr. Howard P. Schwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612, (923) 296–4873
Ms. Laura Stammel, Assistant Director, Administrative Office of the Courts, 100 Mill Creek Park, Frankfort, Kentucky 40601, (502) 564–2350
Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana, 301 Loyola Avenue, room 109, New Orleans, Louisiana 70112–1887, (504) 568–5747
Mr. Robert L. Freeman, Acting State Court Administrator, Administrative Office of the Courts, P.O. Box 4820, Downtown Station, Portland, Maine 04112, (207) 879–4792
Ms. Deborah A. Unitus, Assistant State Court Administrator, Technical and Information Services, Administrative Office of the Courts, P.O. Box 431, Annapolis, Maryland 21404, (301) 974–2353
Honorable John E. Fenton, Jr., Chief Administrative Justice, The Trial Court, Commonwealth of Massachusetts, 317 New Courthouse, Boston, Massachusetts 02108, (617) 725–8787
Marilyn K. Hall, State Court Administrator, Michigan Supreme Court, P.O. Box 30048, 611 West Ottawa Street, Lansing, Michigan 48909, (517) 373–0131
Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 230 State Capitol, St. Paul, Minnesota 55155, (617) 296–2474
Hon. Leslie Johnson, Director, Center for Court Education and Continuing Studies, Box 879, Oxford, Mississippi 38677, (601) 232–5955
Mr. Ron Larkin, Director of Operations, Office of the State Court Administrator, 1105 R Southwest Blvd, Jefferson City, Missouri 65109, (314) 751–3585
Mr. R. James Oppedahl, State Court Administrator, Montana Supreme Court, Justice Building, room 315, 215 North Sanders, Helena, Montana 59620–3001, (406) 444–2621
Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, State Capitol Building, room 1220, Lincoln, Nebraska 68509, (404) 471–2643
Mr. Donald J. Mello, Court Administrator, Administrative Office of the Courts, Capitol Complex, Carson City, Nevada 89710, (702) 885–5076
Mr. James F. Lynch, State Court Administrator, Supreme Court of New Hampshire, Frank Rowe Kenison Building, Concord, New Hampshire 03301, (603) 271–2419
Mr. Robert Lipscher, Administrative Director, Administrative Office of the Courts, CN–

037, RJH Justice Complex, Trenton, New Jersey 08625, (609) 984–0275
Mr. Robert L. Lovato, State Court Administrator, Administrative Office of the Courts, Supreme Court of New Mexico, Supreme Court Building, room 25, Sante Fe, New Mexico 87503, (505) 827–4800
Mr. Matthew T. Crosson, Chief Administrator of the Courts, Office of Court Administration, 270 Broadway, New York, New York 10007, (212) 587–2004
Mr. Franklin E. Freeman, Jr., Administrative Director, Administrative Office of the Courts, Post Office Box 2448, Raleigh, North Carolina 27602, (929) 733–7106/7107
Mr. Keithe E. Nelson, State Court Administrator, Supreme Court of North Dakota, State Capitol Building, Bismarck, North Dakota 58505, (701) 224–4216
Mr. Stephan W. Stover, Administrative Director of the Courts, Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2653
Mr. Howard W. Conyers, Administrative Director, Administrative Office of the Courts, 1925 N. Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450
Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378–6046
Mr. Thomas B. Darr, Director for Legislative Affairs, Communications and Administration, 5035 Ritter Road, Mechanicsburg, Pennsylvania 17055, (717) 795–2000
Mr. Matthew J. Smith, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277–3263 or 277–3272
Mr. Louis L. Rosen, Director, South Carolina Court Administration, Post Office Box 50447, Columbia, South Carolina 29250, (803) 758–2961
Robert A. Miller, Chief Justice, Supreme Court of South Dakota, 500 East Capitol Avenue, Pierre, South Dakota 57501, (605) 773–4885
Mr. Charles E. Ferrell, Executive Secretary, Supreme Court of Tennessee, Supreme Court Building, Room 422, Nashville, Tennessee 37219, (615) 741–2687
Mr. C. Raymond Judice, Administrative Director, Office of Court Administration of the Texas Judicial System, Post Office Box 12066, Austin, Texas 78711, (512) 463–1625
Mr. Ronald W. Gibson, State Court Administrator, Administrative Office of the Courts, 230 South 500 East, Salt Lake City, Utah 84102, (801) 533–6371
Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, Montpelier, Vermont 05602, (802) 828–3281
Ms. Viola E. Smith, Clerk of the Court/Administrator, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774–6680, ext. 248
Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, 3rd Floor, Richmond, Virginia 23219, (804) 786–6455
Ms. Mary C. McQueen, Administrator for the Courts, Supreme Court of Washington, Highways-Licensing Building, 6th Floor, 12th & Washington, Olympia, Washington 98504, (206) 753–5780
Mr. Ted J. Philyaw, Administrative Director of the Courts, Administrative Office, 402–E State Capitol, Charleston, West Virginia 25305, (304) 348–0145
Mr. J. Denis Moran, Director of State Courts, Post Office Box 1688, Madison, Wisconsin 53701–1688, (608) 266–6828
Mr. Robert L. Duncan, Court Coordinator, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777–7581

Appendix II—SJI Libraries Designated Sites and Contacts (August 1992)

State: Alabama
Location: Supreme Court Library
Contact: Mr. Timothy Lewis, State Law Librarian, Alabama Supreme Court Bldg., 445 Dexter Avenue, Montgomery, Alabama 36130, (205) 242–4347

State: Alaska
Location: Anchorage Law Library
Contact: Ms. Cynthia S. Petumenos, State Law Librarian, Alaska Court Libraries, 303 K Street, Anchorage, Alaska 99501, (907) 264–0583

State: Arizona
Location: State Law Library
Contact: Ms. Sharon Womack, Director, Department of Library & Archives, State Capitol, 1700 West Washington, Phoenix, Arizona 85007, (602) 542–4035

State: Arkansas
Location: Administrative Office of the Courts
Contact: Mr. James D. Gingerich, Director, Supreme Court of Arkansas, Administrative Office of the Courts, Justice Building, 625 Marshall, Little Rock, Arkansas 72201–1078, (501) 376–6655

State: California
Location: Administrative Office of the Courts
Contact: William C. Vickery, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, California 94107, (415) 396–9100

State: Colorado
Location: Supreme Court Library
Contact: Ms. Frances Campbell, Supreme Court Law Librarian, Colorado State Judicial Building, 2 East 14th Avenue, Denver, Colorado 80203, (303) 837–3720

State: Connecticut
Location: State Library
Contact: Mr. Richard Akeroyd, State Librarian, 231 Capital Avenue, Hartford, Connecticut 06106, (203) 566–4301

State: Delaware
Location: Administrative Office of the Courts
Contact: Mr. Michael E. McLaughlin, Deputy Director, Administrative Office of the Courts, Carvel State Office Building, 820 North French Street, 11th Floor, P.O. Box 8911, Wilmington, Delaware 19801, (302) 571–2480

State: District of Columbia
Location: Executive Office, District of Columbia Courts
Contact: Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, NW., Washington, DC 20001, (202) 879–1700

State: Florida
Location: Administrative Office of the Courts
Contact: Mr. Kenneth Palmer, State Court Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900, (904) 488–8621

State: Georgia
Location: Administrative Office of the Courts
Contact: Mr. Robert L. Doss, Jr., Director, Administrative Office of the Courts, The Judicial Council of Georgia, 244 Washington Street, SW., Suite 550, Atlanta, Georgia 30334, (404) 656–5171

State: Hawaii
Location: Supreme Court Library
Contact: Ms. Ann Koto, Acting Law Librarian, Supreme Court Law Library, P.O. Box 2560, Honolulu, Hawaii 96804, (808) 548–4605

State: Idaho
Location: AOC Judicial Education Library/State Law Library in Boise
Contact: Mr. Carl F. Bianchi, Administrative Director of theCourts for the State of Idaho, Idaho Supreme Court, 451 West State Street, Boise, Idaho 83720, (208) 334–2246

State: Indiana
Location: Supreme Court Library
Contact: Ms. Constance Matts, Supreme Court Librarian, Supreme Court Library, State House, Indianapolis, Indiana 46204, (317) 232–2557

State: Iowa
Location: Administrative Office of the Court
Contact: Mr. Jerry K. Beatty, Executive Director, Judicial Education & Planning, Administrative Office of the Courts, State Capital Building, Des Moines, Iowa 50319, (515) 281–8279

State: Kansas
Location: Supreme Court Library
Contact: Mr. Fred Knecht, Law Librarian, Kansas Supreme Court Library, 301 West 10th Street, Topeka, Kansas 66614, (913) 296–3257

State: Kentucky
Location: State Law Library
Contact: Ms. Sallie Howard, State Law Librarian, State Law Library, State Capital, Room 200–A, Frankfort, Kentucky 40601, (502) 564–4848

State: Louisiana
Location: State Law Library
Contact: Ms. Carol Billings, Director, Louisiana Law Library, 301 Loyola Avenue, New Orleans, Louisiana 70112, (504) 568–5705

State: Maine
Location: State Law and Legislative Reference Library
Contact: Ms. Lynn E. Randall, State Law Librarian, State House Station 43, Augusta, Maine 04333, (207) 289–1600

State: Maryland
Location: State Law Library
Contact: Mr. Michael S. Miller, Director, Maryland State Law Library, Cour' of Appeal Building, 361 Rowe Blvd., Annapolis, Maryland 21401, (301) 974–3395

State: Massachusetts
Location: Middlesex Law Library
Contact: Ms. Sandra Lindheimer, Librarian, Middlesex Law Library, Superior Court

House, 40 Thorndike Street, Cambridge, Massachusetts 02141, (617) 494–4148

State: Michigan
Location: Michigan Judicial Institute
Contact: Mr. Dennis W. Catlin, Executive Director, Michigan Judicial Institute, 222 Washington Square North, P.O. Box 30205, Lansing, Michigan 48909, (517) 334–7804

State: Minnesota
Location: State Law Library (Minnesota Judicial Center)
Contact: Mr. Marvin R. Anderson, State Law Librarian, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, Minnesota 55155, (612) 297–2084

State: Mississippi
Location: Mississippi Judicial College
Contact: Mr. Rick D. Patt, Staff Attorney, Mississippi Judicial College, 6th Floor, 3825 Ridgewood, Jackson, Mississippi 39211, (601) 982–6590

State: Montana
Location: State Law Library
Contact: Ms. Judith Meadows, State Law Librarian, State Law Library of Montana, Justice Building, 215 North Sanders, Helena, Montana 59620, (406) 444–3660

State: National
Location: JERITT Project/Michigan State University
Contact: Dr. John K. Hudzik, Project Director, Judicial Education, Reference, Information and Technical Transfer Project (JERITT), Michigan State University, 560 Baker Hall, East Lansing, Michigan 48824

State: Nebraska
Location: Administrative Office of the Courts
Contact: Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, Administrative Office of the Courts, P.O. Box 98910, Lincoln, Nebraska 68509–8910, (402) 471–3730

State: Nevada
Location: National Judicial College
Contact: Dean V. Robert Payant, National Judicial College, Judicial College Building, University of Nevada, Reno, Nevada 89550, (702) 784–6747

State: New Jersey
Location: New Jersey State Library
Contact: Mr. Robert L. Bland, Law Coordinator, State of New Jersey, Department of Education, State Library, 185 West State Street, CN520, Trenton, New Jersey 08625, (609) 292–6230

State: New Mexico
Location: Supreme Court Library
Contact: Mr. Thaddeus Bejnar, Librarian, Supreme Court Library, Post Office Drawer L, Santa Fe, New Mexico 87504, (505) 827–4850

State: New York
Location: Supreme Court Library
Contact: Ms. Susan M. Wood, Esq., Principal Law Librarian, New York State SupremeCourt Law Library, Onondaga County Court House, Syracuse, New York 13202, (315) 435–2063

State: North Carolina
Location: Supreme Court Library
Contact: Ms. Louise Stafford, Librarian, North Carolina Supreme Court Library, P.O. Box 28006, (by courier) 500 Justice Building, 2 East Morgan Street, Raleigh, North Carolina 27601, (919) 733–3425

State: North Dakota
Location: Supreme Court Library
Contact: Ms. Marcella Kramer, Assistant Law Librarian, Supreme Court Law Library, 600 East Boulevard Avenue, 2nd Floor, Judicial Wing, Bismarck, North Dakota 58505–0530, (701) 224–2229

State: Northern Mariana Isl.
Location: Supreme Court of the Northern Mariana Islands
Contact: Honorable Jose S. Dela Cruz, Chief Justice, Supreme Court of the Northern Mariana Islands, P.O. Box 2165, Saipan, MP 96950, (670) 234–5275

State: Ohio
Location: Supreme Court Library
Contact: Mr. Paul S. Fu, Law Librarian, Supreme Court Law Library, Supreme Court of Ohio, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2044

State: Oklahoma
Location: Administrative Office of the Courts
Contact: Mr. Howard W. Conyers, Director, Administrative Office of the Courts, 1915 North Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450

State: Oregon
Location: Administrative Office of the Courts
Contact: Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378–6046

State: Pennsylvania
Location: State Library of Pennsylvania
Contact: Ms. Betty Lutz, Head, Acquisitions Section, State Library of Pennsylvania, Technical Services, G46 Forum Building, Harrisburg, Pennsylvania 17105, (717) 787–4440

State: Puerto Rico
Location: Office of Court Administration
Contact: Mr. Alfreado Rivera-Mendoza, Esq., Director, Area of Planning and Management, Office of CourtAdministration, P.O. Box 917, Hato Rey, Puerto Rico 00919

State: Rhode Island
Location: State Law Library
Contact: Mr. Kendall F. Svengalis, Law Librarian, Licht Judicial Complex, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277–3275

State: South Carolina
Location: Coleman Karesh Law Library (University of South Carolina School of Law)
Contact: Mr. Bruce S. Johnson, Law Librarian, Associate Professor of Law, Coleman Karesh Law Library, U.S.C. Law Center, University of South Carolina, Columbia, South Carolina 29208, (803) 777–5944

State: Tennessee
Location: Tennessee State Law Library
Contact: Ms. Donna C. Wair, Librarian, Tennessee State Law Library, Supreme Court Building, 401 Seventh Avenue N, Nashville, Tennessee 37243–0609, (615) 741–2016

State: Texas
Location: State Law Library
Contact: Ms. Kay Schleuter, Director, State Law Library, P.O. Box 12367, Austin, Texas 78711, (512) 463–1722

State: U.S. Virgin Islands
Location: Library of the Territorial Court of the Virgin Islands (St. Thomas)
Contact: Librarian, The Library, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00804

State: Utah
Location: Utah State Judicial Administration Library
Contact: Ms. Jennifer Bullock, Librarian, Utah State JudicialAdministration Library, 230 South 500 East, Suite 300, Salt Lake City, Utah 84102, (801) 533–6371

State: Vermont
Location: Supreme Court of Vermont
Contact: Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, c/o Pavilion OfficeBuilding, Montpelier, Vermont 05602, (802) 828–3278

State: Virginia
Location: Administrative Office of the Courts
Contact: Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, Third Floor, Richmond, Virginia 23219, (804) 786–6455

State: Washington
Location: Washington State Law Library
Contact: Ms. Deborah Norwood, State Law Librarian, Washington State Law Library Temple of Justice, Mail Stop AV–02, Olympia, Washington 98504–0502, (206) 357–2146

State: West Virginia
Location: Administrative Office of the Courts
Contact: Mr. Richard H. Rosswurm, Deputy Administrative Director for Judicial Education, West Virginia Supreme, Court of Appeals, State Capitol, Capitol E–400, Charleston, West Virginia 25305, (304) 348–0145

State: Wisconsin
Location: State Law Library
Contact: Ms. Marcia Koslov, State Law Librarian, State Law Library, 310E State Capitol, P.O. Box 7881, Madison, Wisconsin 53707, (608) 266–1424

State: Wyoming
Location: Wyoming State Law Library
Contact: Ms. Kathy Carlson, Law Librarian, Wyoming State Law Library, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777–7509

American Judicature Society
Contact: Clara Wells, Assistant for Information and Library Services, 25 East Washington Street, Suite 1600, Chicago, Illinois 60602, (312) 558–6900

National Center for State Courts
Contact: Peggy Rogers, Acquisitions/Serials Librarian, 300 Newport Avenue, Williamsburg, Virginia 23187–8798, (804) 253–2000

Appendix III

State Justice Institute

Scholarship Application

Applicant Information: _____

1. Applicant Name: _____
(Last) (First) (M)
2. Position: _____
3. Name of Court: _____
4. Address: _____
Street/P.O. Box
_____
City State Zip Code
5. Telephone No. _____
6. Congressional District: _____

Program Information: _____

7. Course Name: _____
8. Course Dates: _____
9. Course Provider: _____
10. Location Offered: _____

Estimated Expenses: (Please note, scholarships are limited ordinarily to tuition and transportation expenses to and from the site of the course up to a maximum of $1,500.)

Tuition $ _____
Total $ _____
Transportation $ _____
(airfare, trainfare or if you plan to drive, the approximate distance X $0.25/mile)

Additional information:

Please answer the following questions:

1. Why do you need to take this course? How will your taking this course benefit either your court or the State's courts generally?
2. Is there any education or training currently available through your State on this topic?
3. How will you apply what you have learned? Please include any plans you may have to develop/teach a course in your jurisdiction/State on the topic, provide in-service training, or otherwise disseminate what you have learned to colleagues.
4. How long have you served as a judge or court manager? How long do you anticipate serving as a judge or court manager where applicable, assuming reelection or reappointment?
5. How long has it been since you attended a non-mandatory continuing professional education program?
6. Are State or local funds available to support your attendance at the proposed course? If so, what amount(s) will be provided?
7. Please attach a current resume or professional summary.

Statement of Applicant's Commitment

If a scholarship is awarded, I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

Date
Signature _____

State Justice Institute

Judicial Education Scholarship Application

Certificate of Concurrence

I, _____,
Name of Chief Justice (or Chief Justice's Designee)
have reviewed the application for a scholarship to attend the program entitled _____,
prepared by _____,
Name of Applicant
and concur in its submission to the State Justice Institute. I certify that the applicant's participation in the program would benefit the State, that the applicant's absence to attend the program would not present an undue hardship to the court, and that receipt of a scholarship would not diminish the amount of funds made available by the State for judicial education.

_____
Signature

_____
Name

_____
Title

_____
Date

Appendix IV

State Justice Institute

Concept Paper Preliminary Budget

Personnel	$_____
Fringe Benefits	$_____
Consultant/Contractual	$_____
Travel	$_____
Equipment	$_____
Supplies	$_____
Telephone	$_____
Postage	$_____
Printing/Photocopying	$_____
Audit	$_____
Other	$_____
Indirect Costs (%)	
Project Total	$_____
Cash Match	$_____
In-Kind Match	$_____
Amount Requested from SJI	$_____

Financial assistance has been or will be sought for this project from the following other sources:

_____

_____

Appendix V

State Justice Institute

Certificate of State Approval

_____

The _____
Name of State Supreme Court or Designated Agency or Council
has reviewed the application entitled _____

_____

prepared by _____
Name of Applicant
approves its submission to the State Justice Institute, and

[ ] agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.

[ ] designates _____
Name of designated trial or appellate court or agency
to receive, administer and be accountable for all funds awarded by the Institute pursuant to the application.

_____
Signature

_____
Date

_____
Name

_____
Title

Instructions—Form B

The State Justice Institute Act requires that:

Each application for funding by a State or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b)(4).

Form B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or be the director of the designated agency or chair of the designated council. If the designated agency or council differs from the designee listed in the Appendix to the State Justice Institute Grant Guideline, evidence of the new or additional designation should be attached.

The term "State Supreme Court" refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer and be accountable for those funds.

Form B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council. If the designated agency or council differs from the designee listed in the Appendix to the State Justice Institute Grant Guideline, evidence of the new or additional designation should be attached.

[FR Doc. 92–25188 Filed 10–19–92; 8:45 am]

BILLING CODE 6820–SC–M

Federal Register

Tuesday
October 20, 1992

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 33

Airworthiness Standards: Aircraft Engines; Fuel and Induction Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 24922; Notice No. 92-14]

RIN 2120-AB76

Airworthiness Standards: Aircraft Engines; Fuel and Induction Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to require fail-safe design features in the fuel control systems used on reciprocating aircraft engines. Specifically, the proposal would require the fuel-air mixture control device and the throttle control device to move automatically to an acceptable position for continued safe operation if the aircraft control linkage to these devices becomes disconnected. The proposed requirements resulted from an analysis of a series of accidents attributed to loss of mixture or throttle control and from public comments on an Advance Notice of Proposed Rulemaking published in the **Federal Register** on February 28, 1986. This proposed rule is intended to improve safety by requiring the fuel mixture control device and the throttle control device to move automatically to an acceptable position for continued safe flight if the linkage to these devices becomes disconnected.

DATES: Comments must be received on or before February 17, 1993.

ADDRESSES: Comments on this notice should be mailed in triplicate, to: FAA, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 24922, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 24922. Comments may be examined in room 915G, weekdays between 8:30 a.m. and 5 p.m., except federal holidays.

FOR FURTHER INFORMATION CONTACT: Locke Easton, Engine and Propeller Standards Staff, ANE-110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7088.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24922." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM

Any person may obtain a copy of this notice by submitting a request to the FAA, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request, from the above office, a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Statement of the Problem

The FAA has determined that a disconnect of the control linkages on reciprocating engine fuel system mixture or throttle controls can result in loss of engine power or uncommanded inflight shutdown of the engine.

History

These proposals resulted from an analysis of a series of accidents attributed to loss of mixture or throttle control and from public comments received on an Advance NPRM published in the **Federal Register** on February 28, 1986 (51 FR 7224, Docket No. 24922, Notice No. 86-2). The National Transportation Safety Board (NTSB) analyzed 54 aircraft accidents, attributed to problems with the carburetor mixture linkage, which occurred between 1971 and 1981. The NTSB concluded that in the majority of cases, slippage or failure of the mixture control linkage mechanism at the carburetor resulted in the mixture control moving to the idle cut-off position. One recommendation resulting from the NTSB evaluation was to amend part 33 of the FAR to require that the carburetor mixture control device move automatically to the full-rich position in the event that it becomes disconnected from the mixture control linkage. The NTSB also recommended that manufacturers be encouraged to provide retrofit kits for existing aircraft already in service.

The FAA reviewed accident and incident data in its files for the time period covered in the NTSB analysis concerning mixture control and throttle control problems and has concluded that problems are continuing at the same rate as noted in the NTSB study. There were several injury-causing accidents related to failure of mixture control linkages.

The number of accidents in which a problem with the throttle linkage was listed as a causal factor was found to be more than double those that listed a problem with the mixture control as a causal factor. There were personal injuries and a fatal accident related to the throttle control failure.

The FAA found that 71 accidents were caused by mixture and throttle control failures. Those accidents resulted in 1 fatality, 10 serious injuries, and 31 minor injuries. As a result, this proposed rule addresses both mixture and throttle control failures.

Notice No. 86-2 addressed mixture control failures. The notice proposed that if the mixture control linkage becomes disconnected, the mixture lever must move automatically to the full-rich position as recommended by the NTSB.

Sixteen commenters responded to Notice 86-2. Eleven commenters were in favor of the proposal, 2 were opposed, and 3 were partially in favor.

One commenter, who was partially in favor, opposed making proposal requirements retroactive to older aircraft. Another commenter, while favoring the proposal, suggested that emphasis be placed on improving the methods used by aircraft manufacturers during engine installation.

Four of the 11 commenters who were in favor of the proposal recommended adding a similar proposal regarding the throttle linkage. The NTSB has, as a

result of several accidents, also recommended a similar requirement for the throttle linkage. The FAA concurs with this recommendation.

Several commenters who were in favor of the proposal were concerned that full-rich mixture may not always be the desired mixture position after a linkage disconnect. The FAA recognizes that designing for a position other than full-rich may be preferable. Therefore, the proposed regulation has been modified to remove the requirement that full-rich is the only acceptable position following loss of mixture control.

Some commenters felt that the problem is primarily one of improper maintenance. While the FAA agrees that more attention to maintenance would improve the situation, a requirement based solely on maintenance action would not result in a viable solution. A maintenance approach to the problem would require repeated or periodic monitoring to assure that necessary action was taking place. Additionally, transferring responsibility from what is fundamentally a design consideration to a maintenance action does not improve airworthiness.

Another commenter stated that the problem is related to installation problems caused by the airframe manufacturer. The subject of installation requirements as they pertain to this problem is currently under review by the Small Airplane Certification Directorate. NPRM (Docket No. 26344, Notice 90–23; 55 FR 40598, October 3, 1990) proposes to amend 14 CFR 23.1143 "Engine Controls" for single engine airplanes be capable of continued safe flight and landing in event power or thrust control separates from engine fuel metering device.

A few of the commenters opposed to Notice 86–2 were concerned about the expense of design changes and modification if the proposal were made retroactive to existing engines. There was no intent to make the proposed rule retroactive. The rule, if adopted, would be applicable to engines for which application for certification is made after the effective date of the rule.

In consideration of the comments to the notice and additional data reviewed, the FAA has revised the proposed rule as contained in this NPRM.

NTSB Recommendations

Recommendation A–82–130

Amend 14 CFR 23.1147 "Mixture Controls," to require a means of assuring that a carburetor mixture control lever will move automatically to the full-rich position in the event it becomes disconnected from the mixture control linkage.

Recommendation A–82–131

Encourage manufacturers of small, single engine airplanes to make available as service of accessory kits, carburetor mixture control level safety springs or their equivalent that will move the carburetor mixture control lever to the full-rich position in the event the lever becomes disconnected from the mixture control linkage.

Reference Material

Advance NPRM, Docket No. 24922; Notice No. 86–2, (51 FR 7224; February 28, 1986), Airworthiness Standards: Aircraft Engines Fuel and Induction System.

Current Requirements

There are currently no type certification requirements in FAR Part 33 similar to those proposed in this NPRM. The existing requirements of FAR part 23, § 23.1309(b), and comparable rules in FAR parts 27, and 29, require the aircraft design to prevent hazards to the aircraft in the event of a probable malfunction or failure. Also, FAR part 25, § 25.1309(b)(1) requires the design be such that the occurrence of any failure condition which would prevent the continued safe flight and landing of the airplane is extremely improbable. However, the FAA has determined that it is also appropriate to define and require the fail-safe provisions at the engine certification level. Therefore, the engine as certificated, should be designed and constructed to include a fail-safe condition when the control linkages disconnect at the engine-installation interface at the carburetor or fuel control.

General Discussion of the Proposals

Section 33.35(f)(1)

This proposed section would require that in the event of a mixture control linkage disconnect the mixture setting fail-safe position must provide "an acceptable operating mixture to allow continued safe flight." The FAA determined from analysis of service events and comments to the Notice 86–2 that a fail-safe position of full-rich may not always be the most desirable. Also, the proposal recognizes that with the mixture in the fail-safe position, it may still be possible to manipulate the throttle setting. The resultant mixture setting may not be optimum over the entire operational or environmental envelope for which the engine is certified. Therefore, the FAA proposes that the manufacturer identify the approved fail-safe mixture in the installation manual and any operational limitations in the operating manual as required in § 33.5.

Section 33.35(f)(2)

The FAA determined from review of additional service data and comments from the notice that throttle control linkage failures occur at twice the frequency of mixture control linkage failures. Also, a review of records of aircraft accidents caused by mixture and throttle control failures showed that the cause of the one fatal accident was related to a throttle control linkage failure. Therefore, this proposal would require a fail-safe throttle setting in the event of a control linkage failure. That setting, or settings, which could vary with installation, must provide for engine limit protection and permit continued safe flight. In considering the landing phase, the FAA determined that variability in installation, operation, and environmental effects may make it difficult to define a setting which provides power for both safe flight and landing. It is conceivable that once safe flight to the nearest airport can be made with the throttle in a fail-safe position, the engine may need to be shut down to accomplish the landing. While this will not always be the case, it was determined to be beyond the scope of this proposal to attempt to cover all possible combinations of aircraft performance factors affecting the installation of an engine with a fail-safe throttle design.

Section 33.35(g)

This proposed section requires the fail-safe settings of the mixture and throttle controls to be demonstrated in order to show that the design functions as intended and that the operational response of the engine is adequately identified. The demonstration must be done "in a manner acceptable to the Administrator." It is not possible at this time to more specifically define how the demonstration may be accomplished. The many factors which must be considered will require each application to be evaluated on its own merits. Some of the factors which may have a bearing on how the demonstration would be conducted include, but are not limited to:

(1) Installation type (fixed-pitch versus variable pitch propeller, helicopter, etc.).

(2) Carburetor versus fuel injection.

(3) Turbocharged/Supercharged.

(4) Rate and range of mixture or throttle setting change.

(5) Use of redundant linkage designs or backup systems.

The FAA, in conjunction with industry and any comments received in the docket will develop advisory material on how to evaluate the range of design and operational considerations and how to demonstrate those various designs.

Section 33.35(h)

The FAA recognizes that the resulting designs under the requirements of this proposal may vary substantially depending on the engine design and intended application. Therefore, this proposed paragraph requires that all data relevant to the installation and operation of engines designed to meet this section must be available to the installing aircraft manufacturer and the responsible FAA aircraft certification office. As mentioned previously, the aircraft installation requirements for fail-safe system design further complement the requirements of this proposed section. They would also require the necessary installation interface data to be provided as part of the section 33.5 instructions for installing and operating the engine.

Regulatory Evaluation Summary

Introduction

In addition to comments on the technical aspect of the proposed airworthiness standard, public comments concerning the economic impact, if any, of this proposal are specifically requested.

Notice 86–2 requested comments on the economic impact of the proposed requirement for the fuel mixture control lever. One commenter, representing a manufacturers' association, supplied input on anticipated cost. This commenter suggested that expense would be minimal for a new design but that retrofit or incorporation in current production could be more expensive. As mentioned under "History," the proposed regulations would not be applied retroactively.

This section summarizes a full regulatory evaluation of the proposed rule prepared by the FAA, which provides more detailed estimates of the economic consequences of this regulatory action. The full evaluation has been placed in the docket. It quantifies, to the extent practical, estimated costs of the proposed rule to the private sector, consumers, and Federal, state, and local governments, as well as its anticipated benefits and impacts.

Executive Order 12291 dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society for the regulatory change outweigh the potential costs. The order also requires the preparation of a regulatory impact analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this proposed rule is not "major" as defined in the executive order; therefore, a full regulatory analysis, which includes the identification and evaluation of cost reducing alternatives to the rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this proposal without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a trade impact assessment and an initial regulatory flexibility determination as required by the Regulatory Flexibility Act of 1980.

The "baseline risk" that the proposed rule is intended to alleviate was calculated for the six-year period 1982 through 1987. During this period there were 71 accidents caused by fuel-mixture control and throttle control lever disconnections, resulting in one fatality, 10 serious injuries, 31 minor injuries, 11 destroyed aircraft, 59 substantially damaged aircraft, and 1 slightly damaged aircraft. Applying statistically-expected estimates of accident losses and corresponding unit costs to this accident history results in an average annual baseline risk of approximately $11.0 million (1989 dollars).

Benefits

The benefits of the proposed rule were estimated by applying this annual baseline risk to the ten-year period 1993 through 2002. The forecast benefits are based on an estimate that 1,000 reciprocating engines would be affected by the proposed rule over the ten-year period. The reduction in baseline risk is estimated to be $287,840 (nondiscounted) over the ten-year period, or $125,529 when discounted to present value.

Costs

The costs of the proposed rule in terms of 1989 dollars is estimated to be $105,000, consisting of $100,000 in design costs and $5,000 in engine hardware costs, or $77,671 when discounted to present value. Therefore, the FAA finds the proposed rule to be cost-beneficial, based on a benefit-to-cost ratio of 1.62 to 1.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The proposed rule would affect only a subset of newly manufactured engines; no existing engines would be required to be retrofitted. The proposed rule would therefore affect manufacturers of reciprocating engines and their parts. The FAA defines small aircraft engine and engine parts manufacturers as those businesses that are independently owned and operated and have no more than 375 employees. A substantial number of small entities is defined by the RFA as being a number which is not less than eleven.

In the United States there are only two manufacturers of reciprocating engines for aircraft. These two companies share nearly equally the market for newly manufactured reciprocating engines in the United States. Both are large companies and subsidiaries of larger entities and thus do not meet the small business threshold criteria.

In addition to the two manufacturers of reciprocating engines, there is one manufacturer of reciprocating engine carburetors in the United States which might be affected by the proposed rule. The threshold level of 11 small entities is not met.

The FAA, in this initial regulatory flexibility determination, finds that the proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The proposed rule would have little or no impact on trade opportunities either for U.S. firms doing business overseas or for foreign firms doing business in the U.S. Reciprocating engines in the United States, whether manufactured in the United States or abroad, for which application for certification is made after the effective date of the rule, would need to have the mixture control and throttle fail-safe mechanisms. In foreign markets, United States reciprocating engine manufacturers would have to meet the standards in those countries, so the proposed rule would have no effect. Furthermore, the number of

engines affected and the cost of compliance over the ten year period is no nominal that no substantial impact on foreign trade would be expected.

Federalism Implications

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

Conclusion

For the reasons discussed above, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, and Aviation safety.

The Proposed Amendment

Accordingly, the FAA proposes to amend part 33 of the Federal Aviation Regulations (14 CFR part 33) as follows:

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

1. The authority citation for Part 33 is revised to read as follows:

Authority: 49 U.S.C. App. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425; 49 U.S.C. 106(g).

2. Section 33.35 is amended by adding new paragraphs (f), (g), and (h) to read as follows:

§ 33.35 Fuel and induction system.

* * * * *

(f) The fuel system of the engine must be designed and constructed such that—

(1) If the mixture control linkage becomes disconnected, the mixture setting must automatically move to a position which will provide an acceptable operating mixture to allow continued safe flight.

(2) If the throttle control linkage becomes disconnected, the throttle setting must automatically move to a position which will allow the engine to continue to operate within its approved limits and provide sufficient power to allow continued safe flight.

(g) Operation under the conditions specified in paragraphs (f)(1) and (f)(2) of this section must be demonstrated in a manner acceptable to the Administrator as a part of this testing conducted under § 33.51, Operation test.

(h) The following information shall be specified in the approved instructions for installing and operating the engine required under § 33.51 for each mixture and throttle settling approved under this section:

(1) Mixture setting and throttle setting when the respective control linkage becomes disconnected.

(2) Range of power available and any altitude or environmental limitations which restrict that range of power.

(3) Engine operating procedures.

Issued in Washington, DC, on October 8, 1992.

Thomas E. McSweeny,

Acting Director, Aircraft Certification Service.

[FR Doc. 92–25097 Filed 10–19–92; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

October 20, 1992
Tuesday

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

October 1, 1992.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of seven deferrals contained in the First Special Message for FY 1993, which was transmitted to Congress on October 1, 1992.

Rescissions

As of the date of this report, no rescission proposals are pending before the Congress.

Deferrals (Attachments A and B)

Attachment A provides the status of the $930.9 million in budget authority being deferred from obligation as of October 1, 1992. Attachment B provides the status of each deferral reported during FY 1993.

Attachments

Richard Darman,

Director.

BILLING CODE 3110–01–M

ATTACHMENT A

STATUS OF FY 1993 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	930.9
Routine Executive releases through October 1, 1992	---
Overturned by the Congress.....	---
Currently before the Congress.....	930.9

ATTACHMENT B
Status of FY 1993 Deferrals – As of October 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 10–1–92
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D93–1	492,736		10–1–92					492,736
Agency for International Development									
Demobilization and transition fund	D93–2	13,750		10–1–92					13,750
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D93–3	364,582		10–1–92					364,582
Expenses, brush disposal	D93–4	40,241		10–1–92					40,241
DEPARTMENT OF DEFENSE – CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D93–5	2,175		10–1–92					2,175
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D93–6	7,267		10–1–92					7,267
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D93–7	10,123		10–1–92					10,123
TOTAL, DEFERRALS		**930,875**	**0**		**0**	**0**		**0**	**930,875**

[FR Doc. 92–25340 Filed 10–19–92; 8:45 am]
BILLING CODE 3110–01–C

Federal Register

Tuesday
October 20, 1992

Part V

National Aeronautics and Space Administration

14 CFR Part 1260
Grant Regulations; Proposed Rule

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

RIN 2700–AB31

Grant Regulations

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed rulemaking.

SUMMARY: NASA proposes to revise its regulations for grants, including cooperative agreements, in order to streamline the requirements for their award and administration. The proposed revisions are intended to enable NASA grant officers to award grants within 30 days of receiving a request from the NASA technical office.

DATES: Comments must be received on or before December 4, 1992.

ADDRESSES: Submit comments to David Sudduth, Procurement Analyst, Procurement Policy Division, NASA Code HP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: David S. Sudduth, (202) 358–0485.

SUPPLEMENTARY INFORMATION:

Background

The latest revision to NASA's grant regulations was issued in October 1989. The changes in this proposed rulemaking are intended to enable NASA grant officers to award grants within 30 days of receiving a request from the NASA technical office. In addition, as part of the editorial changes, many sections have been consolidated to eliminate redundant material.

The major changes are summarized below.

1. Budget Format

The Appendix at the end of this notice contains the budget format to be used by grantees when submitting proposals in response to NASA Research Announcements and Announcements of Opportunity. The format is also suitable for use with unsolidated proposals. NASA officials may use Columns B and C to markup the budget instead of requesting a revised budget and delaying award of the grant (see § 1260.302(c)). Column C constitutes the budget on which the grant is based (approved budget). The Certification of Indirect Cost Rates, previously considered by NASA for part of this rulemaking, is not being proposed at this time.

2. Cost Sharing

Sections 1260.301(d)(1) and 1260.303(d) restate statutory requirements for cost sharing.

3. Multiple Year Grants

To encourage greater use of multiple year grants, § 1260.303(b)(3) and (4) provide that funding decisions for the unfunded years of a multiple year grant will be based on monitoring of the project and its reports. Renewal proposals or other requests for continued support will not ordinarily be required.

4. Grant Format

Section 1260.304(b) revises the format for grants. Most grant provisions would be incorporated by reference to these regulations rather than attached to the grant.

5. Unilateral Award

Section 1260.303(h) authorizes grant officers to award grants unilaterally. Award can be made in this manner instead of requiring a grantee official to indicate acceptance of the grant by signing the document.

6. Performance Reports, Summary of Research, and Withholding Payment

Section 1260.402(d) requires the grantee to submit a performance report in the 10th month after the anniversary date of the grant. Reports ordinarily should not exceed 3 pages, not counting bibliographies, abstracts, and lists of other media in which the research was discussed. Section 1260.605(d) specifies a percentage of the grant amount that the grant officer may withhold from payment to ensure the receipt of reports and the summary of research.

7. Prior Approval for Non-Technical Property and Threshold for Technical Property

Section 1260.408(b) is revised to require prior approval of the administrative grant officer for all property items of a non-technical nature that will be directly charged to the grant. Currently, a non-technical item is treated as technical property if it is primarily used in and is essential to the actual conduct of the research. Section 1260.408(a) raises the threshold for prior approval of technical property from $5,000 to $25,000. Definitions of technical property and non-technical property are added to the property definitions in 1260.201. Section 1260.408(h) establishes the submission date for the final inventory report of Government furnished equipment and grantee acquired equipment.

8. Subcontracts

Section 1260.413 revises the provision on subcontracts and specifies the information to be provided via the administrative grant officer for NASA's consent to subcontract.

9. Federal Contribution

The provision requiring grantees to publicize the percentage of Federal funding in press releases and other announcements has been eliminated. It covered a requirement that is no longer being added to appropriation acts.

10. Foreign National Employee Investigative Requirements

Section 1260.418 establishes the method by which grantees may request access to NASA installations for foreign nationals working under grants.

11. Prior Approval for Travel Exceeding 125% of Budgeted Travel

Under § 1260.420, total expenditures for travel are limited to 125 percent (or an increase of $1,000, whichever is greater) of the amount allotted for travel in the approved budget. Travel which will cause this limit to be exceeded requires the prior approval of the administrative grant officer. In addition, this provision and § 1260.406(d) advise the grantee about statutory requirements for international air transportation. The provision also refers grantees to Department of Transportation regulations on hazardous materials. Flowdown of the statutory and regulatory transportation requirements to subcontractors is required by § 1260.510(e).

12. Delegation of Administration to the Office of Naval Research (ONR)

Section 1260.501 provides for delegation of full administration of grants to ONR, including property administration, prior approvals, and closeout. It is anticipated that all new grants awarded after the effective date of the final rule resulting from this proposed rulemaking will be delegated. Existing grants may be considered for delegation on a case-by-case basis after discussion between the NASA grant officer and ONR.

13. Threshold Changes

The dollar thresholds of $1,000, in §§ 1260.408 (d) and (f) and 1260.506(a)(4), (5), (8), and (9), and $10,000, in § 1260.510(c)(7), are based on OMB Circular No. A–110 published in 1976. NASA will consider increasing the thresholds when A–110 is revised.

Impact

This rule has been reviewed by the Office of Management and Budget (OMB) under the provisions of Executive Order 12291. NASA certifies that these changes will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

An OMB clearance is being requested separately under the Paperwork Reduction Act.

List of Subjects in 14 CFR Part 1260

Grants.

Don G. Bush,

Assistant Administrator for Procurement.

1. The authority citation for 14 CFR part 1260 continues to read as follows:

Authority: Public Law 97–258, 31 U.S.C. 6301 et seq.

2. Part 1260 is revised in its entirety as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

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Exhibit A—Delegation of Administration Figure 1—General
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Exhibit B—Formats Figure 2—Cooperative Agreement
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Subpart 1—General

§ 1260.101 Authority.

NASA awards grants and cooperative agreements under the authority of 31 USC 6301 to 6308. This part 1260 is issued by the Assistant Administrator for Procurement under authority delegated by the Administrator in NASA Management Instruction (NMI) 5101.8, entitled "Delegation of Authority to Take Certain Actions in Procurement and Related Matters (Assistant Administrator for Procurement)".

§ 1260.102 Applicability.

This part 1260 establishes policies and procedures for all research grants and cooperative agreements awarded by the National Aeronautics and Space Administration (NASA) to educational institutions and other nonprofit organizations. It does not cover training grants, facilities grants, grants for the Centers for the Commercial Development of Space, or contracts.

§ 1260.103 Amendment.

(a) *NASA Research Grant Handbook Directive (GHD).* This part 1260 will be amended by publication of changes in the **Federal Register** and by issuance of printed loose-leaf directives containing revised or additional pages for the handbook version of this part 1260. Each revised or new page will contain the date, the GHD number, and an indication of changes made. GHD's will be numbered consecutively for each edition of the handbook.

(b) *Grant Notice (GN).* Changes to the handbook which require immediate dissemination may be issued as Grant Notices by the Assistant Administrator for Procurement. The mailing list for Grant Notices is maintained by the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP), Washington, DC 20546.

(c) *Effective date.* An amendment to the NASA Research Grant Handbook may be implemented as soon as practicable following the date of issuance, but no later than 60 days thereafter, except as otherwise prescribed by the GHD or GN.

§ 1260.104 Publication and points of contact.

(a) The NASA Research Grant Handbook is published as part 1260 of title 14 of the Code of Federal Regulations (CFR).

(b) The handbook is also available in loose-leaf form. Subscriptions to the NASA Research Grant Handbook may be purchased by other Government agencies, private concerns, universities, and individuals from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402, telephone number (202) 783–3238. Requests should cite GPO Subscription Stock No. 933–001–00000–8. A subscription consists of the basic edition, plus all changes issued for an indefinite period.

(c) The NASA Research Grant Handbook, GHD's, and GN's will be distributed by Code HP directly to installation distribution points. These NASA elements must inform the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP) of the numbers of copies required. Requests for additional copies should be sent directly to Code HP by Installation distribution points.

(d) Installation directives, handbooks or similar guidance documents shall not

repeat, paraphrase, extract, condense, be inconsistent with or otherwise restate the material contained in this handbook. Upon issuance of any directive, handbook, or similar guidance document affecting grants, Installations shall provide one copy to the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP).

(e) NASA grant officers, addresses, and telephone numbers are as follows:

(1) John Werner, NASA Headquarters, Code HWG, Washington, DC 20546, (202) 358–0504.

(2) Anila Strahan, NASA Headquarters, Code HR, Space Station Freedom Procurement Office, Reston, VA 22091, (703) 487–7345.

(3) Barbara Hastings, NASA Ames Research Center, M/S 241–1, Moffett Field, CA 94035, (415) 604–5802.

(4) Gloria Blanchard, NASA Goddard Space Flight Center, Code 286, Greenbelt, MD 20771, (301) 286–3318.

(5) Daryl W. Chilcutt, NASA Johnson Space Center, M/S BE311, Houston, TX 77058, (713) 483–5441.

(6) Earl Gilbert, NASA Kennedy Space Center, OP–SCO, Kennedy Space Center, FL 32899, (407) 867–7346.

(7) Richard Siebels, NASA Langley Research Center, M/S 126, Hampton, VA 23665, (804) 864–2418.

(8) Lorene Albergottie, NASA Lewis Research Center, M/S 500/315, Code 1520, Cleveland, OH 44135, (216) 433–2781.

(9) Elaine Hamner, NASA Marshall Space Flight Center, Code AP29, Huntsville, AL 35812, (205) 544–0308.

(10) Frank Oerting, NASA Stennis Space Center, Code DA–10, Stennis Space Center, MS 39529, (601) 688–1638.

§ 1260.105 Deviations.

(a) *Applicability.* A deviation is required for any of the following:

(1) When a prescribed grant provision is set forth verbatim in this handbook, and the Installation uses a provision covering the same subject matter, or omits such provision.

(2) When a grant provision is set forth in this handbook, but not for use verbatim, and the Installation uses a provision covering the same subject matter which is inconsistent with the intent, principle, and substance of the handbook provision.

(3) When a NASA form or other form is prescribed by this handbook, alteration of such form, or use of any other form for the same purpose.

(4) When limitations, imposed by this handbook upon the use of a grant provision, form, procedure, or any other grant action, are changed.

(5) Creation of a form for grantee use which constitutes a "Collection of Information" within the meaning of the Paperwork Reduction Act of 1980 (44 U.S.C. 35) and its implementation in 5 CFR part 1320.

(b) *Request for deviations.* Requests for authority to deviate from this handbook shall be submitted to the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP). Such requests, signed by the Procurement Officer, will be submitted as far in advance as the situation will permit. Each request for a deviation shall contain as a minimum:

(1) A full description of the deviation and the circumstances in which it will be used.

(2) Detailed rationale for the request, including any pertinent background information.

(3) The name of the grantee or party to a cooperative agreement and identification of the grant or cooperative agreement affected, including the dollar value.

(4) A statement as to whether the deviation has been requested previously, and, if so, circumstances of the previous request.

(5) Identification of the handbook requirement from which a deviation is sought.

(6) A description of the intended effect of the deviation.

§ 1260.106 Foreign grants.

Installations requiring grants with institutions located outside the United States, its possessions and its territories, shall forward the procurement package to the Office of Procurement, Headquarters Acquisition Division, Headquarters Grants and Closeout Branch (Code HWG) for negotiation, award, and administration. Code HWG will distribute copies of the grant to the Installation payment office, technical office, and grants office. See § 1260.422(f) for a special condition on inventions for use with foreign grants.

Subpart 2—Definitions

§ 1260.201 Definitions.

Throughout this part 1260 the term "grant" includes "cooperative agreement" unless otherwise indicated.

(a) *Administrative grant officer.* A grant officer assigned responsibility for grant administration, such as under a delegation from a NASA grant officer.

(b) *Administrator.* The Administrator or Deputy Administrator of NASA.

(c) *Assistant Administrator for Procurement.* The head of the Office of Procurement, NASA Headquarters (Code H).

(d) *Cooperative agreement.* An agreement that provides funds to an educational institution or other nonprofit organization to accomplish a public purpose of support or stimulation authorized by Federal statute. Substantial technical involvement between NASA and the recipient is expected and will be identified in the agreement.

(e) *Days.* Calendar days, unless otherwise indicated.

(f) *Educational institution.* Any institution which (1) has a faculty, (2) offers courses of instruction, and (3) is authorized to award a degree upon completion of a specific course of study.

(g) *Equipment.* As used in this handbook, "equipment" is another term for nonexpendable personal property.

(1) *Government furnished equipment.* Equipment in the possession of, or acquired directly by, the Government and subsequently delivered, or otherwise made available, to a grantee.

(2) *Grantee acquired equipment.* Equipment purchased or fabricated with grant funds by a grantee, for the performance of research under its grant.

(h) *Grant.* An agreement that provides funds to an educational institution or other nonprofit organization to accomplish a public purpose of support or stimulation authorized by Federal statute. No substantial technical involvement is expected between NASA and the grantee.

(i) *Grant officer.* A Government employee who has been delegated the authority to negotiate, award, or administer grants.

(j) *Grant provision.* A term or condition applicable to all grants awarded under this part 1260.

(k) *Grant specialist.* A Government employee who is assigned the responsibility of negotiating or administering grants.

(l) *Historically Black Colleges and Universities.* Institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2 and listed therein.

(m) *Incremental funding.* A method of funding a grant where the funds initially allotted to the grant are less than the award amount. Additional funding is added as described in § 1260.302(d).

(n) *Minority education institution.* An institution meeting the criteria established in 34 CFR 607.2.

(o) *Multiple year grant.* A grant for which NASA obligates funds for an initial period and states an intention to obligate funds for one or more additional periods. The initial period together with the unfunded periods exceeds one year. Continuation of the grant is a unilateral decision by the Government based on availability of

funds, continued relevance, and scientific progress.

(p) *Nonprofit organization.* An organization that qualifies for the exemption from taxation under § 501 of the Internal Revenue Code of 1954, as amended, 26 U.S.C. 501.

(q) *Performance report.* A concise statement of the research accomplished during the report period. This report will normally be limited to a maximum of three pages.

(r) *Property.*

(1) *Acquisition cost.* Acquisition cost of an item of nonexpendable personal property means the net invoice unit price of the property, including the cost of modifications, attachments, accessories, or auxiliary apparatus, necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

(2) *Nonexpendable personal property.* Nonexpendable personal property means tangible personal property having a useful life of more than 2 years, and an acquisition cost of $500 or more per unit. A grantee may use its own definition of nonexpendable personal property, provided the definition would at least include all tangible personal property included in this definition.

(3) *Excess personal property.* Excess personal property means any personal property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by each agency's procedures.

(4) *Exempt property.* Exempt property means tangible personal property acquired in whole or in part with Federal funds, title to which is vested in the grantee without further obligation, except as provided in § 1260.506(a)(4), to the Federal Government.

(5) *Expendable personal property.* Expendable personal property refers to all tangible personal property not included in the definition of nonexpendable personal property.

(6) *Non-technical property.* Property which is usable for other than research, medical, scientific, or technical activities, whether or not special modifications are needed to make it suitable for a particular purpose. Examples include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

(7) *Personal property.* Personal property means property of any kind except real property. It may be tangible or intangible (such as patents, inventions, and copyrights).

(8) *Real property.* Real property means land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

(9) *Technical property.* Equipment which is usable only for research, medical, scientific, or technical activities.

(s) *Research.* Systematic, intensive study directed toward greater knowledge or understanding of the subject studied. The term includes conferences held for the purpose of communicating research results.

(t) *Small business concern.* A concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualifies as a small business under the criteria and size standards in 13 CFR part 121.

(u) *Small disadvantaged business concern.* A small business concern owned or controlled by individuals who are both socially and economically disadvantaged (within the meaning of § 8(a)(5) and (6) of the Small Business Act, as amended, 15 U.S.C. 637(a)(5) and (6).

(v) *Special condition.* A term or condition appended to a grant if applicable.

(w) *Subcontract.* A written agreement between a grantee and a third party for the furnishing of services or supplies.

(x) *Summary of research.* Summary of results of the entire project. This summary will normally be limited to a maximum of 3 pages, not counting bibliographies, abstracts, and lists of other media in which the research was discussed.

(y) *Support.* Funding of a NASA research project.

(z) *Technical officer.* The official of the cognizant NASA office who is responsible for monitoring the technical aspects of the work under a grant.

(aa) *Women-owned small business concern.* A small business concern that is at least 51 percent owned by women who are United States citizens and who also control and operate the business.

Subpart 3—The Process

§ 1260.301 Proposals.

(a) *General.* A grant can result from: (1) A proposal submitted in response to a NASA Research Announcement (NRA), an Announcement of Opportunity (AO), or after approval by the Assistant Administrator for Procurement, another type of broad agency announcement (BAA) or (2) an unsolicited proposal.

(b) *Proposals under NRA's and AO's.* The NASA Research Announcement and NASA Announcement of Opportunity (broad agency announcements) are described in NASA Handbook 8030.6.

(c) *Unsolicited proposals.* Guideance on unsolicited proposals is contained in FAR 48 CFR subpart 15.5 and NASA FAR Supplement (NFS) 48 CFR Subpart 1815.5. The synopsis requirement in NFS 48 CFR 1815.507(b)(4), however, does not apply to the grant process. Contact with agency technical personnel prior to proposal submission is encouraged to determine if preparation of a proposal is warranted. These discussions should be limited to understanding NASA research needs and do not jeopardize the unsolicited status of any subsequently submitted proposal. The grant officer or university affairs officer may refer prospective grantees to technical personnel working in their area of research.

(d) *Cost and budget issues.* The allowability of costs chargeable to NASA research grants is governed by OMB Circulars No. A–21, No. A–88, No. A–110, No. A–122, No. A–128, and No. A–133.

(1) *Cost sharing.* A grant resulting from an unsolicited proposal will include cost sharing if the grantee will benefit from the research results through sales to non-Federal entities. In addition, NASA may accept cost sharing when voluntarily offered as part of any proposal. The amount of cost sharing is not a factor in determining whether to select a proposal for award.

(2) *Recovery of indirect costs.* Subject to applicable cost principles, NASA normally allows full recovery of indirect expenses, but in no case shall an overhead rate used for determining amounts chargeable to a grant exceed, in equivalence, the most recent overhead rate at the recipient institution for comparable research contracts of the Government. The indirect cost rates are negotiated between grantees and the cognizant agencies assigned under OMB Circular No. A–88. NASA is required to apply the negotiated rate for all grants awarded to a grantee. Added or lowered amounts of indirect cost must be determined by the cognizant agency.

(3) *Multiple year grants.* In accordance with NASA policy to foster continuity of research, multiple year grant proposals are encouraged where appropriate, for a period generally up to 3 years. For multiple year grants that exceed 3 years, the technical officer

shall ensure compliance with paragraph 4.h. of NMI 8320.1D. Proposals for multiple year grants shall include a separate budget exhibit for each year of research.

(4) *Budget content.* Proposals shall include budgets as prescribed in this handbook (Exhibit B, Enclosure (2), Budget Summary, of the appendix to this part 1260) and in NRA's and AO's. Narrative detail must support the budgets.

(5) *Incremental funding.* NASA reserves the right to either fully fund or incrementally fund research grants.

(e) *Certifications and assurances.* The following certifications or assurances are required:

(1) *Civil rights requirements—nondiscrimination in certain Federally-funded programs.* Grantees must furnish assurances of compliance with civil rights statutes specified in 14 CFR parts 1250 through 1252. Such assurances are not required for each grant, if they have previously been furnished and remain current and accurate. Certifications to NASA are normally made on NASA Form 1206, which may be obtained, if required, from the grant officer. If acceptable, the grant officer will forward this assurance to the NASA Office of Equal Opportunity Programs for recording and retention purposes.

(2) *Debarment and suspension, drug-free workplace, and lobbying.* Each proposal shall contain certifications concerning debarment and suspension, drug-free workplace, and lobbying. These certifications and other requirements are contained in 14 CFR parts 1265 and 1271. NASA does not require any particular form or format for the certifications under 14 CFR part 1265.

§ 1260.302 Evaluation and selection.

(a) *Technical evaluation.* Technical evaluation of proposals will be conducted by the cognizant NASA technical office and may be based on peer reviews.

(1) *Proposals under NRA's, AO's, and other BAA's (see § 1260.301(a)).* The technical officer will evaluate proposals in accordance with the criteria in the NRA, AO, or other BAA. Proposals selected for award will be supported by documentation as described in paragraph (b)(1) of this section. When evaluation results in a proposal not being selected, the proposer will be notified in accordance with the NRA, AO, or other BAA.

(2) *Unsolicited proposals.* Evaluation of unsolicited proposals must consider whether: the subject of the proposal is available to NASA from another source without restriction; the proposal closely resembles a pending competitive acquisition; and the research proposed demonstrates an innovative and unique method, approach, or concept. Recommendations to fund unsolicited proposals will be supported by documentation as described in paragraph (b)(2) of this section. Institutions submitting unaccepted proposals will be notified in writing.

(b) *Documentation requirements.* For proposals selected for award, the technical officer will prepare and furnish to the grant officer the following documentation:

(1) A proposal selected under an NRA, AO, or other BAA (see § 1260.301(a)) shall be supported by a signed selection statement and technical evaluation based on the evaluation criteria stated in the NRA, AO, or other BAA.

(2) An unsolicited proposal recommended for acceptance shall be supported by a justification for acceptance of an unsolicited proposal (JAUP) prepared by the cognizant technical office. The JAUP shall be submitted for the approval of the grant officer after review and concurrence at a level above the technical officer. The evaluator shall consider the following factors, in addition to any others appropriate for the particular proposal:

(i) Unique and innovative methods, approaches or concepts demonstrated by the proposal.

(ii) Overall scientific or technical merits of the proposal.

(iii) Potential contribution of the effort to the agency's specific mission.

(iv) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(v) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(vi) Current, open NRA's under which the unsolicited proposal could be evaluated.

(3) When most of the proposed budget is for equipment or travel and associated indirect cost, the technical officer shall sign, and submit for grant officer approval, an Equipment Justification or Travel Justification. The justification shall describe the extent to which the equipment or travel is necessary to support NASA-sponsored research.

(c) *Proposal budget evaluation.* (1) The technical officer will review the budget for conformance to program requirements and fund availability, indicating the results of this review in Column B of the proposed budget.

(2) The grant officer will review the budget and the changes made by the technical officer, if any, to identify any budget item which may be unallowable under the cost principles, or which appears unreasonable or unnecessary after considering any budget explanations. The grant officer will complete Column C of the proposed budget after discussing significant changes with the grantee. The grant officer should only request the additional budget detail which is necessary to comply with the instructions in Exhibit B, Enclosure (2), Budget Summary, of the appendix to this part 1260.

(d) *Incremental funding.* Grants with anticipated annual funding exceeding $1 million may be funded for less than the amount and period of performance stated in the proposal provided:

(1) Two increments per grant year are authorized. The second increment will be the balance of funding for the year.

(2) Procedures are established for adding all remaining funds to the grant without any action required of the grantee. The grant officer shall notify the grantee in writing when the remaining funds have been obligated on the grant.

(3) The incremental funding special condition contained in § 1260.422(d) is included in the grant.

(e) *Printing, binding, and duplicating.* Proposals which involve printing, binding, and duplicating in excess of 25,000 pages are subject to the regulations of the Congressional Joint Committee on Printing. The technical office will refer such proposals to the Installation Central Printing Management Officer (ICPMO) to ensure compliance with NMI 1490.1. The grant officer will be advised in writing of the results of the ICPMO review.

(f) *Rights in data.* Section 1260.410 is adequate only for grants for basic or applied research, where the principal purpose (or only expected NASA involvement) is the publication or dissemination of the results, such as in journals or NASA publications (see § 1260.4020. Other expected purposes, especially where there may be substantial NASA involvement under a cooperative agreement or grantee development of software programs, may require a special condition providing customized or expanded data rights. The special condition shall be developed by, or consultation with, intellectual property or patent counsel and may be used in the grant.

(g) *Clean Air and Federal Water Pollution Control Acts.*

(1) By accepting a grant containing § 1260.414, the grantee agrees (for grants exceeding $100,000) that the expenditure of grant funds is in compliance with the Clean Air Act and the Federal Water Pollution Control Act.

(2) The Administrator may exempt for a period not to exceed 1 year any individual or class of grant or any subtract thereunder from the requirements of the Clean Air and Federal Water Pollution Control Acts. Requests for exemptions or renewals thereof shall be made to the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP), Washington, DC 20546.

§ 1260.303 Award procedures.

(a) *General.* NASA policy is to use multiple year grants to support research. However, grants for lesser periods may be awarded.

(b) *Multiple year grant.* (1) NASA fosters continuation of research and recognizes that research projects may span several years. Proposers are encouraged to submit research proposals that describe the entire research project, supported by annual work and budget plans.

(2) The entire research proposal will be evaluated by the cognizant technical office with the recommendation for award identifying the proposal as a multiple year grant. By use of the Multiple Year Grant special condition, the grant clearly indicates at time of award, the initial grant period and funded value as well as the planned values of the subsequent years of the multiple year grant.

(3) Thus, neither a new proposal nor an additional technical evaluation are required for subsequent funding in the approved period unless a special need for new reviews is indicated by monitoring of the project and of its reports, by the introduction of work outside the scope of the approved proposal, or by the need for substantial unanticipated funding. The technical office will notify the grantee if the grant is to be funded; if additional information is required, or if the Government has determined that additional funding will not be provided.

(4) Based upon availability of funds, continued research relevance and scientific progress made by the grantee (as determined by the technical office by monitoring of the grant, including timely submission of performance reports) the Government may elect to fund the subsequent grant periods as identified in the multiple year grant. To insure continuation a multiple year grant, the technical office must forward to the grant office a funded PR in the amount that the technical officer recommends for continuation. This continued funding for the grant should be processed 45 days before the expiration of the funded period.

(5) Section 1260.422(c) is the special condition for multiple year grants.

(6) Normally, each year of a multiple year grant will be funded at the approximate level indicated in the original award instrument, subject to satisfactory scientific progress, availability of funds and continued relevance to NASA programs. However, NASA program constraints and developments within the project may dictate adjustment in the originally anticipated level. When the actual funding differs from the planned funding, the technical officer shall mark up Column B of the budget summary and provide it to the grant officer with an explanation of any increases. The grantee may rebudget under the grant provisions to keep the project within the funding actually provided.

(7) A funded extension beyond the period listed in the multiple year grant special condition may be proposed, however, it will require the submission of a new proposal, subject to full review as discussed in § 1260.303(c).

(c) *Annual grant.* Grants may be awarded for a short term (e.g., on an annual basis), and may be extended if appropriate. The extension should be executed prior to the grant expiration date. Such extensions (other than no-cost extensions) must be supported by a new proposal from the grantee. A complete technical evaluation and support documentation are required and should be forwarded to the grant office at least 6 weeks prior to the expiration of the original grant term. If otherwise acceptable, NASA may fund the proposal extensions through a multiple year grant or by an extension of the existing grant.

(d) *Cost sharing.* NASA grantees usually gain no measurable benefit ("mutuality of interest") from grants, other than conducting the research. The statutory requirement for cost sharing based on mutuality of interest applies to NASA grants resulting from unsolicited proposals only in exceptional cases where the grant officer has reason to believe that the grantee will benefit from the research results through sales to non-Federal entities. When cost sharing is required by statute or when the grant officer accepts voluntarily-offered cost sharing, the grant officer shall use a special condition substantially as shown in § 1260.422(e).

(c) *Partial support.* NASA may provide partial support for a research project or conference where additional Federal funding is being provided by other agencies. If the grant also involves cost sharing by the grantee, the grant officer will ensure that the cost sharing special condition applies only to the non-Federal funding.

(f) *Grant renewals.* If grants are to be renewed, this should be done prior to the grant expiration date. Although the grant officer has little control over the timely receipt of purchase requests, he/she is responsible for informing the technical officer of current lead-time requirements and for timely processing continuation agreements. Alternatively, if a grant is not to be renewed, the grantee should be given a minimum of 4 months advance notice of pending close-out (see § 1260.511(a)).

(g) *Instrument usage.* To eliminate the paperwork burdens associated with the closeout of a grant and negotiation of a new grant for continuing the same effort, ongoing efforts at the same institution will be continued by amending or supplementing the current instrument unless there is a significant change in the nature of the work. If a new grant must be issued, the period of performance should be continuous with the previous award.

(b) *Unilateral award.* Grants may be awarded, amended, or extended unilaterally at the discretion of the grant officer.

§ 1260.304 Format and numbering.

(a) *General.* The grant shall be brief in format, containing only those provisions and special conditions necessary to protect the interests of the Government.

(b) *Formats.* Grant officers are authorized to use the formats in Exhibit B of the appendix of this part 1260 for the award of all research grants and cooperative agreements. Computer-generated versions and omission of inapplicable items are allowed. Special conditions, if required, shall be placed on a separate page. In all instances, the heading, "SPECIAL CONDITION(S), GRANT (COOPERATIVE AGREEMENT) N_____", shall be used, followed by the applicable special condition(s). Use of preprinted checklists containing all special conditions or a separate page for each special condition is not authorized. An acceptance block may be added when the grant officer considers it necessary to require bilateral execution of the grant. When enclosing detailed budgets with the grant, the grant officer will strike out any information that would reveal salaries paid by the grantee.

(c) *Grant numbering.* The identification numbering system for all research grants shall conform to NFS 48

CFR 1804.7102–3, except that a NAG prefix will be used in lieu of the NAS prefix. The prefix designation, will include the Center Identification Number; e.g., NAGW would be the Headquarters prefix designation, and NAG5 would be the Goddard prefix designation. Grants will be sequentially numbered beginning with "1."

(d) *Cooperative agreement numbering.* The numbering system for cooperative agreements will be the same as for grants, except that NCC (for Centers) and NCCW (for Headquarters) prefixes shall be used in lieu of the NAG and NAGW prefixes.

§ 1260.305 Distribution of grants.

Copies of grants and grant supplements will be provided to: payment office, technical officer, administrative grant officer when delegation has been made, NASA Center for Aerospace Information (CASI), P.O. Box 8757, BWI Airport, Maryland 21240, Attn: Acquisitions, and any other appropriate recipient. Copies of the statement of work, contained in the grantee's proposal and accepted by NASA, will be provided to the administrative grant officer and CASI. The grant file will contain a record of the addresses for distributing grants and grant supplements.

Subpart 4—Provisions and Special Conditions

§ 1260.401 General.

The provisions set forth in this subpart 1260.4 shall be incorporated in and made a part of all NASA research grants (§§ 1260.402 through 1260.421) and cooperative agreements (§§ 1260.402 through 1260.421 and 1260.422(b)) subject to this part 1260. Whenever the words "grant" or "grantee" appear in these provisions and special conditions, they shall be deemed to include, as appropriate, the words "cooperative agreement" and "recipient of cooperative agreement," respectively. The provisions for use on grants will be incorporated by reference (Exhibit B, Enclosure (1), of the appendix to this part 1260). Special conditions (§ 1260.422 (b) through (h)) will be incorporated in full text. For inclusion of provisions in subcontracts, see § 1260.510(d) and (e).

§ 1260.402 Publications and reports.

Publications and Reports (Aug. 1992)

(a) NASA encourages the widest practicable dissemination of research results at any time during the course of the investigation.

(b) All information dissemination as a result of the grant, shall contain a statement which acknowledges NASA's support and identifies the grant by number.

(c) Prior approval by the NASA grant officer is required only where the grantee requests that the results of the research be published in a NASA scientific or technical publication. Two copies of each draft publication shall accompany the approval request.

(d) Reports shall be informal in nature and contain full bibliographic references, abstracts of publications and lists of all other media in which the research was discussed. Reports ordinarily should not exceed 3 pages, not counting bibliographies, abstracts, and lists of other media. The grantee shall submit the following technical reports:

(1) A performance report for every year of the grant (except the final year). Each report is due 60 days before the anniversary date of the grant and shall describe research accomplished during the report period.

(2) A summary of research, which is due on the expiration date of the grant, regardless of whether or not support is continued under another grant. This report is intended to summarize the entire research accomplished during the duration of the grant.

(e) Performance reports and summaries of research shall display the following on the first page:

(1) Title of the grant.

(2) Type of report.

(3) Name of the principal investigator.

(4) Period covered by the report.

(5) Name and address of the grantee's institution.

(6) Grant number.

(f) An original and two copies, one of which shall be of suitable quality to permit micro-reproduction, shall be sent as follows:

(1) Original—administrative grant officer.

(2) Copy—technical officer.

(3) Micro-reproducible copy—NASA Center for Aerospace Information (CASI), P.O. Box 8757, BWI Airport, MD 21240.

§ 1260.403 Extensions.

Extensions (Jun. 1992)

(a) It is NASA policy to provide maximum possible continuity in funding grant-supported research, and grants may be extended for additional periods of time. Any extension requiring additional funding should be supported by a proposal submitted at least 3 months in advance of the expiration date of the grant.

(b) Grantees may extend the expiration date of a grant or a supplement thereto if additional time beyond the established expiration date is required to assure adequate completion of the original scope of work within the funds already made available. For this purpose, the grantee may make a single no-cost extension not exceeding 12 months. The grantee must make the extension prior to the expiration date and must notify the administrative grant officer in writing within 10 days of making the extension. Requests for all other extensions (in excess of 30 days) must be submitted, in writing, to the administrative grant officer for prior approval.

§ 1260.404 Suspension or revocation.

Suspension or Revocation (June 1992)

(a) It is a condition of each grant that it may be suspended or revoked in whole or in part by NASA after consultation with the grantee. Suspension or revocation of the grant prior to the planned expiration date will be reserved for exceptional situations which cannot be handled any other way.

(b) Suspension of the grant may occur when the grantee has failed to comply with the terms of the grant. Upon reasonable notice to the grantee, NASA may temporarily suspend the grant, withhold further payments, and prohibit the grantee from incurring additional costs, pending corrective action by the grantee or a decision by NASA to revoke the grant. NASA will allow all necessary and proper costs which the grantee could not reasonably avoid during the period of suspension.

(c) In the event of revocation, the grantee shall refund to NASA any unexpected funds that it has received under the grant, except such portion thereof as may be required by the grantee to meet commitments which had in the judgment of NASA become firm prior to the effective date of revocation and are otherwise appropriate. Significantly reduced availability of the services of the principal investigator(s) named in the grant instrument may be grounds for revocation, unless alternative arrangements are made and approved in writing by the administrative grant officer.

§ 1260.405 Change in principal investigator or scope.

Change in Principal Investigator or Scope (Feb. 1992)

The grantee shall obtain the approval of the NASA grant officer to change the principal investigator or to continue the research work during a continuous period in excess of 3 months without the participation of an approved principal investigator. Change in objective or scope, likewise, requires prior approval.

§ 1260.406 Allowable costs.

Allowable Costs (Jun. 1992)

(a) OMB Circular No. A–21, "Cost Principles for Educational Institutions," OMB Circular No. A–122, "Cost Principles for Nonprofit Organizations," and OMB Circular No. A–110, "Grants and Agreements with Institutions of Higher Education, Hospital and other Nonprofit Organizations," as applicable, govern the allowability of costs chargeable to research sponsored by NASA under grants, except that cost-related and administrative "prior approvals" required by A–21 and A–110 are waived unless specifically required elsewhere in the grant provisions or special conditions.

(b) Payments to individuals for consultant services under a NASA grant shall not exceed the daily equivalent of the maximum rate paid to a GS–18 Federal employee. The limit applies to personal compensation exclusive of expenses and indirect cost.

(c) Grantees may approve preaward costs of up to 90 days prior to the effective date of

a new award, provided the costs are necessary for the effective and economical conduct of the project and they are otherwise allowable under the terms of the grant. Any preaward expenditures are made at the grantee's risk. Approval by the grantee does not impose any obligations on NASA in the absence of appropriations, if an award is not subsequently made, or if an award is made for a lesser amount than the grantee anticipated.

(d) In addition, Comptroller General decisions govern allowability of costs for international air transportation (see § 1260.420(b)).

1260.407 Financial management.

Financial Management (Jun. 1992)

(a) *Payment.* Advance payments by electronic funds transfer will be made by the Financial Management Office of the NASA Installation which issued the grant. The grantee shall submit Federal Cash Transaction Reports (SF 272) to the aforementioned office and, if NASA has delegated administration, to the administrative grant officer, within 15 working days following the end of each Federal fiscal quarter, containing current estimates of the cash requirements for each of the 4 months following the quarter being reported. The final SF 272 is due within 90 days after the expiration date of the grant.

(b) *Management and audit.* The grantee's financial management system shall meet the standards set forth in § 1260.509. The provisions of OMB Circular No. A–133, "Audit of Institutions of Higher Education and Other Nonprofit Organizations," or OMB Circular No. A–128, "Audits of State and Local Governments," as applicable, apply to this award. NASA Federal domestic assistance numbers do not apply to NASA grants.

(c) *Records.* Financial records, supporting documents, statistical records, and all other records (or microfilm copies) pertinent to this grant shall be retained for a period of 3 years, except that (1) if any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved, and (2) records for nonexpendable property acquired with grant funds shall be retained for 3 years after its final disposition. The retention period starts from the date of the submission of the final Federal Cash Transactions Report (SF 272). The Administrator of NASA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the grantee and of subcontractors to make audits, examinations, excerpts, and transcripts. All provisions of this paragraph (c) shall apply to any subcontractor performing substantive work under this grant.

(d) *Unexpended balances.* Any unexpended balance of funds which remains at the end of any funding period, except the final funding period of the grant, shall be carried over to the next funding period, and may be used to defray costs of any funding period of the grant. The estimated amount of unexpended funds shall be identified in the grant budget section of the grantee's renewal proposal.

§ 1260.408 Equipment and other property.

Equipment and Other Property (Jun. 1992)

(a) NASA grants permit acquisition of technical property required for the conduct of research. Acquisition of property costing in excess of $25,000 and not included in the approved proposal budget requires the prior approval of the administrative grant officer unless the item is merely a different model of an item shown in the approved proposal budget. Requests for prior approval of technical property may be made telephonically to the administrative grant officer.

(b) Grantees may not purchase, as a direct cost the grant, items of non-technical property, examples of which include but are not limited to office equipment and furnishings, air conditioning equipment. If the grantee requests an exception, the grantee shall submit a written request for administrative grant officer approval, prior to purchase by the grantee, stating why the grantee cannot charge the property to indirect costs.

(c) Under no circumstances shall grant funds be used to acquire land or any interest therein, to acquire or construct facilities, or to procure passenger carrying vehicles.

(d) Title to equipment purchased with grant funds shall vest in the grantee unless otherwise provided. The Government reserves the right to require transfer to itself of title to items costing more than $1,000 each or, when fabricated into a single coherent system, in aggregate cost. Such reservation is subject to § 1260.506.

(e) Title to Government furnished equipment (including equipment, title to which has been transferred to the Government pursuant to § 1260.408(d) prior to completion of the work) will remain with the Government.

(f) Title to expendable personal property shall vest in the grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or expiration of the grant, and the property is not needed for any other Federally sponsored project or program, the grantee shall retain the property for use on non-Federal sponsored activities, or sell it, but must in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in accordance with subparagraph 6c, Attachment N to OMB Circular No. A–110.

(g) The grantee shall establish and maintain property management standards for nonexpendable personal property and otherwise manage such property as set forth in § 1260.507.

(h) Annually by July 31, the grantee shall submit 2 copies of an inventory report which lists all Government furnished equipment in their custody as of June 30. The grantee shall submit 2 copies of a final inventory report by 30 days after the expiration date of the grant. The final inventory report shall contain a list of all grantee acquired equipment and a list of Government furnished equipment. Annual and final inventory reports shall reflect the elements required in § 1260.507(a)(1) and be submitted to the administrative grant officer. When Government furnished equipment is no longer needed, the grantee shall notify the administrative grant officer, who will provide disposition instructions.

§ 1260.409 Patent rights—retention by the grantee.

Patent Rights Retention by the Grantee (Feb. 1992)

This award is subject to the provisions of 37 CFR 401.3(a) which require use of the standard clause set out at 37 CFR 401.14 "Patent Rights (Small Business Firms and Nonprofit Organization)" and the following:

(a) Where the term "contract" or "contractor" is used in the "Patent Rights" clause, those terms shall be replaced by the term "grant" or "grantee," respectively.

(b) In each instance where the term "Federal Agency," "agency," or "funding Federal agency" is used in the "Patent Rights" clause, the term shall be replaced by the term "NASA."

(c) The NASA regulation applicable to paragraph (e) of the "Patent Rights" clause is at 14 CFR Subpart 1245.2, Licensing of NASA Inventions, § 1245.210.

(d) The following item is to be added to the end of paragraph (f) of the "Patent Rights" clause:

(5) The grantee shall include a list of all Subject Inventions required to be disclosed during the preceding year in the performance report, technical report, or renewal proposal, and a complete list (or a negative statement) for the entire award period shall be included in the summary of research.

(e) The term "subcontract" in paragraph (g) of the "Patent Rights" clause shall include purchase orders.

(f) The NASA implementing regulation for paragraph (g)(2) of the "Patent Rights" clause is at 48 CFR 1827.373(b) (NASA FAR Supplement, 18–27.373(b)).

(g) The following requirement constitutes paragraph (1) of the "Patent Rights" clause:

(1) *Communications.*

A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications or similar material bearing on patent matters, shall be sent to the Installation Patent Counsel and the administrative grant officer in addition to any other submission requirements in the grant provisions. If any reports contain information describing a "subject invention" for which the grantee has elected or may elect title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series, for 6 months from the date of receipt, in order for a patent application to be filed, provided that the grantee identify the information and the "subject invention" to which it relates at the time of submittal. If required by the administrative grant officer, the grantee shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any "subject invention" in any country in which the grantee has applied for patents.

§ 1260.410 Rights in data.

Rights in Data (Feb. 1992)

The grantee grants to the Government, for Governmental purposes, the right to publish, translate, reproduce, deliver, use and dispose of, and to authorize others to do so, all data, including reports, drawings, blueprints, and technical information resulting from the performance of work under this grant.

§ 1260.411 Security.

Security (Jun. 1992)

Normally, NASA grants do not involve classified defense information. However, if information is sought or developed by the grantee that should be classified in the interests of national security, the NASA grant officer who issued the grant shall be notified immediately.

§ 1260.412 Civil rights.

Civil Rights (Feb. 1992)

Work on NASA grants is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Public Law 88–352; 42 U.S.C. 2000d–1), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 et seq.), Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and the NASA implementing regulations (14 CFR Part 1250).

§ 1260.413 Subcontracts.

Subcontracts (Jun. 1992)

(a) NASA grant officer consent is required for subcontracts over $25,000, if not accepted by NASA in the original proposal, and may be requested through the administrative grant officer by providing the name of the subcontractor and the purpose and dollar amount of the subcontract. For subcontracts over $100,000, the grantee shall provide the following additional information, as a minimum, to the administrative grant officer for forwarding to the NASA grant officer:

(1) A copy of the proposed subcontract.

(2) Basis for subcontractor selection.

(3) Justification for lack of competition when competitive bids or offers are not obtained.

(4) Basis for award cost or award price.

(b) The grantee shall utilize small business concerns, small disadvantaged business concerns, Historically Black Colleges and Universities, minority educational institutions, and women-owned small business concerns as subcontractors to the maximum extent practicable.

§ 1260.414 Clean Air-Water Pollution Control Acts.

Clean Air-Water Pollution Control Acts (Mar. 1992)

If this grant or supplement thereto is in excess of $100,000, the grantee agrees to notify the administrative grant officer promptly of the receipt, whether prior or subsequent to the grantee's acceptance of this grant, of any communication from the Director, Office of Federal Activities, Environmental Protection Agency (EPA), indicating that a facility to be utilized under or in the performance of this grant or any subcontract thereunder is under consideration to be listed on the EPA "List of Violating Facilities" published pursuant to 40 CFR 15.20. By acceptance of a grant in excess of $100,000, the grantee (a) stipulates that any facility to be utilized thereunder is not listed on the EPA "List of Violating Facilities" as of the date of acceptance; (b) agrees to comply with all requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857 et seq. as amended by Public Law 91–604) and Section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq. as amended by Public law 92–500) relating to inspection, monitoring, entry, reports and information, and all other requirements specified in the aforementioned Sections, as well as all regulations and guidelines issued thereunder after award of and applicable to the grant; and (c) agrees to include the criteria and requirements of this clause in every subcontract hereunder in excess of $100,000, and to take such action as the administrative grant officer may direct to enforce such criteria and requirements.

§ 1260.415 Procurement standards.

Procurement Standards (Feb. 1992)

The grantee's procurement practices shall meet the standards set forth in § 1260.510.

§ 1260.416 Interest bearing accounts.

Interest Bearing Accounts (Jan. 1992)

Advances of federal funds shall be maintained in interest bearing accounts. Interest earned on federal advances deposited in such accounts shall be remitted to NASA at least quarterly, as instructed by the Financial Management Office of the NASA installation which issued the grant. Interest amounts up to $100 per year may be retained by the grantee

§ 1260.417 Debarment and suspension and drug-free workplace.

Debarment and Suspension and Drug-Free Workplace (Feb. 1992).

NASA grants are subject to the provisions of 14 CFR part 1265, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide requirements for Drug-Free Workplace (Grants), unless excepted by § § 1265.110 or 1265.610. The certifications required by that regulation must accompany extension proposals.

§ 1260.418 Foreign national employee investigative requirements.

Foreign National Employee Investigative Requirements (May 1992)

(a) The grantee shall submit a properly executed Name Check Request (NASA Form 531) and a completed applicant fingerprint card (Federal Bureau of Investigation Card FD–258) for each foreign national employee requiring access to a NASA Installation. These documents shall be submitted to the Installation's Security Office at least 75 days prior to the estimated duty date. The NASA Installation Security Office will request a National Agency Check (NAC) for foreign national employees requiring access to NASA facilities. The NASA Form 531 and fingerprint card may be obtained from the NASA Installation Security Office.

(b) The Installation Security Office will request from NASA Headquarters, International Relations Division (Code IR), approval for each foreign national's access to the Installation prior to providing access to the Installation. If the access approval is obtained from NASA Headquarters prior to completion of the NAC and performance of the grant requires a foreign national to be given access immediately, the technical officer may submit an escort request to the Installation's Chief of Security.

§ 1260.419 Restrictions on lobbying.

Restrictions on Lobbying (Apr. 1990)

This award is subject to the provisions of 14 CFR part 1271 "New Restrictions on Lobbying."

§ 1260.420 Travel and transportation.

Travel and Transportation (Jun. 1992)

(a) Total expenditures for travel are limited to 125 percent (or an increase of $1,000, whichever is greater) of the amount allotted for travel in the approved budget. Within this limit, the additional amount shall be obtained by reducing other areas of the approved budget. Travel which causes this limit to be exceeded requires the prior approval of the administrative grant officer.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 App. U.S.C. 1517) (Fly America Act) requires the grantee to use U.S.-flag air carriers for international air transportation of personnel and property to the extent that service by those carriers is available.

(c) Department of Transportation regulations, 49 CFR part 173, govern grantee shipment of hazardous materials and other items.

§ 1260.421 Program income.

Program Income (Jun. 1992)

Program income shall be retained by the grantee and shall be added to funds already committed to the project and used to further project objectives.

§ 1260.422 Special conditions.

(a) In addition to the provisions set forth in this subpart, NASA grants are subject to various conditions which either are not applicable to all awards or are temporary in nature. Such conditions are not incorporated by reference or printed in NASA Form 1463A, "NASA Provisions for Research Grants and Cooperative Agreements," but are appended in full text to specific grants, as applicable.

(b) With respect to cooperative agreements under 31 U.S.C. 6305, it has been determined that the NASA guidelines and regulations applicable to grants will apply to cooperative agreements. The cooperative agreement, NASA Form 1562, shall contain a special condition stating the nature of the recipient/NASA interaction in accordance with 31 U.S.C. 6305. That special condition is as follows:

Cooperative Agreement Special Condition (Feb. 1992)

This award is a cooperative agreement as it is anticipated that there will be substantial NASA involvement during performance of the effort. That is, the recipient can expect NASA collaboration or participation in the management of the project. The term "grant" and "grantee" mean "cooperative agreement" and "recipient of cooperative agreement," respectively, wherever the terms appear in provisions and special conditions included in this agreement. NASA and the recipient mutually agree to the following statement of anticipated cooperative interactions which may occur during the performance of this effort. (Insert here a concise statement of the exact nature of the cooperative interactions. In addition, note that the statement must deal with existing facts and not contingencies. Under no circumstances shall the statement be used as a work statement or an expanded grant title.)

(c) See § 1260.303(b)(5).

Multiple Year Grant (Nov. 1991)

This is a multiple year grant. Contingent on the availability of funds, scientific progress of the project and continued relevance to NASA programs, NASA anticipates continuing support at approximately the following levels:

Second year $_____. Anticipated funding date: _____.

Third year $_____. Anticipated funding date: _____.

(Additional periods may be included or omitted as applicable.)

(d) See § 1260.302(d).

Incremental Funding (Jun. 1992)

Only $_____ of the amount indicated on the face of this award is available for payment and allotted to this award. NASA contemplates making an additional allotment in the amount of $_____ by _____.

These funds will be obligated to the grant as appropriated funds become available without any action required by the grantee, and the grantee will be given written notification by the NASA grant officer. NASA is not obligated to reimburse the grantee for the expenditure of amounts in excess of the total funds allotted by NASA.

(e) See § 1260.303(d).

Cost Sharing (Jun. 1992)

The grantee agrees to share in the cost of the research by charging to the Government no more than _____ percent of the costs incurred in performing the work contemplated by the grant as determined to be allowable in accordance with 14 CFR 1260.406. The remaining _____ percent, or more, of the allowable costs of performance so determined will constitute the grantee's share and will not be charged to the Government under this grant or under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program). The grantee will maintain records of all grant costs claimed by the grantee as constituting part of its share and such records shall be subject to audit by the Government.

(f) See § 1260.106. "INVENTION REPORTING AND RIGHTS—FOREIGN" in NASA FAR Supplement 18–52.227–85 (48 CFR 1852.227–85) (suitably tailored to identify the parties and the instrument) may be used as a special condition unless in consultation with Installation Patent Counsel, a different provision would be more appropriate.

(g) See § 1260.605(a).

Reports Substitution (Feb. 1992)

Technical reports may be substituted for the required performance reports. The title page of such reports shall clearly indicate that the substitution has been made, showing the period covered by the originally required performance report.

(h) See § 1260.605(d).

Withholding (Jul. 1992)

Pending receipt of the satisfactorily completed summary of research and other final reports under this grant, the financial management office will withhold $_____ from the last payment.

Subpart 5—Administration

§ 1260.501 Delegation of administration.

(a) *Policy.* Pursuant to the Government-wide "cross-servicing" policy, it is NASA's policy to delegate administration to the Office of Naval Research (ONR).

(b) *Procedures.* Delegations will be made using NASA Form 1430, "Letter of Contract Administration Delegation, General"; NASA Form 1430A, "Letter of Contract Administration Delegation, Special Instruction"; and NASA Form 1431, "Letter of Acceptance of Contract Administration Delegation." The grant officer will inform the grantee, in writing, that the delegation has been made, and provide specific instruction regarding actions requiring ONR involvement.

(c) *Types of administration.*

(1) *Full administration.* The grant officer will use NASA Form 1430, as provided in Exhibit A, Figure 1, of the appendix to this part 1260, to delegate to ONR full administration for each grant, except when ONR is not the cognizant administration office or when ONR administration services are not reasonably available.

(2) *Property administration.* Property administration (review and approval of grantee's property control procedures, and on-site surveys of grantees' property control systems) and plant clearance (screening, redistribution and disposal of Government property from grantee's work sites) will be delegated to ONR. Installations will use standard, special instruction wording on the NASA Form 1430A, as provided in Exhibit A, Figure 2, of the appendix to this part 1260.

(3) *Closeout.* Grant closeout may be retained if the grant officer determines that delegation to ONR is not in the best interest of NASA. Closeout delegation must be preceded or accompanied by a Property Administration and Plant Clearance Delegation (if any grantee acquired or Government-furnished equipment (GFE) is involved). Installations will use standard special instruction wording on the NASA Form 1430A, as provided in Exhibit A, Figure 3, of the appendix to this part 1260. ONR shall obtain the approval of the NASA grant office prior to initiating closeout. To expedite closeout, NASA grant officers shall respond to ONR inquiries within 30 days. NASA grant officers shall inform individuals named on NASA Form 1430A, Item 4(f), (i) that a delegation has been made and (ii) of the requirement for timely responses to any inquiries received directly from ONR.

§ 1260.502 Grant supplements.

The NASA grant officer may modify a grant by using a grant supplement. Uses include multiple year grants and grant renewals (§ 1260.303 (b) and (f)), extensions (§ 1260.403), incremental funding (§ 1260.302(d)), and novations (§ 1260.505).

§ 1260.503 Adherence to original budget estimates.

Although NASA assumes no responsibility for budget overruns, the grantee may spend grant funds for the proposed research without strict adherence to individual allocations within total budgets, except as provided in § 1260.408 (a) and (b), § 1260.413(a), and § 1260.420.

§ 1260.504 Suspension or revocation.

(a) *Policy.* Suspension or revocation of a grant prior to the planned expiration date must be reserved for exceptional situations which cannot be handled any other way. Before suspending or revoking any grant with a university, the NASA grant officer and technical officer shall take into account the consequences to graduate students working under the grant. Revocation is a right reserved by NASA (see § 1260.404).

(b) *Suspension of the grant.* When a grantee has failed to comply with the terms of a grant, NASA may, upon reasonable notice to the grantee, temporarily suspend the grant, withhold further payments, and prohibit the grantee from incurring additional costs, pending corrective action by the grantee or a decision by NASA to revoke the grant. NASA will allow all necessary and proper costs that the grantee could

not reasonably avoid during the period of suspension.

§ 1260.505 Transfers, novations, and change of name agreements.

(a) *Transfer of grants.* Novation as provided in § 1260.505(b), is the only means by which a grant may be transferred from one institution to another. When the principal investigator changes organizational affiliation and desires support for the research at a new location and novation is not used, a new proposal must be submitted to NASA via the appropriate officials of the new institution. Although such a proposal will be reviewed in the normal manner, every effort will be made to expedite a decision. Regardless of the action taken on the new proposal, final reports on the original grant, describing the scientific progress and expenditure to date, will be required.

(b) *Novation and change of name.* All novation agreements and change of name agreements of the grantee, prior to execution, shall be reviewed by legal counsel for legal sufficiency. When a change in principal investigator from one institution to another occurs, novation of the grant is preferable to revocation.

§ 1260.506 Use, disposition, and vesting of title to equipment.

(a) *Policy.* The following policies will be reflected, as applicable, in NASA grants.

(1) Title to equipment purchased with grant funds vests in the grantee subject to § 1260.506(a)(4), and the equipment does not automatically follow the principal investigator when he or she leaves the institution.

(2) Title to Government furnished equipment remains with the Government. In accordance with Public Law 94–519, NASA policy is not to furnish excess property, acquired by NASA from other Government agencies, to grantees.

(3) When Government furnished equipment is reported excess by a grantee, the administrative grant officer will report the equipment to the Installation property disposal officer for further NASA use. If NASA has no further need for the property, it shall be declared excess by the Installation property disposal officer and reported to the General Services Administration. Disposition instructions will be issued to the grantee by the administrative grant officer after completion of the Federal-wide review by GSA.

(4) NASA may require transfer to it of title to individual items or coherent systems (§ 1260.506(a)(9)) of grantee acquired equipment purchased at a cost of more than $1,000 subject to the following conditions:

(i) NASA shall notify the grantee in writing.

(ii) NASA shall issue disposition instructions by 120 days after the end of the grant under which it was acquired. If NASA fails to issue disposition instructions within the 120-day period, the grantee shall apply the standards of subparagraphs 6b and 6c, Attachment N to OMB Circular No. A–110, as appropriate.

(iii) When NASA exercises its right to take title, the equipment shall be subject to the provisions for Government furnished equipment discussed in § 1260.507(a).

(iv) When title is transferred to the Federal Government, the provisions of subparagraph 6c(2)(b), Attachment N to OMB Circular No. A–110, shall be followed.

(5) Title to equipment costing $1,000 or less is not subject to transfer to the agency, except under the conditions of § 1260.506(a)(9).

(6) NASA procedure does not require a grantee to transfer title to grantee acquired equipment directly to another grantee or contractor. Such transfers are accomplished by the Government's taking title and issuing it as Government furnished equipment.

(7) NASA normally will not recover equipment that a grantee desires to retain unless it is required for NASA work at a different location.

(8) Cost sharing by NASA and a grantee in the acquisition of individual items or coherent systems of equipment, that could result in joint ownership, shall normally be avoided. When joint ownership cannot be avoided, and the NASA contribution will exceed $1,000, agreement regarding NASA retention of its option to take title and the conditions under which the option (if retained) will be exercised, shall be reached and documented prior to purchase.

(9) When two or more components are fabricated into a single coherent system in such a way that the components lose their separate identities, and the separation would render the system useless for its original purpose, the components will be considered as integral parts of a single system. If such a system includes grantee-owned components (for cost sharing or other purposes), § 1260.506(a)(8) applies. The requirement for agreement regarding NASA's retention of its option to take title shall further apply where it is expected that one or more grantee-acquired components costing $1,000 or less will be fabricated into a single coherent system costing in excess of $1,000. However, an item that is used ancillary to a system, without loss of its separate identity and usefulness, will be considered as a separate item and not as an integral component of the system.

(b) *Procedures.*

(1) When a decision is made to revoke, not renew, or otherwise not continue support of a grant, the administrative grant officer shall notify the grantee in writing of the requirement under the grant for submission of a final inventory report of grantee acquired equipment and Government furnished equipment.

(2) When the technical officer desires that NASA take title to an item of grantee acquired equipment, the technical officer shall request the administrative grant officer to obtain information regarding the grantee's desire to retain the equipment, the use to which it would be put in the absence of further NASA support of the grant, and the effect of removal of the equipment.

(3) The administrative grant officer shall obtain the information described in § 1260.506(b)(2) and provide copies to the technical officer and the Headquarters Supply and Equipment Management Office (Code JIE) for their coordinated review and recommendation regarding acquisition of title. The technical officer shall inform the administrative grant officer of the recommendation by means of a memorandum concurred in by Code JIE.

(4) When NASA acquires title to items of grantee acquired equipment, the administrative grant officer shall notify both the cognizant NASA Installation financial management officer and supply and equipment management officer to ensure proper entries in financial and property accounting records.

§ 1260.507 Property management standards.

(a) *Nonexpendable personal property.* As prescribed by OMB Circular No. A–110, the grantee shall be subject to the following property management standards for Government furnished equipment and grantee acquired equipment:

(1) Property records shall be maintained accurately and shall include:

(i) A description of the property.

(ii) Manufacturer's serial number, model number, national stock number, or other identification number.

(iii) Source of the property, including grant or other agreement number.

(iv) Whether title vests in the grantee or the Federal Government.

(v) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(vi) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government.)

(vii) Location, use and condition of the property and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal sponsoring agency for its share.

(2) Property owned by the Federal Government must be marked to indicate Federal ownership.

(3) A physical inventory of property shall be taken and the results reconciled with the property records at least once every 2 years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(4) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented. If the property was owned by the Federal Government, the grantee shall promptly notify the administrative grant officer.

(5) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(6) Where the grantee is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

(b) *Exempt property.* Title to nonexpendable personal property acquired with grant funds shall be vested in the grantee upon acquisition, unless it is determined that to do so is not in furtherance of the objectives of NASA. When title is vested in the grantee, the grantee shall have no other obligation or accountability to the Federal Government for its use or disposition, except as provided in §§ 1260.408(h), 1260.506(a)(4), and 1260.507(a).

§ 1260.508 Screening of requests for Government furnished equipment.

(a) Pursuant to NMI 4000.2, "NASA Equipment Management," a NASA Equipment Management System (NEMS) has been established to identify and effect optimum use and reuse of Government-owned equipment items of high value and reuse potential. The NEMS and this paragraph apply only to grantee requests for Government furnished equipment. Requests for grantee acquired equipment are neither required nor encouraged to be screened through the NEMS.

(b) When a grantee requests Government furnished equipment of $1,000 or more, the grant officer shall screen the item through the Installation's NEMS coordinator. Screening requests shall list the manufacturer, model number, description, national stock number, estimated cost, and any other information deemed necessary by the NEMS coordinator to properly identify the item. Urgent requests may be screened by telephone and documented.

(c) When suitable equipment is located through the foregoing procedures, the holding Installation will place a "freeze" on the item for 10 working days, pending shipping instructions. Extension of the freeze period must be requested through the NEMS Coordinator if shipping instructions cannot be furnished within the required period. (See paragraph 5.307, NASA Equipment Management Manual, NHB 4200.1.)

§ 1260.509 Financial management standards.

As prescribed by OMB Circular No. A–110, the grantee shall be subject to the following financial management standards:

(a) Accurate, current, and complete disclosure of the financial results of the project.

(b) Records that identify adequately the source and application of funds for the grant. These records shall contain information pertaining to the award, authorization, obligations, unobligated balances, assets, outlays, and income.

(c) Effective control over and accountability for all funds, property, and other assets. The grantee shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(d) Comparison of actual outlays with obligated amounts for the grant.

(e) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee. When advances are made by a letter-of-credit method of electronic funds transfer, the grantee shall make drawdowns as close as possible to the time of making disbursements.

(f) Procedures for determining the reasonableness, allowability, and allocability of costs in accordance with the provisions of § 1260.406 and any other terms of the grant.

(g) Accounting records that are supported by source documentation.

(h) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 1260.510 Procurement standards.

As prescribed by OMB Circular No. A–110, the grantee shall be subject to the following procurement standards:

(a) The grantee shall maintain a code of standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of a subcontract using NASA funds. No employee, officer, or agent shall participate in the selection, award, or administration of subcontracts under grants using NASA funds, where, to his or her knowledge, there exists a financial interest on the part of (1) that person, (2) that person's immediate family or partners, or (3) any organization in which that person or an immediate family member or partner has a financial interest or with whom he or she is negotiating or has any arrangement concerning prospective employment. The grantee's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from subcontractors or potential subcontractors. Such standards shall provide for disciplinary actions to be applied for violation of such standards by the grantee's officers, employees, or agents.

(b) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The grantee should be alert to organizational conflicts of interest or noncompetitive practices among its subcontractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective subcontractor performance and eliminate unfair competitive advantage, subcontractors that develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals should be excluded from competing for such procurements, except when NASA gives approval to a grantee's request to waive this requirement for a particular procurement. Awards shall be made to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the grantee—price and other factors considered. Solicitations shall clearly set forth all requirements that the bidder/offeror must fulfill in order for the bid/offer to

be evaluated by the grantee. Any and all bids/offers may be rejected when it is in the grantee's interest to do so.

(c) The grantee shall establish procurement procedures that provide for, at a minimum, the following procedural requirements:

(1) Proposed procurement actions shall follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(2) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" descriptions may be used as a means to define the performance or other salient requirements of a procurement and, when so used, the specific features of the named brand which must be met by bidders/offerors shall be clearly specified.

(3) Positive efforts shall be made by the grantee to utilize small business concerns, small disadvantaged business concerns, Historically Black Colleges and Universities, minority educational institutions, and women-owned small business concerns as sources of supplies and services. Such efforts should allow these sources the maximum practicable opportunity to compete for subcontracts utilizing NASA funds.

(4) The types of procuring instruments used, e.g., fixed-price subcontracts, cost reimbursable subcontracts, purchase orders, and incentive subcontracts, shall be determined by the grantee but must be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(5) Subcontracts shall be made only with responsible subcontractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as subcontractor integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources.

(6) Some form of price or cost analysis should be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicators, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability.

(7) Procurement records and files for purchases in excess of $10,000 shall include the following:

(i) Basis for subcontractor selection.

(ii) Justification for lack of competition when competitive bids or offers are not obtained.

(iii) Basis for aware cost or award price.

(8) A system for subcontract administration shall be maintained to ensure subcontractor conformance with terms, conditions, and specifications of the subcontract, and to ensure adequate and timely follow up of all purchases.

(d) The following provisions are required in subcontracts in excess of $10,000 awarded by the grantee or a subcontractor, regardless of tier.

(1) Provisions or conditions that will allow for administrative, contractual, or legal remedies in instances in which subcontractors violate or breach subcontract terms and provide for such remedial actions as may be appropriate.

(2) Provisions for termination by the grantee, including the manner by which termination will be effected, and the basis for settlement. In addition, such subcontracts shall describe conditions under which the subcontract may be terminated for default, as well as conditions where the subcontract may be terminated because of circumstances beyond the control of the subcontractor.

(3) A provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR part 60).

(4) For negotiated subcontracts, a provision to the effect that the grantee, NASA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the subcontractor which are directly pertinent to the specific project, for the purpose of making audits, examinations, excerpts, and transcriptions.

(e)(1) All subcontracts, regardless of tier, which may involve international air transportation shall require subcontractor compliance with the statute cited in § 1260.420(b).

(2) All subcontracts, regardless of tier, which may involve shipment of hazardous materials or other regulated items shall require subcontractor compliance with the regulation cited in § 1260.420(c).

§ 1260.511 Closeout procedures.

The closeout of a grant is the process by which NASA determines that all applicable administrative actions and all required work under the instrument have been completed by the grantee and NASA. Closeout procedures consist of the following steps:

(a) *Initiation.* As a basis for closeout initiation, the NASA grant officer shall determine from the technical officer that work under a particular grant will not be continued or is completed. The NASA grant officer will promptly notify the administrative grant officer to begin closeout within 90 days of this determination. The administrative grant officer will inform the grantee of pending closeout and the final documentation required. To the extent practicable, such notification will be made prior to the grant's expiration date.

(b) *Reports submission.* The administrative grant officer will ensure that the summary of research and all other final reports have been received by the appropriate NASA offices. Specifically:

(1) Summary of research (see §§ 1260.402 (d) through (f) and 1260.605(b)).

(2) Final report of inventions and subcontracts (see §§ 1260.409 and 1260.605(b)).

(3) Final Federal cash transactions report (see §§ 1260.407(a), 1260.603 and 1260.605(c)).

(4) Final property inventory (see §§ 1260.408(h), 1260.506(b), and 1260.604).

(c) *Reports certification.* The administrative grant officer will obtain from the recipients of all NASA reports, written certification that the above-noted reports have been satisfactorily completed. In reviewing the certifications, ensure the following:

(1) The grantee is required to immediately refund any balance of unobligated (unencumbered) cash that NASA has advanced or paid. NASA shall make prompt payment for any remaining allowable, reimbursable costs under the grant being closed out.

(2) Final audit of NASA grants normally occurs as a part of scheduled overall audits performed by the cognizant audit agency. Therefore, requests for audit of specific grants in conjunction with closeout are generally unnecessary and should be reserved for unusual circumstances. Unless the cognizant audit agency has performed a final audit prior to closeout of the grant, the administrative grant officer shall state in the closeout letter to the grantee that:

NASA retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from any subsequent audit.

(3) The property certification should indicate that disposal of any remaining Government property has been made as directed and that NASA has been compensated for any residual inventory (see § 1260.408 (f) through (h)).

(4) Upon administrative grant officer receipt of all four certifications from recipients of the summary of research and other final reports, a grant is considered to be administratively complete. A DD Form 1594 will be provided by ONR to the NASA grant officer for the file. Closeout may be cited as the date the administrative grant officer documents the file that all required actions have been satisfactorily completed, and that no further actions are necessary.

(d) *Prohibitions.* Forms, procedures, or requirements (regardless of modifications) applicable to contracts shall not be used during grant closeout unless otherwise authorized in this handbook. Grantees shall not be requested to complete forms or supply information other than discussed in § 1260.511(b), except in unusual situations.

(3) *Retention of documents.* The original or a signed copy of each grant, with supporting data, shall be retained by the installation, for audit purposes, for 3 years after the expiration date of the grant.

Subpart 6—Reports

§ 1260.601 Individual procurement action report (NASA Form 507).

The grant officer is responsible for submitting NASA Form 507 for all grant actions.

§ 1260.602 Committee on Academic Science and Engineering (CASE) report (NASA Form 1356).

For grants awarded to educational institutions, NASA Form 1356 is submitted with funded procurement requests. In the case of certain non-funded actions for educational institutions, the NASA Form 1356 is initiated by the grant officer.

§ 1260.603 Federal cash transactions report (SF 272).

The SF 272 shall be submitted by the grantee within 15 working days following the end of each Federal fiscal quarter, as a condition of receiving advance payments, in accordance with instructions to be provided by the financial management office of the Installation which issued the grant. Any questions regarding payment should be directed to the financial management officer of that Installation.

§ 1260.604 Inventory listings of equipment.

As provided in § 1260.408(h) of this part, an annual inventory listing of Government furnished equipment will be submitted by July 31 of each year. The listing shall include the information specified in § 1260.507(a)(1) and beginning and ending dollar value totals for the reporting period. Upon receipt of each annual inventory listing, the administrative grant officer will provide 1 copy of the NASA installation financial management officer and 1 copy to the NASA installation industrial property officer. A final inventory report of Government furnished equipment and grantee acquired equipment is due 30 days after the end of the grant, in accordance with § 1260.408(h). Upon receipt of the final inventory report, the administrative grant officer will provide 1 copy to the technical officer and 1 copy to the NASA Installation industrial property officer.

§ 1260.605 Performance reports, summaries of research, and other final reports.

(a) Three copies of a performance report, including a concise statement of the research accomplished during the report period, shall be submitted for every year of the grant (except the final year) and is due 60 days before the anniversary date of the grant. At the specific request of the technical officer, this requirement may be modified by use of the special condition entitled "Reports Substitution" (see § 1260.422(g)).

(b) By the expiration date of the grant, the grantee shall submit three copies of a summary of research which summarizes the results of the entire project. Citation of publications resulting from the research, or abstracts thereof, may serve as all or part of this summary of research. In addition, the grantee will report to NASA whether or not any inventions, required to be reported under the grant, have been made in the performance of work thereunder.

(c) A properly certified final Federal cash transactions report, SF 272, is required from the grantee for each grant as provided in § 1260.511(b)(3).

(d)(1) Failure to provide a required grant report can result in: the agency and the public being denied information about grant activities; agency officials having less information for making decisions based on the grant; grant closeout being delayed; and confidence being undermined that the grantee will follow requirements under other grants. Consistent with OMB Circular No. A-110, NASA does not withhold payment under grants, for the purpose of ensuring receipt of reports, until a grantee's failure to provide a required report indicates a need for withholding payment.

(2) Because NASA grants provide for advance payments, the circumstances under which NASA grant officers can withhold payment are limited. The grantee has an opportunity to be paid all of the funds before final reports are due. At this point, it is usually too late to withhold payment under the grant for overdue final reports. When a report is more than 90 days overdue, the NASA grant officer can include the special condition for withholding payment in the grant with the overdue report only if the grant is being supplemented with additional funds, and can also include the special condition in other grants that are being awarded or supplemented.

(3) To ensure receipt of reports and summaries of research from any grantee that has failed to comply with Federal reporting requirements for a period longer than 90 days, the NASA grant officer will take, but not to be limited to, the following action: when awarding a new grant or supplementing an existing grant, include the special condition at § 1260.422(h). The special condition instructs the financial management office to withhold from the last payment a dollar amount pending receipt of the satisfactorily completed summary of research and other final reports identified in § 1260.511(b). The NASA grant officer shall insert in the special condition a dollar amount for withholding that is not more than five percent of the dollar value of the first year of the grant.

(4) The grant officer may waive the withholding requirement for any grant when the grantee has taken corrective action that makes withholding unnecessary. To release for payment the amount withheld, the NASA grant officer shall use a memorandum substantially as shown in Exhibit C of the appendix to this part 1260.

§ 1260.606 Disclosure of lobbying activities (SF LLL).

(a) Grant officers shall provide one copy of each SF LLL furnished under 14 CFR 1271.110 to the Procurement Office for transmittal to the Director, Procurement Systems Division (Code HM).

(b) Suspected violations of the statutory prohibitions implemented by 14 CFR part 1271 shall be reported to the

Director, Procurement Policy Division (Code HP).

§ 1260.607 Debarment and suspension.

The Director, Procurement Policy Division (Code HP) shall provide to the General Services Administration information concerning all NASA debarments, suspensions, determinations of ineligibility, and voluntary exclusions of persons in accordance with 14 CFR 1265.505.

Appendix to Part 1260

BILLING CODE 7510-01-M

Exhibit A - Delegation of Administration
Figure 1 - General

NASA National Aeronautics and Space Administration — Letter of Contract Administration Delegation, General	1. NASA CONTROL NO.	2. RECEIVING OFFICE CONTROL NO.
3. TO:	4. FROM:	
5. PRIME CONTRACTOR OR SUBCONTRACTOR AND PLACE OF PERFORMANCE	6. CONTRACT NO. AND DATE	7. FACE VALUE
	8. CONTRACT TYPE	9. COMPLETION DATE

10. CONTRACT END ITEM OR SERVICE *(Describe briefly)*

11. ~~You are hereby authorized to act as my representative in the administration of this contract. The functions delegated to you for administration are those listed in FAR 42.302(a), excluding those functions listed in NFS 18-42.202(a)(1). Additional functions delegated to you for administration are those functions listed in NFS 18-42.302. *(The attached NASA Form 1430A, if any, may require that certain functions be specifically withheld and/or that others be added.)*~~ *

12. You are further authorized, within the limits of the contract, to redelegate the functions delegated to you by par. 11 above. unless redelegation authority is specifically withheld on NASA Forms 1430A, attached hereto. Redelegation of functions to be performed on NASA installations, or NASA-controlled launch sites, will be directed to the NASA Procurement Officer of the installation concerned. Should you desire that the redelegated functions be performed by other than the NASA Procurement Office receiving the delegation, your letter of redelegation shall so state.

13. The Production Surveillance category requested is N.A. *(Use only for delegations to D.O.D.)*

14. You are requested to provide the NASA Contracting Officer with copies of all communications relating to the administration of this contract that you consider significant.

15. Please acknowledge acceptance of this delegation by returning two signed copies of NASA Form 1431 *(attached)* to the NASA Contracting Officer within 5 days of receipt.

16. TYPED NAME OF CONTRACTING OFFICER	17. SIGNATURE OF CONTRACTING OFFICER	18. DATE

19. NASA PERSONNEL TO CONTACT WHEN NECESSARY

*11. You are hereby authorized to act as my representative in the administration of this grant. The functions delegated to you for administration are those listed in paragraph 3.A. of the Memorandum of Agreement between NASA and ONR for Grant Administration. *(The attached NASA Form 1430A, if any, may require that certain functions be specifically withheld and/or that others be added. On NASA Forms 1430, 1430A, and 1431, the terms "contract," "contractor," and "Contracting Officer" are to be read as "grant," "grantee," and "grant officer," respectively.*

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Exhibit A - Delegation of Administration
Figure 2 - Property Administration and Plant Clearance

NASA National Aeronautics and Space Administration — Letter of Contract Administration Delegation, General	1. CONTRACT NO.	2. DELEGATION NO.

This form is to be used to provide special instructions to NASA Forms 1430 and 1432.

3. FUNCTIONAL AREA *(Enter applicable function area in this space, such as Contract Administration, Production Administration, Quality Assurance, etc. Use separate forms for each functional area delegated.)*

PROPERTY ADMINISTRATION AND PLANT CLEARANCE

4. SPECIAL INSTRUCTIONS

A. NASA property administration and plant clearance requirements generally correspond to DOD's. The differences, which are highlighted below, will require your special attention:

1. The grantee shall maintain property records and otherwise manage nonexpendable personal property utilized in the performance of this grant in accordance with the provisions of 14 CFR 1260.507. Check for compliance during system surveys of the records function.

2 Ensure all cases of loss, damage, or theft of NASA property are promptly investigated, adequately documented, and reported to the grant officer (14 CFR 1260.507(a)(4)). Ensure discoveries of unrecorded property, as well as losses, are investigated, documented, and reported to identify both the causes and necessary actions to prevent recurrence of the discrepancies.

3. Distribute copies of inventory listings (14 CFR 1260.604). Under no circumstances will Government property be disposed of without instructions from NASA.

4. Ensure all NASA identifications are removed or obliterated prior to disposition of property other than by return to NASA or reutilization on other NASA programs/contracts/grants.

5. NASA delegates approval authority for property acquisitions beyond those in the approved proposal budget (14 CFR 1260.408). Ensure that grantee procedures provide that such requests are forwarded to the administrative grant officer. ONR may telephonically obtain technical officer concurrence for property acquisition. ONR will fax approval to the grantee and mail a copy of the approval to the individual listed in Block 5 below. Check for compliance during system surveys of the acquisition function. Also, please note that NASA policy is to not furnish grantees property acquired from Government excess listings.

B. Provide the following data/documents to the individual listed in Block 5 below:

1. One copy of each system survey summary performed for this grantee.

2. Notification of all granting of relief of responsibility for lost, damaged, or destroyed property under this grant.

3. A letter or DD 1593 stating that all required property actions in 14 CFR 1260.511 have been completed.

5. NASA CONTACT DESIGNATED FOR THIS FUNCTION	
a. NAME	b. PHONE

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Exhibit A - Delegation of Administration
Figure 3 - Close-Out

NASA National Aeronautics and Space Administration — Letter of Contract Administration Delegation, General	1. CONTRACT NO.	2. DELEGATION NO.

This form is to be used to provide special instructions to NASA Forms 1430 and 1432.

3. FUNCTIONAL AREA *(Enter applicable function area in this space, such as Contract Administration, Production Administration, Quality Assurance, etc. Use separate forms for each functional area delegated.)*

CLOSE-OUT

4. SPECIAL INSTRUCTIONS

(a) ONR will perform the grant officer functions set forth in 14 CFR 1260.511.

(b) ONR may authorize additional time for submission of reports as necessary and reasonable.

(c) ONR may perform a final desk review in lieu of a final audit by the cognizant agency.

(d) Provide the NASA grant officer a DD 1594 stating that the grant is administratively complete and that close-out is recommended. The accepted reports certifications (14 CFR 1260.511(c)) shall be attached. If property administration and plant clearance has been delegated, a copy of the letter or DD 1593 indicating completion of all required property actions shall be attached.

(e) A separate delegation for property administration and plant clearance has been made previously or accompanies this delegation. ____ YES. ____ NO.

(f) Names, titles and addresses of individuals and/or offices to contact for certifications regarding the reports in 14 CFR 1260.511(b):

Summary of research:

Final report of inventions and subcontracts:

Final financial report:

5. NASA CONTACT DESIGNATED FOR THIS FUNCTION	
a. NAME (grant officer)	b. PHONE

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Exhibit A—Delegation of Administration

Figure 4—Memorandum of Agreement

(DRAFT August 25, 1992) Memorandum of Agreement Between the National Aeronautics and Space Administration and the Office of Naval Research for Grant Administration Services to be Provided to NASA by ONR

1. Purpose.

This agreement between the Office of Naval Research (ONR) and the National Aeronautics and Space Administration (NASA) establishes policies and procedures under which ONR will provide grant administration services in support of NASA grants. ONR support is provided on a reimbursement basis in accordance with the NASA-DOD Agreement for Performance of Contract Administration and Contract Audit Services.

2. Authority.

Section 203(b) of the National Aeronautics and Space Act of 1958, P.L. 85-568 (72 Stat 429; 42 U.S.C. 2473(b)(6)) and the Economy Act of 1932, as amended, 31 U.S.C. 1535 et seq.

3. Scope.

A. This agreement includes, but is not limited to, the following categories of support to be provided by ONR when requested by NASA in a letter of delegation of authority on individual grants:

1. Monitor grantee payment requests and fund expenditures.
2. Perform property administration and plant clearance.
3. Review and approve or disapprove grantee requests to acquire equipment or other property.
4. Review and approve or disapprove grantee requests to incur travel costs exceeding budget limitations.
5. Maintain surveillance of grantee procurement, financial, property management and internal control systems.
6. Ensure timely submission of required reports.
7. Conduct administrative close-out procedures.
8. Quality assurance.

B. The following functions are not included in the scope of this agreement, as they are retained by NASA as a matter of policy:

a. Payment
b. Consent to the placement of subcontracts or subawards.
c. Suspension, termination or revocation.
d. Technical monitoring and oversight.

C. Delegations under individual grants may refer to this agreement to obtain services in 3.A. above, or with the concurrence of the cognizant ONR representative, may cite other specific functions to be performed, depending upon the circumstances. Delegations of authority must be accepted in writing and returned to the NASA grants officer to support reimbursable billings. The ONR representative will refer all disagreements with the NASA technical officer to the NASA grant officer for decision.

4. Administrative Guidance. Grant administration functions will be performed in accordance with the terms of NASA grants and ONR procedures unless otherwise specifically provided in letters of delegation. Enclosure contains additional guidance on the services to be performed in each support category. ONR and NASA personnel will maintain regular communication on grant management.

5. Documentation. NASA will furnish to ONR copies of the grant (including the budget), correspondence between NASA and the grantee, and any special publications or documents required to be used in the administration of a grant not otherwise available to ONR.

6. This Agreement shall take effect upon the latest signature date below, and shall remain in effect through January 31, 1995, unless sooner terminated by either party upon thirty days written notice.

Charles R. Paoletti, Director, University Business Affairs, Office of Naval Research (Acting), Date:

R. Scott Thompson, Director, Contract Management Division, NASA Headquarters, Date:

Enclosure

Exhibit A—Delegation of Administration

Additional Guidance for Categories of Support

MOA *Reference and Support Provided*

3.A.1. Monitor grantee payment requests and fund expenditures. Periodically, as part of on-site reviews, examine payment requests and fund expenditures to assure that excess funds are not being obtained, performance is generally in accordance with grant budget projections, and that expenses appear to be reasonable and allowable under relevant cost principles.

3.A.2. Perform property administration and plant clearance. Oversee grantee property control and plant clearance systems and procedures, including such tests as are necessary to insure the adequacy of these systems. Ensure that all cases of loss, damage, or theft of NASA property are promptly investigated, documented, and reported to the Grants Officer in a timely manner. Monitor, and assure submission of annual inventory listings of government furnished equipment in the custody of the grantee as required by the grant provision "Equipment and Other Property". Oversee the disposition of government furnished equipment after expiration of the grant.

3.A.3. Review and approve or disapprove grantee requests to acquire equipment or other property, after coordinating as necessary with NASA technical or grants personnel, and observing the relevant restrictions in the NASA Grant Handbook.

3.A.4. Review and approve or disapprove grantee requests to incur travel costs exceeding budget limitations, after coordinating as necessary with NASA technical or grants personnel, and observing the relevant restrictions in the NASA Grant Handbook.

3.A.5. Maintain surveillance of grantee financial, procurement, and internal control systems. Individual delegations of authority may call for more specific attention to selected issues, if determined necessary by the NASA grant officer.

3.A.6. Ensure timely submission of required reports. In particular, NASA will use performance reports as an important part of decisions relating to the grant. Timely submission is essential to orderly management of the grant program.

3.A.7. Conduct administrative closeout procedures. The NASA grant officer will contact ONR to initiate closeout procedures. ONR will assure completion of all required reports and disposition of any residual Government property, notifying the NASA grant officer when administrative functions have been completed.

3.A.8. Quality Assurance. When quality assurance functions are required, a statement of quality requirements will be included in individual letters of delegation.

The following normal time periods are established for the routine performance of the above functions. Significant differences from these expected times should be coordinated between the ONR grant administrator and the NASA grant officer. Times are expressed in working days.

3.A.1. In accordance with schedules established by ONR for the institution. For grantees not regularly scheduled by ONR, as agreed by ONR and NASA representatives.

3.A.2. Reports of loss, damage, or theft of property within 7 days of the incident. Annual property inventory prior to August 15 of each year.

3.A.3. 7 days from receipt by ONR.

3.A.4. 7 days from receipt by ONR.

3.A.5. In accordance with schedules established by ONR for the institution. For grantees not regularly scheduled by ONR, as agreed by ONR and NASA representatives.

3.A.6. Followup within 5 days for reports not timely submitted.

Exhibit B—Formats

Figure 1

National Aeronautics and Space Administration—Research Grant

1. To:
2. Grant Number:
3. Supplement:
4. Effective date:
5. Expiration date:
6. For research entitled:
7. Under the direction of (Principal Investigator):
8. *Award History*
   Previous amount: $
   This action: $
   Total to date: $
   Funding History
   Previous obligation: $
   This action: $
   Total obligation to date: $
9. NASA Procurement Request Number:

PPC Number:
Appropriation:
10. Points of Contact (name of office or individual, address, and telephone number):
Technical officer:
Administration:
Payment:
Grant negotiator:
11. This grant is awarded under the authority of 31 U.S.C. 6301, et seq., and is subject to all applicable laws and regulations of the United States in effect on the date this grant is awarded, including but not limited to 14 CFR Part 1260 (Grants and Cooperative Agreements).
12. Applicable statement, if checked:
_____ The Federal Demonstration Project General Terms and Conditions and the NASA Agency-Specific Requirements apply to this grant.
_____ No change is made to existing provisions or special conditions.

UNITED STATES OF AMERICA

(signature and date)

(name), Grant Officer

Applicable enclosure(s), if checked:
_____ Provisions
_____ Special conditions
_____ Budget summaries and details

Figure 2

National Aeronautics and Space Administration—Cooperative Agreement

1. To:
2. Coop. Agreement No.:
3. Supplement:
4. Effective date:
5. Expiration date:
6. For research entitled:
7. Under the direction of (Principal Investigator):
8. *Award History*
Previous amount: $
This action: $
Total to date: $
Funding History
Previous obligation: $
This action: $
Total obligation to date: $
9. NASA Procurement Request Number:
PPC Number:
Appropriation:
10. Points of Contact (name of office or individual, address, and telephone number):
Technical officer:
Administration:
Payment:
Grant negotiator:
11. This cooperative agreement is awarded under the authority of 31 U.S.C. 6301, et seq., and is subject to all applicable laws and regulations of the United States in effect on the date this cooperative agreement is awarded, including but not limited to 14 CFR Part 1260 (Grants and Cooperative Agreements).
12. Applicable statement, if checked:
_____ No change is made to existing provisions or special conditions.

UNITED STATES OF AMERICA

(signature and date)

(name), Grant Officer

Applicable enclosure(s), if checked:
_____ Provisions
_____ Special conditions
_____ Budget summaries and details

Figure 2

Provisions

The following provisions are incorporated by reference:

Full text reference	Title	Date
§ 1260.402	Publications and Reports.	Aug. 1992.
§ 1260.403	Extensions	Jun. 1992.
§ 1260.404	Suspension or Revocation.	Jun. 1992.
§ 1260.405	Change in Principal Investigator or Scope.	Feb. 1992.
§ 1260.406	Allowable Costs	Jun. 1992.
§ 1260.407	Financial Management.	Jun. 1992.
§ 1260.408	Equipment and Other Property.	Jun. 1992.
§ 1260.409	Patent Rights-Retention by the Grantee.	Feb. 1992.
§ 1260.410	Rights in Data	Feb. 1992.
§ 1260.411	Security	Jun. 1992.
§ 1260.412	Civil Rights	Feb. 1992.
§ 1260.413	Subcontracts	Jun. 1992.
§ 1260.414	Clean Air-Water Pollution Control Acts.	Mar. 1992.
§ 1260.415	Procurement Standards.	Feb. 1992.
§ 1260.416	Interest Bearing Accounts.	Jan. 1992.
§ 1260.417	Debarment and Suspension and Drug-Free Workplace.	Feb. 1992.
§ 1260.418	Foreign National Employee Investigative Requirements.	May 1992.
§ 1260.419	Restrictions on Lobbying.	Apr. 1990.
§ 1260.420	Travel and Transportation.	Jun. 1992.
§ 1260.421	Program Income	Jun. 1992.

(Source: 14 CFR Part 1260. Provisions incorporated by reference have the same force and effect as if they were given in full text. Copies of Code of Federal Regulation volumes are available in many libraries and for purchase from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Copies of OMB Circulars referenced in the provisions may be obtained from the Office of Administration, Publications Unit, room G-236, New Executive Office Building, Washington, DC 20503. An index of existing Circulars is contained in 5 CFR 1310.)

Figure 2

Budget Summary

From _____ to _____

	A	NASA use only B	C
1. Direct Labor (salaries, wages, and fringe benefits)			
2. Other Direct Costs:			
a. Subcontracts			
b. Consultants			
c. Equipment			
d. Supplies			
e. Travel			
f. Other			
3. Indirect Costs			
4. Other Applicable Costs			
5. Subtotal—Estimated Costs			
6. Less Proposed Cost Sharing (if any)			
7. Carryover Funds (if any)			
a. Anticipated amount			
b. Amount used to reduce budget			
8. Total Estimated Costs			XXXXX
APPROVED BUDGET	XXXXX	XXXXX	

Instructions

1. Provide a separate budget summary sheet for each year of the proposed research.
2. Grantee estimated costs should be entered in Column A. Columns B and C are for NASA use only. Column C represents the approved grant budget.
3. Provide in attachments to the budget summary the detailed computations of estimates in each cost category, along with any narrative explanation required to fully explain proposed costs.

ADDITIONAL INSTRUCTIONS ON REVERSE

Specific Costs

1. Direct Labor (salaries, wages, and fringe benefits). Attachments should list number and titles of personnel, amount of time to be devoted to the grant, and rates of pay.
2. Other Direct Costs:
a. Subcontracts—Attachments should describe the work to be subcontracted, estimated amount, recipient (if known), and the reason for subcontracting this effort.
b. Consultants—Identify consultants to be used, why they are necessary, time to be spent on the project, and rates of pay (not to exceed the equivalent of the daily rate for GS-18 in Federal service, excluding expenses and indirect cost.)
c. Equipment—List separately and explain the need for items of equipment exceeding $1,000. Describe the basis for the estimated cost. General purpose, non-technical equipment is not allowable as a direct cost to NASA grants unless specifically approved by the grant officer.
d. Supplies—Provide general categories of needed supplies, the method of acquisition, estimated cost, and the basis for the estimate.
e. Travel—List proposed trips individually, describe their purpose in relation to the grant, provide dates, destination, and number of travellers where known, and explain how the cost for each was derived.
f. Other—Enter the total of any other direct costs not covered by 2.a. through 2.e. Attach

an itemized list explaining the need for each item and the basis for the estimate.

3. Indirect Costs—Identify indirect cost rate(s) and base(s) as approved by the cognizant Federal agency, including the effective period of the rate. Provide the name, address, and telephone number of the Federal agency and official having cognizance over such matters for the institution. If unapproved rates are used, explain why and include the computational basis for the indirect expense pool and corresponding allocation base for each rate.

4. Other Applicable Costs—Enter the total of any other applicable costs. Attach an itemized list explaining the need for each item and the basis for the estimate.

5. Subtotal-Estimated Costs—Enter the sum of items 1., 2.a. through 2.f., 3., and 4.

6. Less Proposed Cost Sharing (if any)—Enter the amount proposed, if any. If cost sharing is based on specific cost items, identify each item and amount in attachment.

7. Carryover Funds (if any)—Enter the dollar amount of any funds that are expected to be available for carryover from the prior budget period. Identify how the funds will be used if they are not used to reduce the budget. NASA officials will decide whether to use all or part of the anticipated carryover to reduce the budget. Not applicable to 2nd-year and subsequent-year budgets submitted for the award of a multiple year grant.

8. Total Estimated Costs—Enter the total after subtracting items 6. and 7.b. from item 5.

Exhibit C—Release of Withholding

To: Financial Management Office
From: Grant Officer
Subject: Release of Withholding Under Grant Number _____

The summary of research and other final reports have been received from the grantee, (*name of grantee*). The Financial Management Office may release for payment the amount withheld under the special condition entitled "Withholding."
(Signature and name)

[FR Doc. 92–25110 Filed 10–19–92; 8:45 am]
BILLING CODE 7510–01–M

federal register

Tuesday
October 20, 1992

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commission

24 CFR Part 203

Mutual Mortgage Insurance and Rehabilitation Loans; Miscellaneous Amendments; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-92-1509; FR-2853-F-02]

RIN 2502-AF02

Mutual Mortgage Insurance and Rehabilitation Loans; Miscellaneous Amendments

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final a proposed rule published April 25, 1991 (56 FR 19212) describing miscellaneous amendments to current regulations governing actions by mortgagees with respect to insured mortgages in default. The purpose of the rule is to improve the efficiency of the Single Family Mortgage Insurance Program.

EFFECTIVE DATE: November 19, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph Bates, Director, Single Family Servicing Division, room 9178, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 708-1672 or, for hearing and speech-impaired, (202) 708-4594. (These are not toll-free numbers.).

SUPPLEMENTARY INFORMATION:

I. Introduction

On April 25, 1991, the Department published a proposed rule for public comment containing various amendments to regulations governing FHA-insured mortgages for single family homes, authorized by title II of the National Housing Act (the Act). Under the FHA program, home mortgages are insured, and reserve funds provide the money to pay insurance claims to lenders upon default on the mortgages. The funds are replenished by insurance premiums paid by mortgagors to obtain the insurance, and by income from the investment of proceeds from the sales of homes that HUD acquires upon payment of insurance claims to the lenders.

This rule makes final the April 25, 1991 rule, which specifically amended regulations governing mortgagees' obligations with regard to foreclosures, claims for insurance benefits, and preservation and maintenance of properties upon default by mortgagors. The purpose of the rule is to improve the efficiency of the program, thereby protecting the FHA insurance funds and assuring the availability of the program for use by future homebuyers. The Department received approximately 70 comments from lenders, attorneys, title insurance companies, and industry associations. After analyzing the public comments, the Department has made changes to the rule where appropriate.

II. Discussion of Public Comments and Responses

1. Commencement of Foreclosure Action Upon Default (24 CFR 203.355, 203.377, and 203.606

The Department proposed amending 24 CFR 203.355 to shorten the time within which to commence foreclosure (or obtain a deed in lieu) from one year to six months from the date of default and to shorten the time with regard to vacant or abandoned property from 60 days to 30 days after the date the property is discovered, or should have been discovered, to be vacant or abandoned. Where FHA time limits cannot be met because of State law requirements, the proposed rule would have shortened the time to begin foreclosure from 60 days to 30 days.

Fifty-two commenters addressed this issue. They generally objected to both the six-month limitation for the initiation of foreclosure after default and the 30-day limitation following vacancy or removal of a State prohibition. The Department specifically requested that commenters address any reasons that the six-month deadline could not reasonably be met, and the commenters identified, among other reasons, pre-foreclosure requirements and compliance with the HUD assignment program, administrative matters, State law requirements regarding notice, and the desire to encourage workout or forbearance agreements with mortgagors.

Some commenters agreed with the reduction in time because it preserves the property pending conveyance. Others, including the Mortgage Bankers Association, stated that a nine-month limitation, which is similar to the time permitted by private mortgage insurers, would be acceptable.

Commenters were unanimous in their objection to the requirement that foreclosure be initiated with 30-days after discovery that the property is vacant or abandoned or after removal of the State prohibition or bankruptcy stay. They stated many of the same pre-foreclosure requirements identified above as reasons. They also claim that, in vacancy cases, it is difficult to determine whether the property is vacant or abandoned, particularly in tenant-occupied properties that may be vacant for 30 days between tenancies. The commenters favored retention of the 60-day limitation.

The Department is impressed with the arguments of the commenters, and agrees with those who suggested that a nine-month limitation is reasonable. Therefore, the final rule provides that foreclosure must be initiated within nine months after default. This provides ten months from the due date of the mortgagor's last unpaid installment before foreclosure must be initiated.

The Department is taking this opportunity to clarify a misunderstanding, which was evident from comments, regarding the time frame for initiating foreclosure as related to the assignment program. Some commenters believed that the assignment process had to be completed within the proposed six-month time frame, making the deadline impossible to meet. Mortgagees may issue the notice required by 24 CFR 203.652 (Assignment Letter No. 2 or 3) as late as 20 days before the expiration of the time frame required in 24 CFR 203.355, which under this final rule is nine months.

The Department also agrees with commenters on the difficulties of initiating foreclosure within 30 days after discovery of a vacancy or after release of State prohibition or bankruptcy stay. The final rule establishes a 60-day time frame to initiate foreclosure after the discovery of a vacancy or abandonment, or after the property has been vacant for 60 days, whichever is later. The final rule also retains the 60-day time frame in the existing regulations for initiating foreclosure after release of State prohibition or bankruptcy stay.

The arguments that it is difficult to determine whether the property is vacant or abandoned or that the property may be between tenancies should not affect a decision to initiate foreclosure. A vacant property is vulnerable to potential damage, even between tenancies. Property which is both vacant and subject to a defaulted mortgage is particularly vulnerable, whether or not it has been abandoned. The provision requiring foreclosure of defaulted mortgages on vacant or abandoned mortgages within a specific time frame will be retained, but the time frame is extended to 60 days after discovery.

2. Completion of Foreclosure and Conveyance to the Secretary (24 CFR 203.356 and 203.359)

Under 24 CFR 203.356, mortgagees are required to give written notice to HUD

within 30 days after instituting foreclosure proceedings, and to exercise reasonable diligence in completing the proceedings. In the April 25, 1991 proposed rule, the Department proposed to extend the requirement to exercise reasonable diligence to acquiring title to and possession of the property once the foreclosure proceedings have been completed. Commenters did not object to this proposal, but requested that the mortgage banking industry be consulted in establishing reasonable diligence time limits for each State. Some commenters were concerned because they do not always receive timely notice in those jurisdictions where the foreclosure deed is recorded by a sheriff or other public official. Commenters also suggested that "foreclosure deed" be defined for those States where the term does not have a clear meaning.

The Department agrees with the commenters that the industry should be consulted in establishing reasonable diligence time limits, and will take steps to do so. Additionally, the Department will define "foreclosure deed" for those States where the term does not have a clear meaning. However, since these issues do not affect the extension of the reasonable diligence requirement to acquiring title to and possession of the property, as proposed, the final rule is unchanged from the proposed rule.

3. Repair of Damage and Preservation of Property by Mortgagee (24 CFR 203.378 and 203.379)

Section 136(a) of the Department of Housing and Urban Development Reform Act of 1989 amended section 204(a) of the Act to require mortgagees, as a condition of the receipt of insurance benefits, to maintain or assure the maintenance of the property while it is in the possession of the mortgagee. The Department interpreted this provision as congressional intent to strengthen HUD's position with regard to property conveyed in an unrepaired condition, and proposed amending the regulations on damaged property to require mortgagees to be responsible for any damage, of whatsoever nature, to the property while the property is in the possession of the mortgagee.

The comments on this issue were unanimous in their objection to the proposal. They stated that this proposal shifted the risk of damage, particularly vandalism, from HUD to mortgagees. They argued that Congress did not intend this result in enacting section 136(a).

Many mortgagees questioned when property comes into their possession. Those who recognized the definition in § 203.379a(b) questioned the meaning of "should have been discovered". Several other commenters questioned the distinction between "vacant" and "abandoned," and were concerned about the possibility of being accused of trespass if the property is only vacant, stating that it would be difficult for an inspector to determine which applies. They also pointed out that the property may be vacant because it is between tenancies, and therefore may only appear to be abandoned.

There was strong objection to holding the mortgagee responsible if the mortgagee was not at fault and has taken appropriate protective action. The commenters argued that a mortgagee cannot adequately protect against most vandalism. Some mortgagees suggested that, under the proposed policy change, lenders might refuse to make loans in inner cities and high vandalism areas, causing such areas to be "red lined."

All mortgagees objected to the termination of the insurance contract because of failure to meet repair time requirements.

Since mortgagees are currently responsible for damage to property under most circumstances while the property is in their possession, the effect of the proposed rule would be to extend those circumstances to include damage such as that caused by vandalism and frozen pipes, even when the mortgagee was diligent in taking protection and preservation actions. Upon consideration of the comments on the proposed changes, the Department agrees that the final rule should be modified, with regard to mortgages insured after the effective date of the rule, to allow the mortgagee reimbursement for repairs required by the Secretary in an amount not to exceed HUD's estimate of the damage, less any insurance recovery, where the property damage was from causes other than fire, flood, earthquake, or tornado; and the property damage did not result from the mortgagee's failure to take reasonable action to protect and preserve the property.

In addition to the existing requirement to obtain approval to convey properties damaged under most circumstances, the final rule, with regard to mortgages insured after the effective date of this rule, will require mortgagees to provide notice to the Secretary for all remaining types of damage before conveyance. In effect, in all cases, regardless of whether the mortgagee was responsible for the damage or whether the mortgagee is eligible for reimbursement of the repairs, the mortgagee must notify the Secretary prior to conveying any damaged property.

If the mortgagee fails to provide notice, HUD will either reconvey the property to the mortgagee under the provisions of §§ 203.363 and 203.364, or require the mortgagee to reimburse the Secretary for the Secretary's estimate of the cost of repair or any insurance recovery, whichever is greater. By providing advance notice, HUD will have the opportunity to decide in every instance (which is not currently the case) whether to accept damaged property or to require that the mortgagee repair the damage before conveyance. In those cases where the mortgagee is eligible for reimbursement for the cost of repairs, such costs incurred by the mortgagee will be limited to HUD's estimate, and the mortgagee will be responsible for any costs incurred above HUD's estimate.

With regard to commenters' concerns about when a mortgagee has possession, the statute does not identify the time at which the mortgagee takes possession of the property. The regulation supplies this date as the date the mortgagee first discovers the property is vacant or should have discovered it to be vacant by making required inspections.

The term "damage" should not cause the problems feared by some commenters, since § 203.378(b) excludes waste committed by the mortgagor from the mortgagee's responsibility. There may be some questions about whether damage occurred before or after the mortgagee took possession, but this issue can be resolved by a properly performed inspection.

The Department also agrees with the commenters that termination of the insurance contract 90 days after conveyance is unnecessarily harsh, and the proposed § 203.317a has been dropped from the final rule. On reconsideration, the reduction of insurance benefits and the mortgagee's liability for property expenditures, as provided in §§ 203.363 and 203.364, should be sufficient to encourage prompt repairs. If the mortgagee does not accept the property and fails to make the necessary repairs, HUD may refuse to pay the claim.

4. Deficiency Judgments (Section 203.369)

The proposed rule removed the specific criteria in § 203.369 for determining which mortgagors may be pursued for deficiency judgments, and provided that *any* defaulting mortgagor may potentially be pursued for a deficiency judgment. Some commenters were of the opinion that the scope of the deficiency judgment regulations should not be broadened, but they did not

allege that the proposal would be unfair, irrational or burdensome. The Department continues to believe that a case-by-case determination is a fair and rational method for selecting mortgagors who should be pursued for deficiency judgment, and the proposed rule will be made final. The Department will rely primarily on whether the mortgagor retains significant assets and can be expected to discharge all or part of a deficiency judgment within a reasonable time, but will also consider other factors, such as State laws and cost-effectiveness, as well.

Several mortgagees commented that the mortgagees should be paid for their administrative costs but did not specify what actions with regard to pursuit of deficiency judgments will add to their costs. The Department is of the opinion that nearly all additional activity is conducted by an attorney and an additional fee is provided for this. Additionally, those fees and costs are reimbursed on a basis of 100 percent so that the mortgagee bears none of the cost.

5. Title Defects and Satisfactory Title Evidence (24 CFR 203.359, 203.366, 203.387, 203.391, and 203.402)

The proposed rule would have required title defects to be corrected by a mortgagee within 30 days after notification of a defect. If the defect was not corrected within 30 days, the proposed rule would have required the mortgagee to pay HUD's holding costs until the defect was corrected or HUD reconveyed the property. In addition, no costs borne by the mortgagee for correcting defects in the title would be reimbursed. If the title defect was not corrected within 90 days from reconveyance, the insurance contract would be terminated.

A total of 51 commenters, representing mortgagees, attorneys, and title companies opposed these provisions. They argued that only the most simple title defects can be cured within 30 days, and that a good number require 90 days. Mortgagees claim that they have no control over the time taken by attorneys and title companies to take the necessary action to cure defects. They also argued that they should not be required to pay HUD's holding costs since they did not cause the defects. Title companies stated that the time limitation prevents them from curing defects through litigation or other time-consuming means, should they decide to take such actions under the title insurance contract. Finally, the commenters strongly objected to the provision to terminate the insurance contract after the 90-day period.

The Department was impressed by commenters' arguments that 30 days is an insufficient time within which to correct title defects, and the final rule has been changed to allow 60 days. However, the Department does not believe that it should bear the costs of holding the property or correcting a defect that should have been corrected before conveyance. The final rule provides for reductions in the claim payments in the form of debenture interest curtailments and restrictions on the payment of certain expenses, rather than termination of the insurance contract.

Under the final rule, where a mortgagee conveys defective title, HUD will allow the mortgagee 60 days from the date of HUD's notice to correct the title defect. If the defect is not corrected within the 60 days, the mortgagee will be required to reimburse HUD for its holding costs as well as interest on the total claim paid. Where a mortgagee misses HUD's time frame to convey and delays conveyance in order to correct title, HUD will curtail debenture interest and the mortgagee will not be eligible to claim protection and preservation expenses incurred after the date the property should have been conveyed to HUD.

Commenters also objected to the removal of § 203.387, which provides that title and title evidence are considered satisfactory if they are acceptable to prudent lending institutions and leading attorneys generally in the community in which the property is located. HUD explained that the determination of whether title and title evidence are satisfactory is one that should be made by the Secretary rather than delegated to private parties who may have an interest at stake. Commenters are concerned that untrained field staff will refuse to accept titles that the industry finds acceptable and that title rejections will increase. The Department has decided to retain the regulation, but has added language in § 203.387 to indicate that in cases of disagreement the Secretary will make the final decision, using objective sources, whether title and title evidence are satisfactory and acceptable.

6. Termination of the Insurance Contract

The proposed rule would have added a provision (§ 203.317a) to the regulations to provide that the contract of insurance would be canceled if the mortgagee failed to meet the time limitations for correcting a defective title and repairing damaged property. The commenters strongly objected to this provision, with some arguing that the insurance contract should be terminated only where it can be proved that the mortgagee knowingly and willfully violated regulations. Others suggested that the provision would affect the number of lenders participating in the FHA program and would increase the cost of FHA insurance to consumers. As indicated earlier in the preamble discussions on damaged property and title defects, the Department has removed this proposal from the final rule, as well as all references to termination in other sections. The insurance fund will be adequately protected by other steps taken in the rule, discussed earlier, with regard to curtailment of debenture interest, reimbursement of costs, and, upon reconveyance, reimbursing insurance benefits received.

7. Noncompliance With Regulations (§§ 203.363 and 203.364)

The Department proposed amendments to provide that, upon reconveyance for failure to comply with the regulations, a mortgagee must reimburse the Secretary's daily costs of holding the property, based on the Secretary's estimate of the taxes, maintenance, administrative expenses, and lost investment income caused by the inability to dispose of the property. In addition, the mortgagee would not be reimbursed for any expenses incurred by it in connection with the property nor paid any debenture interest after the date of initial conveyance.

Generally, mortgagees did not object to the reconveyance of property because of noncompliance with regulations, although there was some concern that field offices may apply the remedy harshly or incorrectly. The major objection to the proposal involved an interpretation of the expenses imposed on the mortgagee. Some mortgagees questioned what costs were involved in "administrative expenses" and "loss of investment income," and objected to making the mortgagee responsible for taxes and other costs that HUD would pay if the property is not reconveyed. The commenters also objected to basing these charges on estimates.

The Department believes that debenture interest should not be paid to a mortgagee after reconveyance for noncompliance with the regulations, since reconveyance occurs because of an error that should have been corrected by the mortgagee before conveying the property to the Secretary. The final rule provides that the mortgagee must reimburse the Secretary for any expenses incurred by the Secretary from the time the mortgagee improperly

conveyed the property until reconveyance by the Secretary.

The final rule provides that, in cases where HUD reconveys the property to the mortgagee, the mortgagee will be required to reimburse HUD for its holding costs from the date the deed to the Secretary was filed for record to the date of reconveyance, the full amount of insurance benefits received, and interest on the amount of insurance benefits from the date the benefits were paid to the date they are refunded at an interest rate set in conformity with the Treasury Fiscal Requirements. In cases where the mortgagee reapplies for mortgage insurance benefits following its reconveyance of the property to the Secretary, the mortgagee will not be reimbursed for any expenses incurred in connection with the property after its reconveyance from HUD, nor be paid any debenture interest accrued after the date of the original conveyance to HUD. In addition, a deduction from the claim for insurance benefits will be made for any reduction in the Secretary's estimate of the value of the property occurring from the time of reconveyance by the Secretary to the time of reapplication by the mortgagee.

The Department uses a nationwide average of its daily holding costs, which include property taxes, maintenance and operating expenses for the property, and administrative expenses, because it does not have a cost-effective method of computing the total actual expenses, including administrative expenses through the date of reconveyance, in every locality. Administrative expenses currently includes only salaries. The Department does not believe these daily holding costs differ significantly from the holding costs that would be incurred by the mortgagee had the property not been prematurely conveyed to the Secretary.

HUD agrees with the commenters that "loss of investment income" should not be included in these daily holding costs because of the difficulty in estimating that element of the costs. Rather, the final rule has been changed to require the mortgagee to pay to HUD the current Federal rate of interest on the full amount of the insurance benefits received, from the date the insurance benefits were paid to the mortgagee to the date the mortgagee refunded the insurance benefits.

8. Review of Claims (Section 203.365)

The Department proposed amending its regulations on documents and information required to be submitted by a mortgagee when claiming insurance benefits to comport with current practice and requirements. Section 203.365, as proposed, requires mortgagees to maintain a claim file containing supporting documentation of the information for three years after a claim has been paid, and to give HUD access to the claim file at any time during the three-year period, or face withdrawal of approved-mortgagee status, debarment, or immediate suspension of all claim payments. The rule would also authorize the Department to use statistical sampling in selecting claims to be reviewed and in determining any overpayments. (The identification of insurance benefit underpayments (funds due the mortgagee) for any reason are the responsibility of the mortgagee, and any adjustments must be made only through the supplemental claim process.)

Comparatively few comments were received on this amendment. There was some objection to the requirement that claim files be made available in 24 hours, particularly where files are maintained off-site or where the number of files requested is large. There were also several requests for more specificity on what documents must be retained and how long after an audit they must be retained. Several commenters suggested that there should be a more definitive statement of the statistical sampling procedure, including methodology, confidence level, correlation technique, and appeal procedure.

The documents to be retained and the time for retention are specified in § 203.365(c) of the final rule. The three-year maintenance period and the 24-hour availability requirement are not new requirements. The rule establishes in the regulations a long-standing Departmental policy and practice. The final rule on this issue has not been changed, except to clarify that claim files relating to an unresolved or ongoing claim review must be maintained until final resolution of the review.

The Department agrees that a more definitive statement on the statistical sampling is desirable, but the regulation is not an appropriate vehicle for this explanation. Further elaboration of the procedure and methodology will be provided in handbook or mortgagee letter form.

An amendment to § 203.365 was also proposed to provide that the mortgagee furnish the recording authority with sufficient information so that the original deed can be sent to HUD by the recording authority, rather than the current rule that mortgagees forward the deed to HUD when received from the recording authority. A number of commenters objected to this provision, stating that the change would create an uncontrollable situation, resulting in lost deeds. The Department agrees, and has removed this provision from the final rule.

9. Notice of Transfer of Servicing (Section 203.502)

The proposed rule would have amended § 203.502 to require that, when servicing of a mortgage is transferred to another mortgagee, the mortgagee or servicer to whom it is transferred (transferee) notify HUD within 15 days of the transfer. The change was to bring the regulation into conformity with HUD's Mortgage Record Change 92080 form, which states the time as 15 days. However, the amendment also changed the party responsible for the notification from the mortgagee effecting the transfer (seller) to the transferee.

Several commenters pointed out that the effect of this change would be a "dual notification" system, since § 203.431 of the current regulations already require the seller to notify HUD within 15 days. HUD agrees, and § 203.502 in the final rule has been changed to provide that the seller notify HUD within 15 days, consistent with § 203.431.

10. Other Changes

The final rule also revises § 203.402 regarding the regulatory limitation on the amount a mortgagor may receive for executing a deed in lieu of foreclosure and thereby providing full reimbursement to the mortgagee of the actual amount paid to the mortgagor as consideration for executing a deed in lieu.

HUD may accept title to property secured by HUD-insured loans in default either through a foreclosure action or by accepting a deed in lieu of foreclosure. The latter action includes conveyances from mortgagees who have acquired title from the mortgagor by taking a deed in lieu of foreclosure. Costs are incurred in both procedures, but taking title by accepting a deed in lieu is less costly than a foreclosure and is a simpler, faster procedure. Costs associated with a foreclosure action can be several thousand dollars more than the costs for accepting a deed in lieu, and, in addition, the mortgagor is left with a blemished credit report.

In addition, because acquisition of title to property by accepting a deed in lieu of foreclosure is a faster procedure, benefits inure to the Department in the form of reduced acquisition, protection, preservation and interest costs. Specifically, the mortgage insurance claim is paid earlier, the mortgagee is

responsible for the condition of the property for a shorter time period, the property may be disposed of at an earlier date, and the debenture interest to be paid is calculated over a shorter period of time.

Under the current § 203.402(f), the dollar amount that may be paid to the mortgagor as consideration for executing a deed in lieu may not exceed $200. This final rule revises § 203.402(f) by removing the sentence that limits the payment to $200. Additionally, a new paragraph (p) is being added to § 203.402 providing that the amount paid to the mortgagor as consideration for the execution of a deed in lieu of foreclosure will be set by the Secretary. Expressly granting the Secretary the authority in the regulation to establish the amount of consideration will allow the Secretary to change that amount as circumstances dictate.

The change will also result in full reimbursement to the mortgagee of the amount paid to a mortgagor as consideration for executing a deed in lieu. As currently written, § 204.402(f) not only caps the consideration at $200, but also limits the reimbursement to the mortgagee to two-thirds of the actual payment. By removing the provision governing the mortgagor's consideration for executing a deed in lieu, the two-thirds reimbursement limitation no longer will be acceptable to the deed in lieu consideration fee, because only those fees listed in § 203.402(f) are subject to the two-thirds reimbursement limitation.

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. However, part 10 does provide for exceptions from that general rule when the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public participation is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1.) The Department finds that good cause exists to publish the amendment to § 203.402(f) and the addition of § 203.402(p), as discussed in this section, for effect without first soliciting public comment, in that the prior public procedure is unnecessary. These amendments are for the purpose of encouraging use of the deed in lieu of foreclosure procedure and do not have any adverse impact on either the mortgagor or the mortgagee.

III. Other Matters

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by President Ronald Reagan on February 17, 1981. An analysis of the rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Specifically, the requirements of this rule are directed to lenders and do not impinge upon the relationship between the Federal government and State and local governments. To the extent State and local law is relevant to the requirements of the rule, those laws are followed.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have a significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. The rule governs the actions of mortgagees with respect to insured mortgages in default. Any effect on the family would likely be indirect and insignificant.

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that it's rule will not have a significant economic impact on a substantial number of small entities, because the purpose of the program is to protect lenders from loss by providing insurance on home mortgages.

This rule was listed as item number 1161 in the Department's Semiannual Agenda of Regulations published at 57 FR 16804, 16827 on April 27, 1992, under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

For the reasons set forth in the preamble, part 203 of title 24 of the Code of Federal Regulations is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for 24 CFR part 203 is revised to read as follows;

Authority: 12 U.S.C. 1709, 1710, 1715b; 42 U.S.C. 3535(d). In addition, subpart C is also issued under 12 U.S.C. 1715(u).

2. Section 203.355 is revised to read as follows:

§ 203.355 Acquisition of property.

(a) *In general.* Upon default of a mortgage, except as provided in paragraphs (b) through (f) of this section, the mortgagee shall take one of the following actions within nine months from the date of default, or within any additional time approved by the Secretary or authorized by §§ 203.345, 203.346, or 203.650 through 203.660 of this part:

(1) Obtain a deed in lieu of foreclosure (see §§ 203.357, 203.389, and 203.402(f) of this part) with title being taken in the name of the mortgagee or the Secretary; or

(2) Commence foreclosure. (b) *Vacant or abandoned property.* With respect to defaulted mortgages on vacant or abandoned property, if the mortgagee discovers, or should have discovered, that the property is vacant or abandoned, the mortgagee must commence foreclosure within the later of 120 days after the date the property became vacant, or 60 days after the date the property is discovered, or should have been discovered, to be vacant or abandoned; but no later than nine months from the date of default as provided in paragraph (a) of this section. The mortgagee must not delay foreclosure on vacant or abandoned property because of the requirements of § 203.606 of this part, or because of the

notice requirements of §§ 203.650 and 203.651 of this part.

(c) *Law prohibiting foreclosures within nine months.* If the laws of the State in which the mortgaged property is located or if Federal bankruptcy law does not permit the commencement of foreclosure within the time limits described in paragraphs (a) and (b) of this section, the mortgagee must commence foreclosure within 60 days after the expiration of the time during which foreclosure is prohibited. If the laws of the State in which the mortgaged property is located require or if Federal bankruptcy law requires the prosecution of a foreclosure to be discontinued, the mortgagee must recommence the foreclosure within 60 days after the expiration of the time during which foreclosure is prohibited.

(d) *Property located on Indian land.* Upon default of a mortgage on property located on Indian land insured pursuant to section 248 of the National Housing Act (see § 203.43h of this part), the mortgagee must comply with §§ 203.350(b) and 204.664 of this part.

(e) *Property located on Hawaiian home lands.* Upon default of a mortgage on property located on Hawaiian home lands insured pursuant to section 247 of the National Housing Act (see § 203.43i of this part), the mortgagee must comply with §§ 203.350(c) and 203.665 of this part.

(f) *Property located on the Allegany Reservation of the Seneca Nation of Indians.* Upon default of a mortgage on property located on the Allegany Reservation of the Seneca Nation of Indians authorized by section 203(q) of the National Housing Act (see § 203.43j of this part), the mortgagee must comply with §§ 203.350(d) and 203.666 of this part, unless the mortgagor and the lessor have executed a lease renewal or a new lease either with a term of not less than five years beyond the maturity date of the mortgage, or with a term established by arbitration award. If a lease renewal or new lease has been executed, the mortgagee must comply with paragraph (a) of this section.

3. Section 203.356 is revised to read as follows:

§ 203.356 Notice of foreclosure; reasonable diligence requirements.

The mortgagee must give written notice to the Secretary within 30 days after the institution of foreclosure proceedings, and must exercise reasonable diligence in prosecuting the foreclosure proceedings to completion and in acquiring title to and possession of the property. A time frame that is determined by the Secretary to constitute "reasonable diligence" for each State is made available to mortgagees.

4. Section 203.359 is revised to read as follows:

§ 203.359 Time of conveyance to the Secretary.

(a) *For mortgages insured under firm commitments issued prior to November 19, 1992 or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter prior to November 19, 1992.* After acquiring good marketable title to and possession of the property the mortgagee must transfer the property to the Secretary:

(1) Within 30 days after acquiring possession of the mortgaged property by foreclosure or other means; or

(2) Within such further time as may be necessary to complete the title examination and perfect the title.

(b) *For mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after November 19, 1992.*—(1) *Conveyance by the mortgagee.* The mortgagee must acquire good marketable title and transfer the property to the Secretary within 30 days of the later of:

(i) Filing for record the foreclosure deed;

(ii) Recording date of deed in lieu of foreclosure;

(iii) Acquiring possession of the property;

(iv) Expiration of the redemption period; or

(v) Such further time as the Secretary may approve in writing.

(2) *Direct conveyance.* In cases where the mortgagee arranges for a direct conveyance of the property to the Secretary, the mortgagee must ensure that the property is transferred to the Secretary within 30 days of the reasonable diligence time frame specified in § 203.356 of this part.

5. Section 203.363 is revised to read as follows:

§ 203.363 Effect of noncompliance with regulations.

(a) *For mortgages insured under firm commitments issued prior to November 19, 1992 or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter prior to November 19, 1992.* If, for any reason, the mortgagee fails to comply with the regulations in this subpart, the Secretary may hold processing of the application for insurance benefits in abeyance for a reasonable time in order to permit the mortgagee to comply, or, in the alternative, the Secretary may reconvey title to the property to the mortgagee, in which event the application for insurance benefits shall be considered as cancelled without prejudice to the rights of the mortgagee to reapply for insurance benefits at a subsequent date.

(b) *For mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after November 19, 1992.* If, for any reason, the mortgagee fails to comply with the regulations in this subpart, the Secretary may hold processing of the application for insurance benefits in abeyance for a reasonable time in order to permit the mortgagee to comply. In the alternative to holding processing in abeyance, the Secretary may reconvey title to the property to the mortgagee, in which event the application for insurance benefits shall be considered as cancelled and the mortgagee shall refund the insurance benefits to the Secretary as well as other funds required by § 203.364 of this part. The mortgagee may reapply for insurance benefits at a subsequent date; provided, however, that the mortgagee may not be reimbursed for any expenses incurred in connection with the property after it has been reconveyed by the Secretary, or paid any debenture interest accrued after the date of initial conveyance or after the date conveyance was required by § 203.359 of this part, whichever is earlier, and there will be deducted from the insurance benefits any reduction in the Secretary's estimate of the value of the property occurring from the time of reconveyance to the time of reapplication.

6. Section 203.364 is revised, to read as follows:

§ 203.364 Mortgagee's liability for property expenditures.

Where the Secretary acquires a property and thereafter it becomes necessary for the Secretary to reconvey the property to the mortgagee due to the mortgagee's noncompliance with these regulations or the application for insurance benefits is withdrawn with the consent of the Secretary, the mortgagee shall reimburse the Secretary for all expenses incurred in connection with such acquisition and reconveyance. The reimbursement shall include interest on the amount of insurance benefits refunded by the mortgagee from the date the insurance benefits were paid to the date of refund at an interest

rate set in conformity with the Treasury Fiscal Requirements Manual, and the Secretary's cost of holding the property, accruing on a daily basis, from the date the deed to the Secretary was filed for record to the date of reconveyance. These costs are based on the Secretary's estimate of the taxes, maintenance and operating expenses of the property, and administrative expenses. Appropriate adjustments shall be made by the Secretary on account of any income received from the property.

7. Section 203.365 is revised, to read as follows:

§ 203.365 Documents and information to be furnished the Secretary; claims review.

(a) *Items to be furnished the Secretary.* Within 45 days after the deed is filed for record, the mortgagee must forward to the Secretary:

(1) A copy of the deed to the Secretary that has been filed for record and the title evidence continued so as to include recordation of the deed.

(2) Fiscal data pertaining to the mortgage transaction.

(3) Any additional information or data that the Secretary may require.

(b) *Items to be retained by mortgagee.* The mortgagee must retain all cash amounts, held or deposited for the account of the mortgagor or to which it is entitled under the mortgage transaction, that have not been applied in reduction of the principal mortgage indebtedness.

(c) *Claim file to be maintained by mortgagee.* (1) The Secretary may verify the accuracy of information regarding the insurance claim either before payment of the claim or after payment by periodic reviews of the mortgagee's records. Mortgagees must reimburse the Secretary for any claim and interest overpaid because of incorrect, unsupported, or inappropriate information provided by the mortgagee, or because of failure to provide correct information.

(2) Mortgagees must maintain a claim file containing documentation supporting all information submitted for claim payment for at least three years after a claim has been paid. All claim files for claims paid during a period relating to an unresolved or ongoing claim review must be maintained until final resolution of such review. Information to be maintained in the claim file includes receipts covering all disbursements as required by the fiscal data form, ledger cards covering the mortgage transaction, and any additional information or data relevant to the mortgage transaction or insurance claim.

(3) The Secretary may review any claim file at any time during the three-year period after the claim has been paid. Denial of access to any files will be grounds for withdrawal of the mortgagee's approved lender status, debarment by the Secretary, or immediate suspension of all claim payments.

(4) Within 24 hours of a request by the Secretary, a mortgagee must make available for review, or forward to the Secretary, hard copies of identified claim files.

(d) *Statistical sampling.* HUD may use statistical sampling in selecting claims to be reviewed and in determining the amount due the Secretary because of overpayment.

8. Section 203.366 is amended by redesignating the existing text as paragraph (a) and adding a new paragraph heading, and by adding a new paragraph (b), to read as follows:

§ 203.366 Conveyance of marketable title.

(a) *Satisfactory conveyance of title and transfer of possession.* * * *

(b) *Conveyance of property without good marketable title.* (1) For mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after November 19, 1992, if the title to the property conveyed by the mortgagee to the Secretary is not good and marketable, the mortgagee must correct any title defect within 60 days after receiving notice from the Secretary, or within such further time as the Secretary may approve in writing.

(2) If the defect is not corrected within 60 days, or such further time as the Secretary approves in writing, the mortgagee must reimburse the Secretary for HUD's costs of holding the property, accruing on a daily basis, and interest on the amount of insurance benefits paid to the mortgagee at an interest rate set in conformity with the Treasury Fiscal Requirements Manual from the date of such notice to the date the defect is corrected or until the Secretary reconveys the property to the mortgagee, as described in paragraph (b)(3) of this section. The daily holding costs to be charged a mortgagee shall include the costs specified in § 203.364 of this part.

(3) If the title defect is not corrected within a reasonable time, as determined by HUD, the Secretary will, after notice, reconvey the property to the mortgagee and the mortgagee must reimburse the Secretary in accordance with §§ 203.363 and 203.364 of this part.

9. In § 203.369, paragraphs (a) and (b) are revised, to read as follows:

§ 203.369 Deficiency judgments.

(a) *Mortgages insured on or after March 28, 1988.* (1) For mortgages insured pursuant to firm commitments issued on or after March 28, 1988, or pursuant to direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after March 28, 1988, the Secretary may require the mortgagee diligently to pursue a deficiency judgment in connection with any foreclosure. With respect to claims filed for insurance benefits on such mortgages, any judgment obtained by the mortgagee must be assigned to the Secretary.

(2) In cases where the Secretary requires the pursuit of a deficiency judgment and provides the mortgagee with the Secretary's estimate of the fair market value of the property, less adjustments, in accordance with § 203.368(e) of this part, the mortgagee must tender a bid at the foreclosure sale in that amount, and must take all other appropriate steps in accordance with State law to obtain a deficiency judgment.

(b) *Mortgages insured before March 28, 1988.* For mortgages insured pursuant to firm commitments issued before March 28, 1988, or pursuant to direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter before March 28, 1988, the Secretary may request that the mortgage diligently pursue a deficiency judgment in connection with the foreclosure. With respect to claims filed for insurance benefits on such mortgages, any judgment obtained by the mortgagee must be assigned to the Secretary.

* * * * *

10. Section 203.377 is revised, to read as follows:

§ 203.377 Inspection and preservation of properties.

The mortgagee, upon learning that a property subject to a mortgage insured under this part is vacant or abandoned, shall be responsible for the inspection of such property at least monthly, if the loan thereon is in default. When a mortgage is in default and a payment thereon is not received within 45 days of the due date, and efforts to reach the mortgagor by telephone within that period have been unsuccessful, the mortgagee shall be responsible for a visual inspection of the security property to determine whether the property is vacant. The mortgagee shall

take reasonable action to protect and preserve such security property when it is determined or should have been determined to be vacant or abandoned until its conveyance to the Secretary, if such action does not constitute an illegal trespass. "Reasonable action" includes the commencement of foreclosure within the time required by § 203.355(b) of this part.

11. Section 203.378 is amended by adding a paragraph heading to paragraph (a), revising paragraph (b), and adding new paragraphs (c) and (d), to read as follows:

§ 203.378 Property condition.

(a) *Condition at time of transfer.* * * *

(b) *Damage to property by waste.* The mortgagee shall not be liable for damage to the property by waste committed by the mortgagor, its heirs, successors or assigns in connection with mortgage insurance claims paid on or after July 2, 1968.

(c) *Mortgagee responsibility.* The mortgagee shall be responsible for:

(1) Damage by fire, flood, earthquake, or tornado;

(2) Damage to or destruction of security properties on which the loans are in default and which properties are vacant or abandoned, when such damage or destruction is due to the mortgagee's failure to take reasonable action to inspect, protect and preserve such properties as required by § 203.377 of this part, as to all mortgages insured on or after January 1, 1977; and

(3) As to all mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after November 19, 1992, any damage of whatsoever nature that the property is conveyed to the Secretary without notice to and approval by the Secretary as required by § 203.379 of this part.

(d) *Limitation.* The mortgagee's responsibility for property damage shall not exceed the amount of its insurance claim as to a particular property.

12. Section 203.379 is revised, to read as follows:

§ 203.379 Adjustment for damage or neglect.

(a) If the property has been damaged by fire, flood, earthquake, or tornado, or, for mortgages insured on or after January 1, 1977, the property has suffered damage because of the mortgagee's failure to take action as required by § 203.377 of this part, the damage must be repaired before conveyance of the property or assignment of the mortgage to the Secretary, except under the following conditions:

(1) If the prior approval of the Secretary is obtained, there will be deducted from the insurance benefits the Secretary's estimate of the cost of repairing the damage or any insurance recovery received by the mortgagee, whichever is greater.

(2) If the property has been damaged by fire and was not covered by fire insurance at the time of the damage, or the amount of insurance coverage was inadequate to repair fully the damage, only the amount of insurance recovery received by the mortgagee, if any, will be deducted from the insurance benefits, provided the mortgagee certifies, at the time that a claim is filed for insurance benefits, that:

(i) At the time the mortgage was insured, the property was covered by fire insurance in an amount at least equal to the lesser of 100 percent of the insurable value of the improvements, or the principal loan balance of the mortgage; and

(ii) The insurer later cancelled this coverage or refused to renew it for reasons other than nonpayment of premium; and

(iii) The mortgagee made diligent though unsuccessful efforts within 30 days of any cancellation or non-renewal of hazard insurance, and at least annually thereafter, to secure other coverage or coverage under a FAIR Plan, in an amount described in paragraph (a)(2)(i) of this section, or if coverage to such an extent was unavailable at a reasonable rate, the greatest extent of coverage that was available at a reasonable rate; and

(iv) The extent of coverage obtained by the mortgagee in accordance with paragraph (a)(2)(iii) of this section was the greatest available at a reasonable rate, or if the mortgagee was unable to obtain insurance, none was available at a reasonable rate; and

(v) The mortgagee took the actions required by § 203.377 of this part.

(3) The certification requirements set out in paragraph (a)(2) of this section apply to any mortgage insured by HUD on or after September 22, 1980, for which a claim has not been filed before September 30, 1986. Any mortgage insured on or after September 22, 1980, for which a claim has been filed before September 30, 1986, but the claim has not been settled before that date, will be governed by § 203.379(b) (1986) Edition as it existed immediately before September 30, 1986.

(4)(i) As used in this section, *reasonable rate* means a rate that is not in excess of the rate or advisory rate set by the principal State-licensed rating organization for essential property insurance in the voluntary market, or if coverage is available under a FAIR Plan, the FAIR Plan rate.

(ii) If a State has neither a FAIR Plan nor a State-licensed rating organization for essential property insurance in the voluntary market, the mortgagee must provide to the HUD Field Office having jurisdiction, information concerning the lowest rates available from an insurer for the types of coverage involved, with a request for a determination of whether the rate is reasonable. HUD will determine the rate to be reasonable if it approximates the rate assessed for comparable insurance coverage applicable to similarly situated properties in a State that offers a FAIR Plan or maintains a State-licensed rating organization.

(b) For mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after November 19, 1992, the provisions of paragraph (a) of this section apply and, in addition, if the property has been damaged during the time of the mortgagee's possession by events other than fire, flood, earthquake, or tornado, or if it was damaged notwithstanding reasonable action by the mortgagee as required by § 203.377 of this part, the mortgagee must provide notice of such damage to the Secretary and may not convey until directed to do so by the Secretary. The Secretary will either:

(1) Allow the mortgagee to convey the property damaged; or

(2) Require the mortgagee to repair the damage before conveyance, and the Secretary will reimburse the mortgagee for reasonable payments not in excess of the Secretary's estimate of the cost of repair, less any insurance recovery.

(c) In the event the damaged property is conveyed to the Secretary without prior notice or approval as provided in paragraphs (a) or (b) of this section, the Secretary may:

(1) After notice, reconvey the property to the mortgagee and the mortgagee must reimburse the Secretary in accordance with §§ 203.363 and 203.364 of this part, or

(2) Require the mortgagee to reimburse the Secretary for the greater of the Secretary's estimate of the cost of repair or any insurance recovery.

13. Section 203.380 is revised to read as follows:

§ 203.380 Certificate of property condition.

(a) The mortgagee shall either:

(1) Certify that as of the date of the filing of deed for record, or assignment of the mortgage to the Secretary, the property was:

(i) Undamaged by fire, flood, earthquake, or tornado; and

(ii) As to mortgages insured or for which commitments to insure were issued on or after January 2, 1977, undamaged due to failure of the mortgagee to take action as required by § 203.377; and

(iii) As to mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after November 19, 1992, undamaged while the property was in the possession of the mortgage; or

(2) Attach to its claim a copy of the Secretary's authorization to convey the property in damaged condition.

(b) In the absence of evidence to the contrary, the mortgagee's certificate or description of the damage shall be accepted by the Secretary as establishing the condition of the property, as of the date of the filing of the deed or assignment of the mortgage.

14. Section 103.387 is revised to read as follows:

§ 203.387 Acceptability of customary title evidence.

If the title and title evidence are such as to be acceptable to prudent lending institutions and leading attorneys generally in the community in which the property is situated, such title and title evidence shall be satisfactory to the Secretary and shall be considered as good and marketable. In cases of disagreement, the Secretary will make the final decision.

15. Section 203.391 is revised to read as follows:

§ 203.391 Title objection waiver with reduced insurance benefits.

Payment of an insurance claim will not automatically be refused solely because the title evidence reveals a condition of title not taken into consideration in the original appraisal and not covered by the provisions of § 203.389 of this part, or not otherwise waived in writing by the Secretary. In such instances, the Secretary may, at his or her option, approve the payment of a claim if the mortgagee agrees to accept a reduction in insurance benefits considered adequate by the Secretary to compensate for any anticipated loss to the Mutual Mortgage Insurance Fund as a result of the existence of the title condition at the time of claim.

16. Section 203.402 is amended by revising the first sentence and removing the last sentence of paragraph (f), by revising paragraphs (g), (j) and (k)(1), and by adding paragraphs (p), (q) and (r), to read as follows:

§ 203.402 Items included in payment—conveyed and non-conveyed properties.

* * * * *

(f) Foreclosure costs or costs of acquiring the property otherwise (including costs of acquiring the property by the mortgagee and of conveying and evidencing title to the property to the Secretary, but not including any costs borne by the mortgagee to correct title defects) actually paid by the mortgagee and approved by the Secretary, in an amount not in excess of two-thirds of such costs or $75, whichever is the greater. * * *

(g)(1) *For mortgages insured under firm commitments issued before November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter before November 19, 1992,* reasonable payments made by the mortgagee, with the approval of the Secretary, for the purpose of protecting, operating, or preserving the property, or removing debris from the property.

(2) *For mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after November 19, 1992,* reasonable payments made by the mortgagee, with the approval of the Secretary, for the purpose of protecting, operating, or preserving the property, or removing debris from the property prior to the time of conveyance required by § 203.359 of this part.

(3) Reasonable costs for performing the inspections required by § 203.377 of this part and to determine if the property is vacant or abandoned are considered to be costs of protecting, operating or preserving the property.

* * * * *

(j) Charges for the administration, operation, maintenance or repair of community-owned property or the maintenance and repair of the mortgaged property paid by the mortgagee with respect to which it certifies to the Secretary that payment was made for the purpose of discharging an obligation arising out of a covenant filed for record and approved by the Secretary prior to the issuance of the mortgage; and charges for the repair of the mortgaged property required by and in an amount authorized by the Secretary under § 203.379 of this part;

(k)(1) For properties conveyed to the Secretary, an amount equivalent to the debenture interest which would have been earned, as of the date such payment is made, on the portion of the insurance benefits paid in cash, if such portion had been paid in debentures, except that when the mortgagee fails to meet any one of the applicable requirements of §§ 203.355, 203.356, 203.359, 203.360, 203.365, 203.606(b)(1), 203.366 of this part within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

* * * * *

(p) An amount approved by the Secretary and paid to the mortgagor as consideration for the execution of a deed-in-lieu of foreclosure;

(q) Reasonable costs incurred in evicting occupants and in removing personal property from acquired properties;

(r) Notwithstanding any other provision in this section, the mortgagee will not be reimbursed for any expenses incurred in connection with the property after a reconveyance from the Secretary to the mortgagee as provided in § 203.363(b) of this part.

§ 203.502 [Amended]

17. Section 203.502 is amended by removing from the last sentence in paragraph (b) the word "thirty" and adding, in its place, the word "fifteen".

Dated: October 14, 1992.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92–25396 Filed 10–19–92; 8:45 am]

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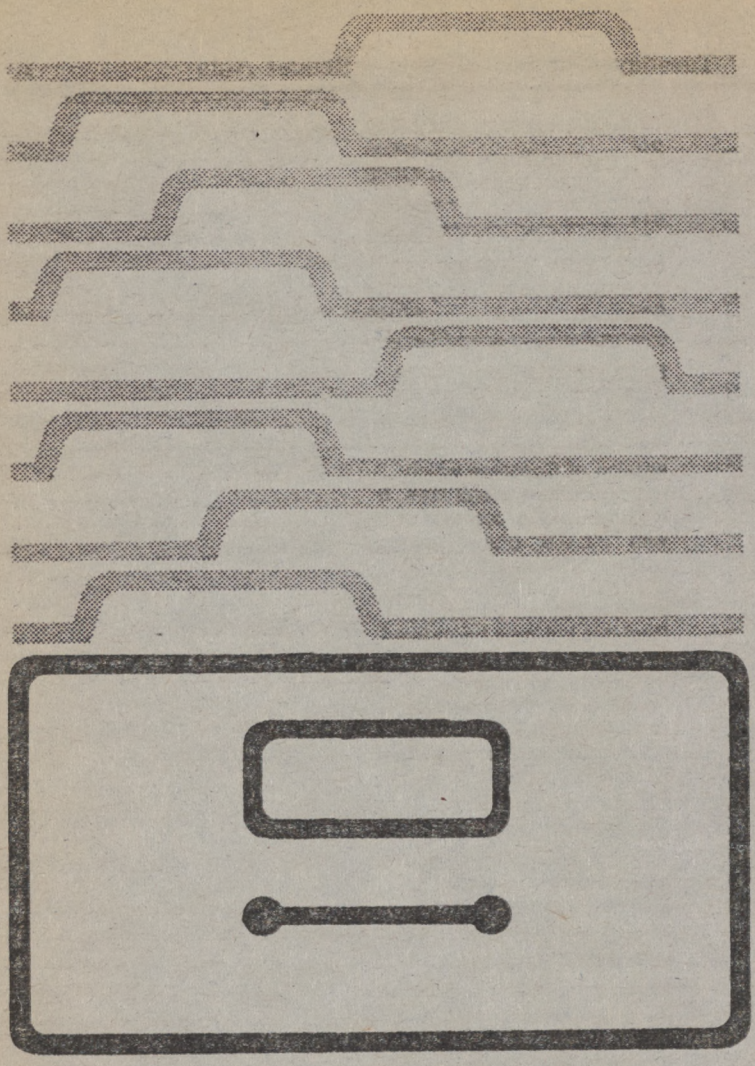

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

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