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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 AGRICULTURE

Food and Nutrition Service

7 CFR Parts 240 and 250

Cash in Lieu of Donated Foods and Donation of Foods for Use in the United States, its Territories and Possessions and Areas Under its Jurisdiction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Food Distribution Program Regulations (7 CFR part 250) to incorporate revisions made to two previously published interim rules on which comments were solicited. This rule concerns the following requirements of Public Law 100–237, the Commodity Distribution Reform Act and WIC Amendments of 1987:

(1) Dissemination of summaries of product specifications to recipient agencies;

(2) Commodity delivery schedules;

(3) Procedures for the replacement of commodities;

(4) Collection of commodity acceptability information from recipient agencies, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990;

(5) Purchase of domestically produced products ("Buy American");

(6) Testing and monitoring of processed commodities;

(7) Allocation procedures;

(8) Establishing commodity values; and

(9) Offering the per-meal value of commodities to school food authorities. These changes improve the manner in which commodities are purchased and distributed.

In addition, this rule amends the Food Distribution Program Regulations and the Cash in Lieu of Donated Foods Regulations (7 CFR part 240) to incorporate portions of Public Law 101–147, the Child Nutrition and WIC Reauthorization Act of 1989, that require the calculation of commodity assistance or cash in lieu of commodities for the National School Lunch Program and for the Child and Adult Care Food Program, based on the number of meals served in those programs in the previous school year.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Lillie Ragan, Section Head, Policy and Family Assistance Section, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Park Office Center—Fifth Floor, 3101 Park Center Drive, Alexandria, Virginia 22302–1594; or telephone (703) 305–2660.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this rule will not have an annual impact on the economy of more than $100 million. No major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions is anticipated. This action is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–12). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Most of the new provisions in this rule affect distributing and recipient agencies. While some of these agencies may be considered "small entities", the cost of the compliance with the changes made in this rule will be minimal because the time and cost of preparing any paperwork and arranging deliveries relative to participation will be very limited.

These programs are listed in the Catalog of Federal Domestic Assistance under 10.550 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the additional recordkeeping and reporting requirements contained in § 250.13(k) of this rule were reviewed and approved by the Office of Management and Budget (OMB) under control number 0584–0384. Current reporting and recordkeeping requirements for part 250 were approved by OMB under control number 0584–0007. Current reporting and recordkeeping requirements for part 240 were approved by OMB under control number 0584–0280.

This final rule amends the Food Distribution Program Regulations (7 CFR part 250) to incorporate revisions made to two previously published interim rules on which comments were solicited. See 53 FR 22466 published on June 16, 1988 and 53 FR 27469 published on July 21, 1988. This rule also incorporates sections 131(a)(1)(C) and (b)(1)(A–C) of the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101–147), that was enacted on November 10, 1989. These sections of Public Law 101–147 amend sections 6(e) and 17(h) of the National School Lunch Act (42 U.S.C. 1755(e) and 1766(h)) to require that the Department calculate commodity assistance and cash in lieu of commodities for the National School Lunch and Child and Adult Care Programs on the basis of the number of meals served by participating schools and institutions in the preceding school year. Section 131(c) of Public Law 101–147 made these requirements retroactively effective on July 1, 1989. In addition, section 1773(d) of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101–624) amends section 3(f)(2) of Public Law 100–237 to require that the Department solicit information from recipient agencies regarding useful types and forms of commodities at least annually. Pursuant to section 1781(b) of Public Law 101–624, this provision became effective on November 28, 1990, the date of enactment of the Law. Hence, the Administrator of the Food and Nutrition Service has found, in

accordance with 5 U.S.C. 553(b), that prior notice and comment are impracticable, unnecessary and contrary to public interest, and that good cause exists for publishing revisions to 7 CFR 240.1 (c) and (f), 240.3(b), 240.4(a), 250.13(k)(3), 250.48 (b)(1) and (c)(1), and 250.49(b) without prior public notice and comment. Other provisions contained in this rule were previously published as interim rules with requests for public comment, and the comments received are addressed in this rule.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of the preamble. Prior to any judicial challenge to the provisions of this rule or the application of the provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures provided by state or local governments. For disputes involving procurements by state agencies and sponsors, this includes any administrative appeal procedures to the extent required by 7 CFR part 3015 or part 3016.

Food Distribution Provisions of the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101-147)

This rule incorporates those portions of Public Law 101-147 that require the number of meals served in the preceding school year to be the basis for calculating the amount of commodity assistance or cash in lieu thereof for schools and institutions participating in the National School Lunch Program and the Child and Adult Care Food Program. In the past, the Department used meals served in the current school year to determine commodity assistance or cash in lieu thereof for the National School Lunch Program. The same basic approach was used in the Child and Adult Care Food Program. This process necessitated the use of estimates, recalculations and revised figures during each school year.

Since these provisions were made retroactively effective to July 1, 1989, by section 131(c) of Public Law 101-147, they were implemented by the Department in November of 1989. Thus, commodity assistance or cash in lieu thereof was provided for schools and child and adult care institutions for School Year 1990 on the basis of the number of meals served by these institutions in School Year 1989. The use of participation figures from the previous year greatly facilitated the process of announcing and offering more precise commodity allotments early for the 1991 school year. Because of the expedited commodity allotments, this process has, and will continue to reduce the possibility of cash payments being made to States in place of the preferred delivery of commodities as required for schools participating in the school lunch program by section 6(b) of the National School Lunch Act. The pertinent sections of Public Law 101-147 and the corresponding regulatory amendments are discussed below.

Sections 131 (a) and (b) of Public Law 101-147 amend sections 6(e) and 17(h), respectively, of the National School Lunch Act (42 U.S.C. 1755(e) and 1766(h)) to require the Department to revise the procedures used to calculate the commodity assistance levels (or cash in lieu thereof) provided to States for school food authorities and child and adult care institutions. The Department is directed by this legislation to multiply the number of meals served in participating schools and institutions in the preceding school year by the current national average per-meal value to determine the commodity assistance levels or cash in lieu thereof available to each State for the current school year. The legislation requires that, after the end of each school year, the Department reconcile the number of meals served in each State in such school year with the number served in the preceding school year and, based on such reconciliation, increase or reduce each State's subsequent commodity assistance (or cash in lieu thereof).

Sections 240.3(b), 250.48(b)(1), and 250.49(b) are revised to specify that States will receive commodity assistance based on the number of meals served in the preceding school year. Further, at the Department's discretion, current year commodity adjustments may be made for significant variations in the number of reimbursable meals served. Such current year commodity adjustments would not be routine and would only be made for unusual situations encountered in a State, such as a teachers' strike or a major disaster that necessitates school closures for a prolonged period of time. Making such adjustments will, in most instances, eliminate the possibility of significant adjustments being made to a State's commodity assistance level as a result of reconciliation.

Section 250.48(c)(1) is also revised to specify that the per-meal value of commodity assistance offered by States to school food authorities will be based on the number of meals served in the preceding school year, unless the distributing agency prefers and can justify as equitable an alternative method.

Sections 240.4(a) and 240.6 are revised to make clear that State agencies electing to receive cash-in-lieu of commodities for the Child and Adult Care Food Program and in the National School Lunch Program will continue to receive payments based on the number of meals actually served during the current school year. The Child and Adult Care Food Program regulations in 7 CFR part 226 will be amended by the Department in a separate rulemaking to reflect these changes and clarifications.

Because FNS will not need to make commodity adjustments and reconciliations in instances where States use the cash-in-lieu payment option, it will not be necessary for FNS to make mid-year adjustments like those made to commodity assistance levels for school food authorities. Ultimately, school food authorities and child and adult care institutions participating in the program will receive assistance based on the actual number of meals served. The school food authorities and institutions receiving commodity assistance will receive assistance based on the number of meals served in the preceding year, as adjusted for significant variations in the number of reimbursable meals served in the current year. School food authorities and institutions receiving cash-in-lieu of commodities will receive reimbursements based on the actual number of meals served in the school year, thereby avoiding any overpayments and subsequent payment reductions. Under both methods, the participating schools and institutions will ultimately receive commodity assistance or cash in lieu thereof based on the actual number of reimbursable meals served in a given school year.

Further, changes are made to the definition of "nonresidential child care institution" in § 250.3 and to § 250.49 to reflect the change in the name of the Child Care Food Program to the Child and Adult Care Food Program and the eligibility of nonresidential adult care institutions for participation in that program pursuant to section 17(o) of the National School Lunch Act.

The following regulatory revisions are made in the final rule to implement these requirements of Public Law 101-147.

Background of Commodity Distribution Reform Act and WIC Amendments of 1987

This rule amends two prior interim rules which implemented a number of provisions contained in the Commodity Distribution Reform Act and WIC Amendments of 1987 (Pub. L. 100–237). On January 8, 1988, Public Law 100–237 was enacted to improve the manner in which agricultural commodities are distributed to recipient agencies, to improve the quality of the commodities that are distributed, and to increase the degree to which the distribution responds to the needs of recipient agencies while still carrying out the Department's responsibilities to support agricultural prices and remove surpluses from the market.

On June 16, 1988, an interim rule (53 FR 22466) was published to implement provisions of the Act regarding commodity delivery schedules and replacement procedures. On July 21, 1988, a second interim rule (53 FR 27469) implemented those provisions of the Act requiring:

(1) Dissemination of summaries of product specifications to recipient agencies;

(2) Semiannual collection of commodity acceptability information from recipient agencies;

(3) Purchase of domestically-produced products;

(4) Testing and monitoring of processed commodities;

(5) Allocation procedures;

(6) Establishment of commodity values; and

(7) Offering of the per-meal value of commodities to school food authorities.

Please note that a typographical error in the interim rule published on July 21, 1988 (53 FR 27475) misidentified § 250.13 as § 250.12. The Department apologizes for any inconvenience this may have caused in reviewing the interim regulations for comment. Throughout this final rule, the correct section number will be referred to when discussing provisions of that interim rule in order to avoid further confusion.

Overview of Comments Received

The Department solicited comments on both interim rules. The June 16, 1988 interim rule generated 48 comment letters from distributing agencies, recipient agencies and various school-related associations. The July 21, 1988, interim rule generated 59 comment letters from entities such as distributing agencies, recipient agencies, and private sector representatives including distributors, food processors, attorneys and associations. The requirements most commented upon are:

(1) Commodity delivery schedules;

(2) Establishing commodity values;

(3) Semiannual collection of commodity acceptability information; and

(4) Testing and monitoring of processed commodities.

The remainder of this preamble discusses concerns expressed by commenters and the specific changes being made in this final rulemaking. For ease in reference, the commenter concerns and any corresponding changes are explained under the interim rule section headings. The preamble does not address sections for which no substantive objections were raised by commenters or those comments which resulted in nonsubstantive revisions which simply serve to clarify the regulatory wording. Further, provisions of the interim rules not amended in this final regulation are not restated herein and remain as set forth in the interim rules. Only those sections being revised are restated in this final regulation.

Readers should refer to the preambles of the interim rules for a more comprehensive description of the legislative requirements.

Commodity Value (Section 250.13(a)(5))

Section 3(b)(7) of the Act requires the Secretary to establish a value (i.e., cost per pound) for donated commodities and products to be used by distributing agencies in the allocation or charging of commodities against entitlements. The established commodity values are also to be used by distributing agencies in determining the value of commodities offered to recipient agencies to meet planned commodity assistance levels. The planned commodity assistance level represents the volume of commodities expected to be needed in order to meet the anticipated assistance at the local level, as determined by the distributing agencies. In accordance with Public Law 100–237, § 250.13(a)(5) was added in the interim rule to require that States use either the estimated cost-per-pound data or actual cost-per-pound data provided by USDA to value commodities offered to recipient agencies and to credit recipient agencies' assistance levels. The same section of the interim rule also established definitions for actual and estimated cost data depending on the commodity.

Thirty comments were received, of which 20 opposed this method of establishing a value for commodities, stating the method was too restrictive, confusing and complicated. Many commenters recommended that the Department establish one value to be used throughout the year. These commenters offered several alternative definitions for the commodity value in an attempt to simplify the process. The Department is sensitive to commenter concerns on this issue and has established a less complex definition of commodity value in the final rule. At the option of the distributing agency, the commodity value must now be based on:

(1) Actual cost-per-pound data used to charge a State's commodity entitlement;

(2) Estimated cost-per-pound data provided by the Department; or

(3) USDA commodity file data as of a date specified by the distributing agency. The change in the definition will allow States the flexibility to define commodity values consistent with their data processing system needs and to select one definition of commodity value to be used throughout the year. The cost data used to value commodities must still be applied consistently throughout the State.

Also, this final rule requires the distributing agency to document the method used to determine the commodity value and the specific source of the value used. This documentation must be maintained on file for FNS review.

Please note that the definition of the "minimum donation" of these commodities (§ 250.13(a)(3)) was changed from carload to truckload in this final rule to reflect the Department s change in purchasing policy. Donations measured by truckload, gauged at 40,000 pounds, offer greater ordering flexibility than donations measured by railcar load, estimated at 80,000 pounds each. Also, there has been a non-substantive restructuring of the subparagraphs in § 250.13(a).

Announcement and Delivery of Commodities (Section 250.13(a)(6))

Section 3(e)(1)(D) of Public Law 100–237 requires the Secretary to mandate delivery schedules for the distribution of commodities that are consistent with the needs of recipient agencies, taking into account the duties of the Secretary to remove surplus agricultural commodities from the marketplace and to make direct purchases under several distinct provisions of legislation that are specified in Public Law 100–237. While the Department makes commodities available in accordance with the needs and requests of recipient agencies to the fullest extent possible, this will not always be possible. As recognized throughout the legislation, the Department must continue to consider agricultural market conditions as well as the costs associated with the purchase and distribution of all commodities.

The interim rule revised § 250.13(a)(6) to require the Department and the distributing agency to consider the needs of recipient agencies prior to ordering and delivering donated foods. The interim rule specified that the Department shall, to the extent practicable, arrange deliveries based on information obtained from distributing agencies. To avoid untimely deliveries to recipient agencies, the interim rule also required distributing agencies to notify recipient agencies of:

(1) Anticipated Department purchases and estimated shipping periods as such information becomes available;

(2) Anticipated State delivery schedules at least quarterly; and

(3) Changes in delivery schedules as they become known.

Fifteen commenters supported the requirement to notify recipient agencies of anticipated Department purchases and estimated shipping periods. However, six commenters believed providing USDA shipment information as it became available would be too frequent and could be misleading. Four commenters pointed out that despite a State's efforts, delivery schedules would not prevent "untimely" deliveries, since they are the result of untimely shipments. Six commenters stated that the information recipient agencies needed to know the most was States' delivery schedules and the actual types and quantities of commodities to be delivered to the recipient agency. Two commenters stated that changes in delivery schedules need to be communicated only to the recipient agency affected.

In response to these comments, the Department has amended the notification requirements in this final rule to require distributing agencies to notify recipient agencies of:

(i) General USDA purchase information at least quarterly;

(ii) Anticipated State delivery schedules at least quarterly, including the types and quantities of commodities to be available; and

(iii) Changes in delivery schedules when such changes affect the recipient agency.

The Department anticipates that these changes will help eliminate some of the confusion about the different notification requirements. In many instances, requirements (i) and (ii) could be met with one notice. The Department wishes to emphasize, however, that this "quarterly" requirement is a minimum standard and there may be times when more frequent notification is appropriate.

Section 250.13(a)(6) of the interim rule also required distributing agencies to maintain distribution schedules to recipient agencies which are equitable and reliable and recognize hours of operation, holidays, vacations and other special needs of recipient agencies. One commenter indicated that meeting all recipient agencies' special needs is not possible. The Department is keenly aware of this and intends that the distributing agency exercise judgement in meeting special needs. Accordingly, the mandate to recognize special needs has been qualified with the phrase "whenever possible."

Also under § 250.13(a)(6) of the interim rule, distributing agencies were required to make donated foods available to recipient agencies at least monthly. This requirement attracted the greatest response with forty commenters opposed to requiring minimum monthly deliveries of commodities to all recipient agencies. Commenters opposed to the requirement asserted that if mutually agreed upon by the recipient agencies and distributing agencies, deliveries less frequent than monthly should be allowed.

The Department agrees with commenter response and does not wish to preclude a distributing agency and a recipient agency from agreeing to commodity distributions less frequent than monthly. Certain circumstances could make monthly deliveries impractical, e.g. location of school food authorities in very rural areas where monthly deliveries are not cost effective. However, the Department is of the opinion that unless extenuating circumstances do exist, distributing agencies should provide for monthly deliveries. Thus, in response to commenter concerns, the Department amends this provision as set forth in the interim rule to allow for the arrangement of less frequent deliveries by the distributing agency upon request by the recipient agency when the distributing agency determines that monthly service is not cost effective, or for other reasons.

Replacement of Commodities (Section 250.13(g))

Section 3(b)(5) of Public Law 100–237 requires the Secretary to establish procedures for the replacement of commodities received by recipient agencies that are stale, spoiled, out of condition, or not in compliance with specifications. Section 250.13(g) of the interim rule stated that the Department would replace commodities under the following conditions:

(1) The donated foods have been provided as part of the State's authorized level of assistance (entitlement) as established by law or when the donated foods have been provided in addition to the State's entitlement (as a bonus) but the total amount which the State can order has been capped by the Department;

(2) It is clearly determined that the donated foods were not fit for use in the Food Distribution Program at the time they were delivered by the Department;

(3) The loss is reported to the FNSRO within three months of the date the donated foods were received in the State;

(4) A signed consignee receipt or acceptable written documentation of delivery is submitted to the FNSRO; and

(5) At the request of the Department, the donated foods have been reinspected and determined to be unfit for use in the Food Distribution Program.

Twenty-seven commenters responded to § 250.13(g) of the interim rule, and 18 of the commenters approved of the requirements. Two of the comments received on § 250.13(g)(2) of the interim rule objected to the language "not fit for use in the Food Distribution Program." Commenters noted this language was unclear and did not reflect the language of the Act. Therefore, the language has been clarified in § 250.13(g)(1)(i) of this rule to state the following: "the distributing agency documents that the donated foods were stale, spoiled, out of condition or not in compliance with USDA specifications at the time they were delivered by the Department." A conforming change has been made to § 250.13(g)(1)(v) (formerly § 250.13(g)(5)).

Four commenters requested that the timeframes set forth in § 250.13(g)(3) of the interim rule for reporting the loss be longer than 3 months. This timeframe was established to allow the detection of hidden damage not visible upon receipt of the commodity. Prior to accepting delivery, the Department expects the distributing agency or recipient agency to examine the commodities and to report any damage as soon as possible. However, since in § 250.14(f)(2) the Department permits a maximum six-month inventory of donated food, and some commodities have much longer warranty periods, this rule restructures the timeframe in § 250.13(g)(1)(iii) to provide a longer timeframe for the reporting of canned commodities to be replaced. The timeframe is extended to six months only for canned commodities due to the longer warranty periods for the various canned products and the fact that canned products are not as vulnerable as other commodities to storage and handling abuses. The three month timeframe remains in effect for all other commodities.

One commenter questioned whether problems with commodities that are stale, spoiled, out of condition or not in compliance with specifications should be reported if the problems are detected after the deadline. The Department does not intend for distributing agencies to stop reporting commodity losses or problems detected outside the reporting timeframe. However, replacement is assured only if the criteria outlined in § 250.13(g) of the regulations have been fulfilled. The Department will continue to receive, record and pursue the resolution of all commodity losses and complaints that are submitted with the pertinent information.

Several commenters requested that timeframes be established for USDA and the distributing agencies' resolution of replacement requests. However, since the time required to resolve complaints depends on the method used to replace commodities and, in many instances, the cooperation of vendors, the Department is reluctant to set a timeframe.

Three commenters requested clarification of the necessity for the reinspections referred to in § 250.13(g)(1)(v) and (5) of the interim rule. As stated in the interim rule, the Department will, at a minimum, require a reinspection in instances when the loss is significant or when it is determined that a potential health hazard exists. The purpose of the reinspection is to determine if the donated food is stale, spoiled, out of condition or does not meet USDA specifications, and to assist in establishing at what point in time the loss occurred. Since it is necessary for USDA to ascertain this information in order to pursue replacement by the vendor or establish a claim, the Department will continue to require reinspections in instances when they are warranted.

Nine commenters objected to the requirement that distributing agencies pay for reinspections which establish that the commodity was in good condition when delivered. One commenter claimed that this requirement discourages reporting. The Department did not intend for this requirement to discourage reporting. The intent is to place responsibility on the distributing agency (and indirectly on the recipient agency) to ensure that only bona fide losses are reported. Therefore, the requirement has not been revised in this rule.

One commenter believed that distributing agencies and recipient agencies should be reimbursed for storage and handling costs of replaced commodities. However, the Department cannot reimburse agencies since no authority or funds are currently available to restore these costs. The Department is, however, exploring modifying commodity contracting procedures to allow for such reimbursement.

Three commenters recommended that the Department handle replacing commodities by an annual adjustment to a State's entitlement and that States also be allowed to make one annual adjustment to a recipient agency's planned commodity assistance level. While adjusting commodity entitlements is an option, the Department does not wish this to be the sole method for replacing commodities. Ideally, commodities should be replaced with the identical commodity. However, as permitted by the interim rule, when very small quantities are involved, cash from the vendor to the distributing or recipient agency is sometimes a more practical alternative. Further, when entitlement crediting is the method of replacement, to ensure an accurate reflection of a State's entitlement, adjustments for replacements should take place as soon as possible, not annually. Therefore, this rule continues to provide for replacement through entitlement crediting and cash payments.

Four commenters opposed vendors providing cash to distributing or recipient agencies. According to these commenters, cash causes problems if the distributing agency does not have authority to deposit the payment and later make cash disbursements to the recipient agencies which lost the value of the donated food.

Since cash payments may only be made with the Department's approval, before pursuing cash replacement with the vendor, FNS will ensure that a system is in place for the distributing or recipient agency to accept the funds.

In this final rule, § 250.13(g) has been restructured to provide additional clarity.

Commodity Acceptability Information (Section 250.13(k))

Section 250.13(k) of the interim rule was set forth in three subparagraphs:

(1) Information collection, which specified the types of information to be reported;

(2) Samples and Representation, which specified who should submit commodity acceptability reports; and

(3) Timeframes for submission of the reports on April 30th and November 30th of each year.

When the interim rule was published, section 3(f)(2) of Public Law 100–237 required the Secretary to establish procedures to ensure that information was received from recipient agencies at least semiannually about the types and forms of commodities that are most useful to persons participating in programs operated by recipient agencies. However, section 1773(d) of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101624), which became effective upon the date of enactment, November 28, 1990, amended section 3(f)(2) of Public Law 100–237 to require annual collection of commodity acceptability information rather than semiannual collection. Consequently, § 250.13(k)(3) of this final rule specifies that commodity acceptability reports are to be submitted annually by distributing agencies. Reports for summer camps and the Summer Food Service Programs must be submitted to the appropriate FNSRO by November 30th of each year. Reports for all other programs must be submitted to the appropriate FNSRO by April 30th of each year.

Section 250.13(k) drew 20 comments which were almost evenly split between approval and disapproval. Eleven commenters opposed the semiannual commodity acceptability reporting requirement, claiming that twice a year is redundant, burdensome and costly. As explained above, the requirement has been statutorily reduced to an annual requirement.

Several commenters pointed out that commodity preference information is already captured for certain commodity programs in State advisory council reports. The Department acknowledges that reports submitted by State Food Distribution Advisory Councils may include a portion of the commodity preference information for schools. In fact, § 250.13(k)(2) of the interim rule, as published in the **Federal Register** on July 21, 1988 (53 FR 27476), permitted distributing agencies to use information contained in these reports to represent one of the semiannual reports for schools. However, since the semiannual reporting requirement has been reduced to an annual requirement and since the contents of State advisory council reports vary considerably, the Department has determined that use of data contained in these reports alone is not sufficient. As reflected in the final rule, information contained in these reports is one source distributing agencies may use in collecting annual commodity acceptability information. As discussed below, the Department strongly encourages use of form FNS–663, Food Distribution Commodity Acceptability Report, for collecting commodity preference information from recipient agencies.

Some commenters did not understand the importance of submitting information for each commodity program. Separate information for each commodity program is necessary because of the target populations served and the differing authorities which govern the new forms and varieties of foods that are donated by the Department. While some of the commodities may be received through more than one program, each recipient agency or target population may feel differently about the acceptability of a product. For example, a product well received by the elderly through the Commodity Supplemental Food Program may cause a different reaction from students participating in the National School Lunch Program. The diversity of the programs and the people served requires that commodity acceptability information be reported separately for each commodity program. Consolidated report information does not accurately reflect feedback on any one commodity program, and the Department has not found this information useful in making program improvements.

The Department wishes to clarify that the Food and Nutrition Service's commodity acceptability report, Form FNS–663, does not have to be the instrument used to solicit information from recipient agencies. However, pursuant to § 250.13(k)(3) of the final regulation, distributing agencies will be required to complete this standard form and submit it to FNS.

The Department would like to emphasize at this time the importance of the Commodity Acceptability Reports in evaluating and modifying the specifications for the commodities distributed through the Food Distribution Programs. Form FNS–663 is a tool crucial to the Department's efforts to improve the commodities so that they meet the needs of each group served. As an example, FNS–663 feedback led to modification of the peanut butter specifications so that the peanut butter would spread more easily. The Department strongly supports the concept of collecting recipient-level feedback on federally donated commodities and promotes the use of the FNS–663 form as the best means for incorporating the views and preferences of program recipients.

Buy American (Section 250.23)

Section 3(h) of the Act specifies that the Secretary shall require recipient agencies to purchase only food products that are produced in the United States (U.S.) whenever possible. The Act also exempts specific States and territories from this requirement and permits the Secretary to grant waivers of the "Buy American" requirement for those recipient agencies that have unusual or ethnic preferences in food products or in such other circumstances as the Secretary considers appropriate.

In order to incorporate these provisions into the interim rule, § 250.23 was added to require that, whenever possible, recipient agencies, with the exception of those outside of the contiguous U.S., purchase only food products that are produced in the U.S. Twenty-nine comments were submitted and only 9 of those did not support the interim rule on the "Buy American" requirements.

The interim regulations limited the applicability of the "Buy American" provision to purchases of food products with Federal funds. In response to commenters' support of this provision, this requirement will be retained in the final rule.

In accordance with the legislation, § 250.23(b) of the interim rule permitted recipient agencies to purchase food products which are not produced in the U.S. when recipients have unusual or ethnic food preferences which can only be met through purchases of food products not produced in the U.S. The interim rule identified two other situations which warrant a waiver to permit purchase of foreign products:

(1) The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; and

(2) Competitive bids reveal the cost of a U.S. product is significantly higher than a foreign product. Three commenters requested that the Department define "significantly higher". While this language is open to interpretation, the Department believes the recipient agency is in the best position to determine what constitutes a significantly higher cost. Such determinations need to be made on a case-by-case basis since procurement situations vary depending on the product. Therefore, the Department will continue to allow recipient agencies to use their discretion in implementing the cost waiver provision.

Some commenters noted that the "Buy American" requirements should also be incorporated into the regulations governing the National School Lunch Program, Child and Adult Care Food Program, School Breakfast Program, Special Milk Programs, and Summer Food Service Program. Commenters contended, and the Department agrees, that the State agency with oversight for these particular recipient agencies should be responsible for ensuring compliance with this requirement. Therefore, in a separate rulemaking, the Department will amend parts 210, 215, 220, 225, and 226 to include reference to the Act's "Buy American" requirement, as contained in § 250.23.

Section 250.3 of the interim rule defined "food products produced in the U.S." as an unmanufactured food product produced in the U.S. or a food product manufactured in the U.S. Defining food products produced in the U.S. in this manner eliminated the need for recipient agencies to determine if the ingredients in a processed product were produced in the U.S. In addition, purchases of processed food products can be easily monitored to ensure compliance since imported processed food items are labeled with the country of origin.

Several commenters supported this definition of "food product produced in the U.S." One commenter requested that the Department establish special ingredient requirements for specific food products. The Department originally considered several options in defining what foods would be classified as "food products produced in the U.S." The Department did consider requiring that manufactured products primarily contain ingredients of U.S. origin and be manufactured by a company located in the U.S. However, many manufactured products that are labeled and canned in the U.S. may have foreign ingredients. The Department also maintains that requiring recipient agencies to determine which ingredients are of U.S. origin would be burdensome. While a method may exist to verify the origins of individual ingredients in a manufactured product, this would likely require on-site inspection of a food processor's records. Therefore, in the final rule the definition of "food product produced in the U.S." is unchanged except that it has been moved into § 250.23(a) to facilitate its use.

Testing and Monitoring Processed End Products (Section 250.30(b)(1))

In accordance with section 3(d)(5) of the 1987 Act, § 250.30(b)(1) of the interim rule required each distributing agency to:

(1) Assure that the acceptability of processed end products is tested with recipient agencies eligible to receive them prior to entering into a processing contract; and

(2) Develop a system to monitor product acceptability.

Of the almost 40 comments received on these requirements, 27 commenters opposed them. Most commenters indicated that end product testing and

monitoring should occur at the recipient agency level between the processor and the purchasing party. Commenters assumed that the Department intended to require that the actual testing and monitoring occur at the distributing agency level. It is the Department's position that the distributing agency has oversight responsibility to ensure that testing and monitoring occur, but that the actual functions may be performed at the recipient agency level.

As one commenter noted, when a distributing agency negotiates the contract and commits or contracts for the actual purchase of end products on behalf of recipient agencies, the distributing agency should be actively involved with testing the specific product with recipient agencies. This involvement should occur prior to entering into the contract. However, when recipient agencies negotiate purchases on their own behalf, it is appropriate for the recipient agency to perform this function. Several commenters recommended that end products be exempted from testing when the receipt of such end product is based on a voluntary purchase by a recipient agency. Commenters indicated that entering into a processing agreement does not automatically mean an end product will be sold or offered to a recipient agency. While the Department recognizes this point, the Department has no authority to exempt certain end products from this provision since the Act clearly states that product testing must occur prior to entering the contract. Therefore, the distributing agency must ensure that all end products are tested with recipient agencies prior to entering into a contract.

The interim rule did not establish specific, detailed procedures for distributing agencies to test and monitor the acceptability of end products. Instead, the Department solicited comments from all interested parties about establishing specific procedures for testing and monitoring end products. A few commenters submitted recommendations regarding this provision. Three commenters recommended that documented proof of marketability supplied by the processor, in accordance with § 250.30(c)(1)(ii), be considered a form of product testing. While the interim rule did not specify this as an option, evidence of historical commercial purchases of a product by recipient agencies or documented interest in a specific new product would be considered adequate documentation of end product testing.

Four commenters wanted flexible monitoring procedures that would not be burdensome. In recognition that many methods exist to test and to monitor product acceptability and that distributing agencies need some flexibility to develop an appropriate system, the Department has chosen not to outline specific procedures via regulation. The distributing agency must, however, develop a testing and monitoring system and communicate such system to recipient agencies.

One commenter recommended required testing only for new items. The Department agrees that if an item has been purchased previously from a processor and has been determined by the distributing agency to be acceptable by recipient agencies, and the specifications have not changed, retesting would not be necessary. In § 250.30(b)(1), language has been added to this effect.

Summary of Implementation of Public Law 100–237

All requirements of Public Law 100–237 that pertain to the distribution of commodity foods have been implemented as described below. Readers may acquire additional background on the legislation and the rationale for the Department's actions to implement the requirements of the law by referring to the following issues of the **Federal Register**.

- *Notice*—April 19, 1988 (53 FR 12794): Description of the legislation and the Department's plans for implementation.
- *Interim Rule*—June 16, 1988 (53 FR 22466): Requirements for the replacement of damaged commodities and for commodity delivery schedules.
- *Interim Rule*—July 21, 1988 (53 FR 27469): Requirements for summaries of product specifications, commodity acceptability reports, "Buy-American"; testing and monitoring of processed commodities; allocation procedures; commodity values; and per-meal values.
- *Proposed Rule*—October 20, 1988 (53 FR 41172): Requirements for commercial warehousing and distribution; distribution charges; and basic performance standards.
- *Final Rule*—October 17, 1989 (54 FR 42467): Finalization of requirements listed immediately above. Readers should note, however, that section 3(d) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Pub. L. 100–237) was amended by section 1773(c) of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624) to exempt the evaluation of warehousing and distribution systems for some smaller programs (such as the Food Distribution Program on Indian Reservations), to partially exempt evaluations for distributing agencies that do not charge warehousing and distributing fees to recipient agencies, to specify the costs to recipient agencies in State systems that are to be compared to commercial systems, and to postpone implementation of mandatory conversion to commercial systems.

Cost-Benefit Analysis

Section 3(f)(1) of the Act requires the Department to provide for a systematic review of the costs and benefits of providing commodities of the kind and quantity suitable to the needs of recipient agencies. See 53 FR 12794. The implementation of other requirements of the Act has enhanced the Department's data base for this cost benefit analysis. The Department has determined that the following currently provide for a systematic review by FNS of user needs: Annual collection of recipient agency commodity acceptability reports, field testing, semiannual meetings with members of the Food Distribution Advisory Council, and ongoing analysis of complaints concerning vendor performance to determine if specifications for a particular product are in need of revision. A systematic review of the cost of providing the commodities to recipient agencies is accomplished through commodity market monitoring and research routinely done by the Agricultural Marketing Service (AMS) and Agricultural Stabilization and Conservation Service (ASCS), quarterly purchase meetings and regular Department initiative meetings involving FNS, AMS, and ASCS. Thus, the Department has determined that additional formalization of cost-benefit analysis procedures is unnecessary.

Testing Commodities for Acceptability

Section 3(g) of the Act requires ongoing field testing of present and anticipated commodity and product purchases to establish product acceptability with program participants.

The Department's initial plans for implementing this requirement, discussed in the notice published April 19, 1988 (53 FR 12794), included the development of a standard field-test survey form. However, preliminary work in this area revealed that this is not feasible. The Department found that in order to be useful, questions must be tailored to the specific commodity being tested. Therefore, the Department will be developing survey questions as new commodities become available. The field-testing requirement is further satisfied by the regulatory requirements now in place for annual collection of

commodity acceptability reports (§ 250.13(k)) and for testing and monitoring end products by the distributing and recipient agencies (§ 250.30(b)(1)).

List of Subjects

7 CFR Part 240

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR Parts 240 and 250 are amended to read as follows:

PART 240—CASH IN LIEU OF DONATED FOODS

1. The authority citation for part 240 is revised to read as follows:

Authority: 42 U.S.C. 612c note, 1751, 1755, 1762a, 1765, 1766, 1779.

2. In § 240.1, paragraphs (c) and (f) are revised to read as follows:

§ 240.1 General purpose and scope.

* * * * *

(c) Section 6(e)(1) of the Act requires:

(1) That for each school year, the total commodity assistance, or cash in lieu thereof, available to each State for the National School Lunch Program shall be the amount obtained by multiplying the national average value of donated foods, described in paragraph (c)(2) of this section, by the number of lunches served in that State in the preceding school year; and

(2) That the national average value of foods donated to schools participating in the National School Lunch Program, or cash payments made in lieu thereof, shall be 11 cents, adjusted on July 1, 1982, and each July 1 thereafter to reflect changes in the Price Index for Food Used in Schools and Institutions. Section 6(e)(1) further requires that not less than 75 percent of the assistance under that section shall be in the form of donated foods for the National School Lunch Program. After the end of each school year, FNS shall reconcile the number of lunches served by schools in each State with the number served in the preceding school year and, based on such reconciliation, shall increase or reduce subsequent commodity assistance or cash in lieu thereof provided to each State.

* * * * *

(f) Sections 17(h)(1) (B) and (C) of the Act provide that the value of commodities, or cash in lieu thereof, donated to States for use in nonresidential child or adult care institutions participating in the Child and Adult Care Food Program (7 CFR part 226) for any school year shall be, at a minimum, the amount obtained by multiplying the number of lunches and suppers served during the preceding school year by the rate established for lunches for that school year under section 6(e) of the Act. At the end of each school year, FNS shall reconcile the number of lunches and suppers served in participating institutions in each State during such school year with the number of lunches and suppers served in the preceding school year and, based on such reconciliation, shall increase or reduce subsequent commodity assistance or cash in lieu of commodities provided to each State.

* * * * *

§ 240.31 [Amended]

3. In § 240.3, paragraph (b) is amended by removing the words "during that school year".

4. In § 240.4, the section heading and the first two sentences in paragraph (a) are revised to read as follows:

§ 240.4 Cash in lieu of donated foods for nonresidential child and adult care institutions.

(a) For each school year any State agency may, upon application to FNS prior to the beginning of the school year, elect to receive cash in lieu of donated foods for use in nonresidential child care or adult care institutions participating in the Child and Adult Care Food Program. FNS shall pay each State agency making such election, at a minimum, an amount calculated by multiplying the number of lunches and suppers served in the State's nonresidential child and adult care institutions which meet the meal pattern requirements prescribed in the regulations for the Child and Adult Care Food Program under part 226 of this chapter by the national average value of donated food prescribed in section 6(e)(1) of the Act. * * *

* * * * *

§ 240.6 [Amended]

5. Section 240.6 is amended by adding the following words before the period at the end of the section: ", except that the amount may be based on the number of meals served in the current school year, rather than on the number of meals served in the preceding school year with a subsequent reconciliation."

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for part 250 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612 note, 612c, 612c note, 1431, 1431b, 1431(e), 1431 note, 1446a–1, 1859; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

2. Section 250.3 is amended by:

a. Removing the definition of "Food products produced in the U.S"; and

b. Revising the definition of "Nonresidential child care institution" to read as follows:

§ 250.3 Definitions.

* * * * *

Nonresidential child or adult care institution means any child or adult care institution (as defined in part 226 of this chapter) which participates in the Child and Adult Care Food Program authorized under section 17 of the National School Lunch Act, as amended (42 U.S.C. 1766).

* * * * *

3. In § 250.13, paragraphs (a), (g) and (k) are revised to read as follows:

§ 250.13 Distribution and control of donated foods.

(a) *Availability and use of donated foods*—(1) *General.* (i) Donated foods shall be available only for distribution and use in accordance with the provisions of this part and, with respect to distribution to households on all or part of an Indian reservation, of parts 253 and 254 of this chapter.

(ii) Donated foods shall not be sold, exchanged or otherwise disposed of without the approval of the Department.

(iii) Donated foods which are provided as part of an approved food package or authorized level of assistance may be transferred between like recipient agencies only with prior authorization of the distributing agency. Donated foods which are provided in addition to the State's authorized level of assistance may be transferred between recipient agencies which are eligible to receive such foods with the

prior authorization of the distributing agency. However, the transfer of donated foods between unlike recipient agencies (e.g., from schools to charitable institutions), which have been provided as part of an approved food package or authorized level of assistance, must be approved by the appropriate FNSRO.

(iv) Food donated under section 32 of Public Law 74–320 (7 U.S.C. 612c) may also be transferred by recipient agencies to emergency feeding organizations which are distributing donated foods under part 251 of this chapter. A transfer between recipient agencies and emergency feeding organizations may be made only with the prior approval of the distributing agency and the State agency responsible for administering TEFAP.

(v) All transfers of donated foods shall be documented. Such documentation shall be maintained in accordance with the recordkeeping requirements in §§ 250.16 and 251.10(a) of this chapter.

(2) *Quantities.* (i) The quantity of donated foods to be made available for donation under this part shall be determined in accordance with the pertinent legislation and the program obligations of the Department, and shall be such as can be effectively distributed to further the objectives of the pertinent legislation.

(ii) Donated foods shall be requested and distributed only in quantities which can be consumed without waste in providing food assistance for persons eligible under this part. Distributing agencies shall impose similar restrictions on recipient agencies.

(3) *Minimum donations.* Foods shall be donated only in such quantities as will protect the lower truck load freight rate, except as the Department determines to be in the best interest of the program.

(4) *Allocations.* As foods become available for donation, FNS shall notify distributing agencies regarding the donated foods, the class or classes of recipient agencies or recipients eligible to receive them, and any special terms and conditions of donation and distribution which attach to a particular donated food, in addition to the general terms and conditions set forth herein.

When a commodity is available in limited quantities, the Department shall allocate such commodities among the States using allocation percentages which are based on appropriate participation data for the program designated to receive the commodity.

(5) *Commodity value.* Distributing agencies shall establish a value for each commodity for school food authorities and nonresidential child and adult care institutions for purposes of offering and crediting each recipient agency with the correct amount of commodities to fulfill planned commodity assistance levels (i.e., volume of commodities expected to be needed in order to meet the anticipated assistance at the local level, as determined by the distributing agency). Each commodity value shall be used consistently throughout the State to value commodities. The distributing agencies shall document and maintain on file for FNS review the method used to determine commodity values. Distributing agencies shall notify recipient agencies of the cost-per-pound used to value commodities at the time a commodity is offered to recipient agencies. If the cost used to credit a commodity differs from the cost used to offer a commodity, distributing agencies shall also advise recipient agencies of the cost used to credit a commodity. To value a commodity offered to a recipient agency and to credit a commodity towards a recipient agency's planned commodity assistance level, distributing agencies shall use one of the following: The actual cost-per-pound data used to charge a State's commodity entitlement; the estimated cost-per-pound data provided by the Department; or the USDA commodity file cost as of a specified date. Actual cost data shall be defined as the cost-per-pound for an individual commodity charged to a State's entitlement on the Entitlement Food Order Report, which is based on the USDA purchase cost. Estimated cost data shall be defined as the cost provided by USDA on commodity survey memoranda. The USDA commodity file cost shall be defined as the cost that is listed for a commodity as of a date specified by the distributing agency.

(6) *Announcement and delivery of commodities.* The Department shall make every reasonable effort to arrange commodity deliveries based on information obtained from distributing agencies. However, the Department shall not be held fiscally responsible for any delay in delivering or for nondelivery of donated foods due to any cause. Distributing agencies shall maintain monthly distribution schedules which provide for equitable and reliable deliveries to recipient agencies, recognize local hours of operation, holidays and vacations and, whenever possible, other special needs of recipient agencies. Upon request by the recipient agency, the distributing agency may make deliveries less frequent than monthly when the distributing agency determines that monthly service is not cost effective, due to distance or the size of a food order, or other necessary reasons, such as seasonal school closures. Distributing agencies shall notify recipient agencies of:

(i) General USDA purchase information at least quarterly;

(ii) Anticipated State delivery schedules at least quarterly, including the types and quantities of commodities available; and

(iii) Changes in delivery schedules when such changes affect the recipient agency.

(7) *Demonstrations and tests.* Notwithstanding any other provision of this part, a quantity of any food donated for use by any recipient agency or recipient may be transferred by the distributing agency or by the recipient agency to bona fide experimental or testing agencies, or for use in workshops, or for demonstrations or tests relating to the utilization of such donated food by the recipient agency or recipient. No such transfer by any recipient agency shall be made without the approval of the appropriate distributing agency.

* * * * *

(g) *Replacement of damaged commodities.* (1) The Department shall replace donated foods received by distributing or recipient agencies when:

(i) The distributing agency documents that the donated foods were stale, spoiled, out of condition or not in compliance with USDA specifications at the time they were delivered by the Department;

(ii) The donated foods have been provided as part of the State's authorized level of assistance (entitlement) as established by law; or, when the donated foods have been provided in addition to the State's entitlement, but the total amount of the specific donated food which the distributing agency can order is limited by the Department;

(iii) The loss is reported to the FNSRO within three months of the date the donated foods were received in the State, except that for canned commodities the reporting deadline shall be six months after receipt;

(iv) A signed consignee receipt or acceptable written documentation of delivery is submitted to the FNSRO; and

(v) At the request of the Department, the product has been reinspected and has been determined to be stale, spoiled, out of condition or not in compliance with USDA specifications.

(2) In instances in which a recipient agency seeks replacement of donated foods, the recipient agency shall submit the informatior listed above to its distributing agency. The distributing

agency shall promptly submit the information to the FNSRO.

(3) Replacement by the vendor shall be made with either the same or similar food agreed to by the Department. Physical replacement shall be on a per-pound or per-case basis. In rare instances, and only with the approval of the Department, distributing agency and recipient agency, vendor replacement will be made with a cash payment to the recipient or distributing agency. Any such cash payments shall be used to purchase replacement commodities which are the same or similar to the original commodities. Cash payments shall be made on the basis of the dollar value established by the Department of the donated food at the time the product was delivered or the cost to the Department for replacement, whichever is higher.

(4) Replacement by the Department shall be with either the same or similar food or by crediting the State's entitlement or cap. Physical replacement shall be on a per-pound or per-case basis. Entitlement or cap crediting shall be equal to the dollar value or the number of pounds which was deducted from the State's entitlement or cap for that shipment. The Department shall arrange for delivery of the replacement donated foods when the quantities to be delivered are sufficient to make it cost effective. Once the Department has replaced the donated foods, the distributing agency shall make arrangements for providing replacement donated foods to the recipient agency which incurred the loss.

(5) In instances in which it is determined that the donated foods were in good condition at the time they were delivered by the Department, the cost of the reinspection shall be borne by the distributing agency and the distributing agency shall follow the claims procedures contained in § 250.15(c) of this part and FNS Instruction 410–1, Non-Audit Claims—FNS Distribution Program.

* * * * *

(k) *Commodity acceptability reports.* To ensure that the Department is kept apprised of the commodities and packaging that are preferred by recipients and participating agencies, information shall be collected as follows:

(1) *Information collection.* Distributing agencies shall obtain information from recipient agencies which reflects:

(i) The types and forms of donated foods that are most useful to recipients;

(ii) Commodity specification recommendations; and

(iii) Requests for options regarding package sizes and forms of commodities.

(2) *Samples and representation.* The distributing agency shall collect information from recipient agencies from each of the following program categories: The National School Lunch Program, the Child and Adult Care Food Program, the Summer Food Service Program, the Nutrition Program for the Elderly, the Commodity Supplemental Food Program, charitable institutions, summer camps, the Food Distribution Program on Indian Reservations, and the Emergency Food Assistance Program. At a minimum, distributing agencies shall obtain this information from a sample of at least 10 percent or 100 recipient agencies in each program category, whichever is less. To ensure that the sample is representative of all recipient agencies, distributing agencies shall consider the size and geographic location of all recipient agencies within the State and alternate among them so that over time each recipient agency is provided an opportunity to express its views. Distributing agencies are encouraged to extract information regarding commodity acceptability from all available sources, including, for example, State Food Distribution Advisory Council Reports.

(3) *Timeframes for submission.* Distributing agencies shall submit commodity acceptability reports to the appropriate FNSRO annually as requested on Form FNS–663. Reports for summer camps and the Summer Food Service Programs shall be submitted by November 30th of each year; all other reports shall be submitted by April 30th of each year.

4. In § 250.23, paragraph (a) is revised to read as follows:

§ 250.23 Buy American.

(a) *Purchase requirements.* When purchasing food products with Federal funds, whenever possible, recipient agencies shall purchase only food products that are produced in the United States (U.S.). Food products produced in the U.S. means:

(1) An unmanufactured food product produced in the U.S.; or

(2) A food product that is manufactured in the U.S.

* * * * *

5. In § 250.30 a new sentence is added to the end of paragraph (b)(1) to read as follows:

§ 250.30 State processing of donated foods.

* * * * *

(b) *Permissible contractual arrangements.* (1) * * * Distributing agencies may exempt end products from testing if they have been used previously, have been determined by the distributing agency to be acceptable by recipient agencies, and have had no changes in specifications.

* * * * *

6. In § 250.48, paragraphs (b)(1) and (c) are revised to read as follows:

§ 250.48 School food authorities and commodity schools.

* * * * *

(b) *Quantities and Value of Donated Foods*—(1) *Quantities.* Distribution of donated food to a State for school food authorities shall be calculated by multiplying the number of lunches served in the preceding school year which meet the mealpattern requirements (reimbursable) prescribed in the regulations for the National School Lunch Program under part 210 of this chapter, by the national average value of donated food as described in paragraph (b)(2) of this section. The number of reimbursable lunches served shall be derived from the monthly claims submitted by school food authorities and States as required by regulations for the National School Lunch Program at § 210.8 of this chapter. After the end of each school year, FNS shall reconcile the number of reimbursable lunches served by schools in each State with the number served in the preceding school year and, based on such reconciliation, shall increase or reduce subsequent commodity assistance provided to each State. As early as practicable each school year, but not later than September 1, the estimated number of lunches served in the preceding school year and requests for adjustments shall be provided by the administering State agency or the FNSRO to the distributing agency. At the discretion of FNS, current year adjustments may be made for significant variations in the number of reimbursable lunches served. Such current year adjustments will not be routine and will only be made for unusual problems encountered in a State, such as a teachers' strike or a disaster that necessitates school closures for a prolonged period of time.

* * * * *

(c) *Offering the per-meal value of donated foods*— (1) *Commodity offer value.* Distributing agencies shall offer each school food authority no less than the national average per-meal value of donated foods established by the Department on July 1 of each year, in accordance with paragraph (b)(2) of this section. This value shall be referred to as the commodity offer value. The total value of donated foods which must be

offered to school food authorities shall be calculated by multiplying the per-meal value of donated foods times the number of reimbursable meals served by the school food authority during the preceding school year; or by another method which the distributing agency prefers and can justify as providing each school food authority an equitable share of donated food. Distributing agencies shall communicate to school food authorities and FNS regional offices the methods used to establish the commodity offer value. Distributing agencies shall document commodity offerings and refusals in order to verify that the per-meal value of commodities was offered to all school food authorities.

(2) *Commodity variety offered.* Distributing agencies shall offer and efficiently deliver to each school food authority the full range of all commodities equitably and consistently to the extent that quantities requested or made available are sufficient to make a statewide distribution. At least annually, distributing agencies shall develop and disseminate to school food authorities a procedure for the allocation of commodities when the amount received from the Department is not sufficient to make a statewide distribution to all school food authorities.

(3) *Bonus commodities.* Bonus commodities (i.e., commodities provided in addition to a State's authorized level of assistance) offered shall be distinguished from entitlement commodities (i.e., commodities provided as part of an authorized level of assistance) and shall not be included as a part of the per-meal value of donated foods which must be offered to school food authorities.

* * * * *

7. In § 250.49, the heading of the section and paragraph (b)(1) are revised to read as follows:

§ 250.49 Nonresidential child and adult care institutions.

* * * * *

(b) *Quantities and value of donated foods*—(1) *Quantities.* Distribution of donated food to a State for nonresidential child and adult care institutions shall be calculated by multiplying the number of lunches and suppers served in the preceding school year which meet the meal-pattern requirements (reimbursable) prescribed in the regulations for the Child and Adult Care Food Program under part 226 of this chapter by the national average value of donated food as described in paragraph (b)(2) of this section. The number of lunches and suppers served shall be derived from the monthly claims submitted by participating institutions as required by Child and Adult Care Food Program regulations at § 226.11(b) of this chapter. After the end of the school year, FNS shall reconcile the number of reimbursable meals served in each State with the number served in the preceding school year and, based on such reconciliation, shall increase or reduce subsequent commodity assistance provided to each State. As early as practicable each year, but not later than September 1, the estimated number of lunches and suppers served in the preceding school year and requests for adjustments shall be provided by the administering State agency or the FNSRO to the distributing agency. At the discretion of FNS, current year adjustments may be made for significant variations in the number of meals served. Such current year adjustments will not be routine and will only be made for unusual problems encountered in a State, such as a disaster that necessitates institutional closures for a prolonged period of time.

* * * * *

Dated: July 12, 1993.

Ellen Haas,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 93–17267 Filed 7–21–93; 8:45 am]

BILLING CODE 3410–30–U

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 91–155–5]

Mediterranean Fruit Fly; Removal From the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing from the list of quarantined areas in California the quarantined area in San Diego County. We have determined that the Mediterranean fruit fly has been eradicated from this area and that the restrictions are no longer necessary. This action relieves unnecessary restrictions on the interstate movement of regulated articles from this area.

DATES: Interim rule effective July 16, 1993. Consideration will be given only to comments received on or before September 20, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91–155–5. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The regulations in 7 CFR 301.78 through 301.78–10 (referred to below as the regulations) impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Mediterranean fruit fly to noninfested areas of the United States. In a document effective on November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57573–57579, Docket No. 91–155), we quarantined the Hancock Park area of Los Angeles County, CA. In an interim rule effective on September 10, 1992, and published in the **Federal Register** on September 15, 1992 (57 FR 42485–42486, Docket No. 91–155–2), we amended the regulations by adding a portion of Santa Clara County, CA, to the list of quarantined areas. Also, effective on November 12, 1992, and published in the **Federal Register** on November 17, 1992 (57 FR 54166–54169, Docket No. 91–155–3), we amended the regulations by expanding the quarantined area in Los Angeles County, CA, to include other portions of Los Angeles County, including Duarte, Griffith Park, Inglewood, and Pasadena. In an interim rule effective January 19,

1993, and published in the **Federal Register** on January 28, 1993 (58 FR 6343–6346, Docket No. 91–155–4), we amended the regulations by expanding the previously quarantined area in Los Angeles County, and including a portion of Orange County, and by adding a portion of San Diego County, CA, to the list of quarantined areas.

Based on trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service we have determined that the Medfly has been eradicated from the quarantined area in San Diego County, CA. The last finding of the Medfly thought to be associated with the infestation in this area was made on November 11, 1992. Since then, no evidence of infestation has been found in this area. We have determined that the Medfly no longer exists in this area, and we are therefore removing it from the list of areas in § 301.78–3(c) quarantined because of the Mediterranean fruit fly. As a result of this action there are no longer any quarantined areas in San Diego County. Portions of Los Angeles, Orange and Santa Clara Counties remain quarantined.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. The area in California affected by this document was quarantined due to the possibility that the Mediterranean fruit fly could spread to noninfested areas of the United States. Since this situation no longer exists, and the continued quarantined status of this area would impose unnecessary regulatory restrictions on the public, immediate action is warranted to remove restrictions from the noninfested areas.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This rule affects the interstate movement of regulated articles from the Oceanside area of San Diego County in California. There are approximately 132 small entities that could be affected, including 40 retail/wholesale fruit stands, 59 nurseries, 3 packers, 2 farmers' markets, and 25 fruit vendors. There are also 3 farms totalling 2.7 acres.

The effect of this rule on these entities should be insignificant since most of these small entities handle regulated articles primarily for local intrastate movement, not interstate movement, and the distribution of these articles was not affected by the regulatory provisions we are removing.

Many of these entities also handle other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities should be minimal. Further, the conditions in the Mediterranean fruit fly regulations and treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allow the interstate movement of most articles without significant added costs. These small entities comprise less than 1 percent of the total number of similar entities operating in the State of California.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule:

(1) Preempts all State and local laws and regulations that are inconsistent with this rule;

(2) Has no retroactive effect; and

(3) Does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.78–3 [Amended]

2. In § 301.78–3, paragraph (c) is amended by removing the entry for San Diego County.

Done in Washington, DC, this 16th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–17438 Filed 7–21–93; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Parts 1 and 2

[Docket No. 91–035–3]

RIN 0579–AA42

Random Source Dogs and Cats

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations under the Animal Welfare Act (Act) to require that dogs and cats acquired by pounds and shelters owned

and operated by States, counties, and cities, private entities established for the purpose of caring for animals, such as humane societies or contract pounds or shelters, and research facilities licensed as dealers by the United States Department of Agriculture, be held and cared for at those establishments for at least 5 days before being provided to a dealer. We are also amending the regulations to require that dealers provide a valid certification to anyone acquiring random source dogs and cats from them. These amendments are being made pursuant to the most recent amendment of the Act. The amendment to the Act was enacted to prevent the use of stolen pets in research and to provide owners the opportunity to locate their animals.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Acting Assistant Deputy Administrator, Animal Care, Regulatory Enforcement and Animal Care, APHIS, USDA, room 554, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–4981.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Regulations (the regulations) are contained in title 9 of the Code of Federal Regulations, chapter 1, subchapter A, parts 1, 2, and 3. Part 1 provides definitions of the terms used in parts 2 and 3. Part 2 sets forth the administrative and institutional responsibilities of regulated persons under the Animal Welfare Act (7 U.S.C. 2131, *et seq.*) (the Act). Part 3 provides specifications for the humane handling, care, treatment, and transportation, by regulated persons, of animals covered under the Act.

On November 15, 1992, we published in the **Federal Register** (56 FR 57991–57994, Docket No. 91–035) a document proposing to add new provisions to 9 CFR part 2, subpart I, regarding the length of time certain pounds, shelters, and research facilities must hold dogs and cats, in accordance with the Act. We also proposed to add to 9 CFR part 2, subpart I, provisions requiring certification to accompany random source dogs and cats sold, provided, or made available by dealers to any individual or entity.

We invited comments on our proposed rule, requiring that they be received on or before December 16, 1991. We received 49 comments by that date. The commenters included members of the academic and research communities, biological supply companies, municipal animal holding facilities, humane organizations, and other members of the general public. A number of the commenters requested that the comment period be extended. We made no changes to the comment period based on these requests. We consider the 30-day comment period provided to have been sufficient time for the public to have reviewed and responded to the proposed rule.

Of the commenters that addressed the proposed rule, one opposed it in general. The remainder of the commenters recommended specific changes to the proposed provisions. We carefully considered all comments, and discuss the commenters' recommendations below. Based on the reasons set forth in the proposal and in this document, we are adopting the provisions of the proposed rule, with the changes discussed in this document.

Holding Period

In proposed § 2.133 (a)(1) through (a)(3), we proposed that any dog or cat acquired by (1) a State, county, or city owned and operated pound or shelter, (2) a private entity established for the purpose of caring for animals, such as a humane society, or other organization that is under contract with a State, county, or city, that operates as a pound or shelter, and that releases animals on a voluntary basis, or (3) a research facility which is licensed by the United States Department of Agriculture (USDA) as a dealer, must be held and provided care for at least 5 full days before being sold to a dealer. We proposed further that this 5-day period would not include the day of acquisition or time in transit. (Additionally, the day of disposition is also excluded from the holding period because it is not a full day.) We proposed that this holding period would include a Saturday, in order to provide owners and other individuals the opportunity to recover or adopt such animals on a weekend.

A number of commenters expressed concern that the 5-day holding period would significantly raise the operating costs of shelters that are not currently holding animals for that length of time, and that these costs would have to be passed along in the form of increased taxes or higher prices to dealers. In the latter case, said the commenters, the costs would then be passed along to colleges and universities that use the animals for research. One commenter recommended that a holding period of 10 days be required.

We are making no changes based on these comments. While we recognize that the rule may increase costs in some cases, the statute requires the establishment of at least a 5-day holding period. The intent of the holding period is to provide a reasonable period of time for a dog or cat to be either recovered by its original owner or adopted by other individuals before the dog or cat is provided to a dealer. We continue to consider the holding period required by this rule to be consistent with that intent.

Several commenters specifically supported the provision that the holding period include a Saturday. One commenter opposed that provision, stating that Congress withdrew that requirement in conference before amending the Act. We are making no changes based on this comment. Although a Saturday holding requirement does not appear in the Act, the legislative history regarding the amendment to the Act clearly shows that Congress supported the concept of holding dogs and cats over a Saturday. We are confident that such a requirement will be, in many cases, a significant aid to owners attempting to recover lost pets.

A number of commenters stated that if the intent of the proposal was to give owners the opportunity to recover pets, then the 5-day holding period should be extended to all dogs and cats at pounds and shelters, not just to those sold to dealers. Some of these commenters stated that the number of dogs and cats sold to dealers is a small percentage of the total number of dogs and cats at pounds and shelters. We are making no changes based on these comments. The statute does not authorize imposition of such requirements.

A number of commenters recommended that the holding period be waived in cases where the owner of the dog or cat indicates that he or she allows the dog or cat to be used in research. Several commenters specifically opposed such a change to the proposal. One of these commenters expressed concern that such a provision would result in dogs and cats being fraudulently identified, unless the individual releasing the dog or cat were to show verifiable proof of ownership. We are making no changes to the regulations based on these comments. The intent of the 5-day holding period, as set forth in the Act, is both to enable dogs and cats to be recovered by their owners and to allow dogs and cats to be adopted by other individuals. Establishing an owner-option waiver would not further the goal of allowing additional time for adoption of dogs and cats.

A number of commenters recommended that the proposed holding period be applied only to live dogs and cats. Many of these

commenters stated that dogs and cats euthanized without being held for 5 days would likely be disposed of through other means, such as disposal at landfills or incinerators. The commenters expressed concern that this would reduce the supply and raise the cost of dead dogs and cats used for educational purposes. Upon consideration of these comments and of the amendment's provisions, we agree with the commenters. The purpose of the amendment is to provide pet owners a greater opportunity to recover any lost or stolen dogs and cats, and to allow others to adopt stray dogs and cats. The amendment does not require pounds and shelters to hold dogs and cats before euthanizing them. No purpose would be served by precluding pounds and shelters from selling or otherwise disposing of euthanized dogs and cats to dealers. Accordingly, the proposed regulations are modified in this final rule to make it clear that they apply only to live dogs and cats.

Several commenters requested that language be added to the proposed provisions to make clear that the holding period would apply only to dogs and cats acquired by dealers, and not to those made available by pounds and shelters directly to research facilities. Another commenter recommended that the holding period be extended to include any dog or cat released from a pound or shelter, regardless of whether it is sold directly to a research facility. We are making no changes based on these comments. The statute clearly states that the holding period applies only to dogs and cats provided to dealers. It should be noted, however, that research facilities that sell animals (other than those that are government-operated) must be licensed as "dealers," and therefore the holding period would apply in such cases.

One commenter objected to the provision that the holding period would exclude the time a dog or cat spends in transit, stating that this provision would be difficult to enforce. We do not agree. We are already enforcing regulations in 9 CFR part 2 that require dealers and exhibitors to meet certain holding periods, and these holding periods are exclusive of time dogs and cats are in transit. We have not found it difficult to enforce these regulations.

One commenter stated that, because of their functional differences, it is misleading to include pounds and shelters in the same definition. The commenter recommended that separate definitions be developed for each type of facility. We are making no changes based on this comment. Although there may be differences between pounds and shelters in other contexts, when they engage in activities subject to the regulations there are no legally significant differences.

One commenter recommended that language be inserted into the proposed regulations to clarify that State laws prohibiting the release of pound and shelter dogs and cats would not be superseded. We are making no changes based on this comment. It is nowhere implied in the proposed regulations that pounds and shelters would be required to release dogs and cats to dealers.

Clarification

We are also making a change to the regulations as proposed to clarify which dogs and cats are subject to the holding period. In accordance with the statutory requirements, the certification requirements in proposed § 2.133(b) apply to random source dogs and cats acquired by a dealer from any person, pound, or shelter. However, proposed § 2.133(a) refers only to entities "selling" dogs or cats. Therefore, to eliminate any possible confusion, proposed § 2.133(a) is modified in this final rule to provide that the holding period will apply to dogs and cats that are sold or in any way "provided" to dealers by the entities described in § 2.133(a).

Certification

In our proposed rule, we also proposed to establish requirements for certification to accompany random source dogs and cats that are sold, provided, or otherwise made available by dealers to any individual or entity. A number of commenters recommended that the requirement that the dealer certify that the person, pound, or shelter releasing the dog or cat was informed that it might be used in research or education be changed to require that the notice be in writing. We are making no changes based on this comment. We consider the written certification adequate to facilitate our enforcement of the proposed provisions.

The certification as proposed would also have to include a description of the dog or cat, which would include the following: (1) The species, breed, or type; (2) the sex; (3) the date of birth or, if unknown, the approximate age; (4) the color and any distinctive markings; and (5) the official USDA-approved identification number of the dog or cat. Several commenters recommended that the description be required to include additional information, including length, height, and weight, and, for mixed breeds, an estimate of the dominant breeds. One commenter recommended that the regulations require each dog or cat to be photographed.

We agree that mixed breeds could be better identified if an estimate were made of the dominant breeds or types. Therefore, § 2.133(b)(3)(i) as proposed is modified in this final rule to provide that, for mixed breeds, the certification must indicate an estimate of the two dominant breeds or types. We do not agree that adding length, height, and weight would aid significantly in identification. Except in infrequent situations, a dog or cat identified by its breed or mix will fall into an identifiable size range, and the specificity gained by actually measuring them would not justify the added burden involved. Weight would not necessarily be a good method of identification, because, in many cases, strays suffer significantly weight loss. We also do not agree that requiring that each dog or cat be photographed would be justifiable or necessary. We consider the information required by this final rule to be adequate for identification. The significant additional cost of photographing each dog or cat would not be justified by any additional specificity the photograph might provide.

Several commenters requested clarification of whether the certification requirements would apply to dogs and cats that have been euthanized, and objected to such an application. One commenter recommended that, if the regulations were to apply to dead animals, it be provided that the certification requirements cease with the first recipient of the animals. The commenters expressed concern that applying the certification requirements to dead animals would create unwieldy recordkeeping requirements for catalog supply houses, which, the commenters stated, would have to maintain certification records on specific animals through the processing cycle, send the specified certification records to the end use (schools), and require return of verification of receipt of such certification. We agree with these comments and, as stated above, the regulations as proposed are modified in this final rule to make it clear that they apply only to live dogs and cats.

Section 2.133(b)(4) as proposed provides that the certification that would have to accompany the dog or cat must contain the name and address of the person, pound, or shelter from which the dog or cat was acquired by the dealer. Proposed § 2.133(b)(5) provides, additionally, that the certification must include the date the dealer acquired the dog or cat. One commenter stated that these proposed

provisions are in conflict with current § 2.75(a)(4), which provides that the source and date of acquisition of a dog or cat need not appear on the copy of the record that must accompany the shipment under the current regulations. The commenter stated that the proposed regulations create a similar discrepancy under current § 2.35(e) with regard to registered research facilities that dispose of dogs and cats acquired from dealers to any other facility.

We agree that this apparent discrepancy could be confusing. The proposed regulations are intended to supplement the recordkeeping requirements in the current regulations in situations where random source dogs and cats are involved. In such cases, the proposed regulations would supersede the "freedom from disclosure" provisions in current §§ 2.75 and 2.35. Therefore, we are amending current §§ 2.75(a)(4) and 2.35(e) to clarify that the provisions in those sections that state that the date and source of acquisition of dogs and cats need not appear on records accompanying shipments of dogs and cats are applicable except as provided in § 2.133.

Section 2.133(b)(1) as proposed provides that the certification to accompany the dog or cat must include the name, address, USDA license number, and signature of any dealer providing a dog or cat covered by the proposed provisions to another party. One commenter recommended that this identification requirement be expanded to include the vehicle license number and State of the individual delivering the dog or cat, that individual's driver's license and State, and the State of the individual. The commenter stated that, because some dealers employ many employees and subcontractors, this additional identification would be necessary to resolve any theft problems. We are making no changes based on this comment. We consider the information available to us under § 2.75 of the current regulations ("Records: Dealers and exhibitors"), and in the regulations as proposed, to be sufficient to trace the address and location of any dealer supplying dogs or cats.

Section 2.133(g) as proposed requires that, in instances where a research facility transfers a random source dog or cat acquired from a dealer to another research facility, a copy of the required certification must accompany the dog or cat transferred. Several commenters requested clarification of whether the word "transfers" refers to an actual change of ownership, or simply to a physical transfer of the dog or cat for the purpose of maintaining it in a different facility for part of a study. Another commenter recommended that the regulations specify that, in the case of two or more research institutions transferring dogs or cats among themselves, each facility must maintain copies of the certification. The word "transfers" as we used it in the proposal was intended to refer to change of ownership. If no change of ownership occurs, the records maintained by the first facility will be sufficient for identification and tracing of the animal. We are therefore amending § 2.133(g), as proposed, to read: "In instances where a research facility transfers ownership of a live random source dog or cat acquired from a dealer to another research facility, a copy of the certification required by paragraph (b) of this section must accompany the dog or cat transferred * * *."

Sections 2.133 (f) and (g) as proposed provide that research facilities must keep copies of the required certification for at least 1 year following disposition of the animal. One commenter stated that this period is not consistent with § 2.35(f) of the current regulations, which requires all registered research facilities to maintain acquisition and disposition records for dogs and cats for a minimum of 3 years. We agree that the record retention requirement should be consistent and should be 3 years. Accordingly, § 2.133(f) as proposed is modified in this final rule to provide that a research facility that acquires any random source dog or cat from a dealer shall keep, maintain, and make available for APHIS inspection a copy of the required certification for at least 3 years following disposition of the dog or cat. Also, § 2.133(g) as proposed is modified in this final rule to require that research facilities that obtain ownership from another research facility of a random source dog or cat acquired from a dealer shall keep, maintain, and make available for APHIS inspection a copy of the required certification for at least 3 years following disposition of the dog or cat.

Nonsubstantive Changes

We are changing the references to "the Department" in the rule to read "USDA." This change will make the terminology in the rule consistent with the terminology in the remainder of 9 CFR part 2. We are also updating the authority citation for this rule to reflect the most recent amendments to the act. Additionally, we are making nonsubstantive changes for purposes of clarity.

Public Comments on the Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (Pub. L. 96–354), we conducted an initial regulatory flexibility analysis regarding the proposed rule, and we encouraged comments on the analysis. We received a small number of comments regarding the analysis.

In our initial regulatory flexibility analysis, we assumed an average holding period of 3 days for dogs and cats at pounds and shelters. Several commenters suggested that we should have assumed a longer average holding period. These commenters stated that many shelters already hold dogs and cats for 5 or more days. While we agree that many shelters may hold dogs and cats for periods in excess of 3 days, we nonetheless believe that a 3-day average is a reasonable average upon which to base our analysis.

One commenter stated that our estimate that 2,200 to 3,800 pounds and shelters in the United States sell dogs and cats to dealers was too high, because many county and local laws prohibit the sale or release of dogs and cats to dealers. We agree that, in many cases, whether dogs and cats may be released to dealers is determined by the laws and ordinances of local jurisdictions. Because of this, it is impossible, without conducting a costly and comprehensive survey, to determine precisely how many facilities do release dogs and cats to dealers. That is why we provided such a wide range in our estimate, which we continue to consider a reasonable one based on the information available to us.

One commenter stated that our estimated numbers of dogs and cats sold or otherwise provided by pounds or shelters to dealers (80,000 for dogs and 50,000 for cats) were to high. The estimates we provided in our proposal were based on data from 1985–1990. Trends in the use of dogs and cats in research have been changing, and we agree with the commenter that the most recent figures available show a decline from previous years. Therefore, we have revised our estimates of the number of dogs and cats sold or provided annually from pounds and shelters to 67,000 dogs and 31,000 cats.

One commenter felt that the $7 figure we used as the cost per day to care for each dog or cat was to high. We based this figure on 30 minutes of labor and $1–$3 worth of food, cleaning materials, and water. We consider it to be a reasonable cost figure.

Several commenters suggested that shelters are generally full, and that, in

order to hold dogs and cats for 5 days, additional space and cages would be necessary at these facilities. Although we agree that some pounds and shelters may often be used to capacity, it would be extremely costly and difficult to determine how much pound or shelter capacity is utilized on a daily or weekly basis across the United States. The regulations in this rule, however, do not apply to all dogs and cats held at pounds or shelters, but only to those provided to dealers. Therefore, pounds and shelters that generally operate at capacity would have to add space only if they wanted to sell dogs and cats to dealers. At this time, we have no way of determining how many dogs and cats will be provided to dealers once the provisions in this rule are implemented.

Several commenters questioned the statement in the initial regulatory flexibility analysis that the increased costs arising from the proposed regulation would be borne by taxpayers. We agree that this statement may be an oversimplification. Increased costs faced by pounds and shelters as a result of this rule will need to be absorbed by the pound or shelter either through: (1) Increased funding from either private donations, or State, county, or city funds, or (2) increased income from the sale of each dog or cat. This statement is included in the regulatory flexibility analysis discussed below.

In our initial regulatory flexibility analysis, we stated that the sales of dogs and cats from pounds and shelters are currently prohibited in 12 states. One commenter correctly stated that a thirteenth state, West Virginia, also prohibits such sales, and we have amended our analysis accordingly.

Miscellaneous

A number of commenters addressed issues outside the scope of the proposal. One commenter recommended that it be required that owners who voluntarily deliver a dog or cat to a pound or shelter be informed in writing if that facility might transfer the animal to a dealer or research facility. One commenter requested that the definition of dealer in 9 CFR part 1 be amended to exclude "a pound/shelter municipally owned and operated or a pound or shelter operated under contract with a State, county, city, or other jurisdiction." One commenter expressed the opinion that it is essential that the pet-owning public have free access to animals at a pound or shelter during regular business hours and a Saturday. One commenter recommended that we consider a more permanent form of identification for dogs and cats than that required by the current regulations. The same commenter requested that we license pounds and shelters that sell animals for research or education purposes as "Class B dealers." (We are already following such a practice, except with regard to municipal pounds and shelters.) One commenter recommended that dealers that also operate pounds or shelters be liable for proper care of the animals present. (Standards for such care already exist in 9 CFR part 3, subpart A.) One commenter requested that AHIS investigate means by which the perception that pets are widely used in research could be corrected, and also that APHIS conduct a study of the effectiveness and impact of the proposed rule, once implemented, and present it to Congress. Although we are making no changes based on these comments, we have reviewed them carefully, and, if necessary, will take whatever action is appropriate.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less that $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Analysis

In accordance with 5 U.S.C. 603, we have performed a regulatory flexibility analysis regarding the potential impact of this rule on small entities. This analysis is set forth below.

Under this rule, municipally owned and operated pounds and shelters, humane societies and contract pounds or shelters, and licensed research facilities that provide random source dogs and cats to dealers must comply with the holding period. Sales of dogs and cats for research from pounds and shelters are currently prohibited in the following 13 States: Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont, and West Virginia. Pounds and shelters in these 13 States would, therefore, be unaffected by the proposed regulations. Individual shelters in the remaining 37 States and the District of Columbia that choose not to make such sales would also be unaffected. Under part 2, subpart C, § 2.38(j) of the Animal Welfare regulations, research facilities are already required to hold for 5 full days dogs or cats that they acquire from sources other than dealers, exhibitors and exempt persons. The only change from the current regulations in this regard would be the addition of the requirement that the dogs and cats at licensed research facilities be held over at least one Saturday.

The total number of pounds and shelters in the United States is estimated by the Humane Society of the United States to be between 3,000, 5,000. For purpose of the Regulatory Flexibility Act, all of these pounds and shelters would be considered small. For this analysis, it was assumed that approximately 2,200 to 3,800 pounds and shelters in the United States may sell dogs and cats to dealers. It is estimated that as many as 67,000 dogs and 31,000 cats may be sold or provided to dealers from these pounds and shelters each year. These 2,200 to 3,800 pounds and shelters will be affected by the regulations. The extent of the impact of the regulation on these pounds and shelters will depend on whether the pound or shelter currently holds dogs and cats at least 5 days, including a Saturday, before selling them to a dealer.

Holding periods for pounds and shelters are currently prescribed by State or local governments and by shelter operators. While it was known that at least one State, Minnesota, requires dogs and cats to be held for 5 days before they can be sold, specific information for other State and local governments was not available. A 3-day average holding period was assumed for this analysis. Therefore, this regulation will require pounds and shelters to hold and care for each dog or cat, on average, for an additional 2 to 4 days, in order to hold each dog and cat for 5 days including a Saturday. The daily cost for labor and materials to feed, water, and clean up after each dog or cat was estimated at $7. The increased cost to each affected pound or shelter for each dog or cat is, therefore, estimated at approximately $14 to $28. The increased annual cost for each affected shelter is estimated at approximately $370 to $1,250.

Some of the pounds or shelters that sell, provide, or make available dogs or cats to dealers may currently be operating at capacity. The holding requirements set forth in this rule may result in these pounds and shelters

adding space and/or cages. It was not possible to determine how many pounds or shelters might be affected in this manner or to estimate the cost of this impact.

To absorb the increased costs resulting from this rule, pounds and shelters must either increase their funding and/or increase their income from the sale of each dog or cat. Increased funding could come from increased private donations or increased monies from State, county, or city finances. Taxpayers and purchasers of these dogs and cats could be affected.

Under this rule, any dealer selling, providing, or making available to any person a random source dog or cat will be required to provide the recipient of the dog or cat with certain certification, as discussed in the supplementary information of this document under the heading "Certification." These proposed requirements overlap the current provisions of part 2 of the Animal Welfare regulations. Under the regulations prior to the effective date of this rule, dealers are already required to enclose a record with each shipment of any dog or cat. This record must contain the following:

1. The name and address of the person to whom a dog or cat was sold or given and that person's license or registration number if he or she is licensed or registered under the Act;
2. The official USDA tag number or tattoo assigned to a dog or cat; and
3. A description of the dog or cat.

Dealers are also currently required to maintain records of the following information for each dog or cat:

1. The name and address of the person from whom a dog or cat was purchased or otherwise acquired, whether or not the person is required to be licensed or registered under the Act;
2. The USDA license or registration number of the person if he or she is licensed or registered under the Act;
3. The vehicle license number and state, and the driver's license number and State, and State of the person, if he or she is not licensed or registered under the Act;
4. The date a dog or cat was acquired or disposed of, including by euthanasia;
5. The method of transportation, including the name of the initial carrier or intermediate handler or, if a privately owned vehicle is used to transport a dog or cat, the name of the owner of the privately owned vehicle; and
6. The date and method of disposition of a dog or cat—e.g., sale, death, euthanasia, or donation.

Because, as noted above, the certification requirements contained in this rule are comprised in large measure of information already required, the reporting requirements of this regulation are not expected to increase dealers' cost.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given OMB control number 0579–0036.

List of Subjects

9 CFR Part 1

Animal welfare, Animal housing, Dealers, Exhibitors, Research facilities, Humane animal handling.

9 CFR Part 2

Adequate veterinary care, Identification of animals, Institutional animal care and use committees, Licensing, Miscellaneous, Records, Registration.

Accordingly, 9 CFR parts 1 and 2 are amended as follows:

PART 1—DEFINITION OF TERMS

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

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.17, 2.51, and 371.2(g).

2. Section 1.1 is amended by adding, in alphabetical order, a definition of "Pound or shelter" to read as follows:

§ 1.1 Definitions.

* * * * *

Pound or shelter means a facility that accepts and/or seizes animals for the purpose of caring for them, placing them through adoption, or carrying out law enforcement, whether or not the facility is operated for profit.

* * * * *

PART 2—REGULATIONS

3. The authority citation for part 2 is revised to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.17, 2.51, and 371.2(g).

4. In subpart C, § 2.35(e) is amended by revising the first sentence to read as follows:

§ 2.35 Recordkeeping requirements.

* * * * *

(e) One copy of the record containing the information required by paragraphs (b) and (c) of this section shall accompany each shipment of any live dog or cat sold or otherwise disposed of by a research facility; *Provided, however*, That, except as provided in § 2.133 of this part, information that indicates the source and date of acquisition of any dog or cat need not appear on the copy of the record accompanying the shipment.

* * *

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5. In subpart C, § 2.38, a new paragraph (k)(4) is added to read as follows:

§ 2.38 Miscellaneous.

* * * * *

(k) * * *

(4) Each research facility shall comply with the regulations set forth in § 2 133 of subpart I of this part.

6. In subpart C, § 2.75(a)(4) is amended by revising the second sentence to read as follows:

§ 2.75 Records: Dealers and exhibitors.

(a) * * *

(4) * * * One copy of the record containing the information required by paragraph (a)(1) of this section shall accompany each shipment of any dog or *however*, that, except as provided in § 2.133(b) of this part for dealers, information that indicates the source and date of acquisition of a dog or cat need not appear on the copy of the record accompanying the shipment.

* * *

* * * * *

7. Part 2, subpart I, is amended by adding a new § 2.133 to read as follows:

§ 2.133 Certification for random source dogs and cats.

(a) Each of the entities listed in paragraphs (a)(1) through (a)(3) of this section that acquire any live dog or cat shall, before selling or providing the live dog or cat to a dealer, hold and care for the dog or cat for a period of not less

than 5 full days after acquiring the animal, not including the date of acquisition and excluding time in transit. This holding period shall include at least one Saturday. The provisions of this paragraph apply to:

(1) Each pound or shelter owned and operated by a State, county, or city;

(2) Each private pound or shelter established for the purpose of caring for animals, such as a humane society, or other organization that is under contract with a State, county, or city, that operates as a pound or shelter, and that releases animals on a voluntary basis; and

(3) Each research facility licensed by USDA as a dealer.

(b) A dealer shall not sell, provide, or make available to any person a live random source dog or cat unless the dealer provides the recipient of the dog or cat with certification that contains the following information:

(1) The name, address, USDA license number, and signature of the dealer;

(2) The name, address, USDA license or registration number, if such number exists, and signature of the recipient of the dog or cat;

(3) A description of each dog or cat being sold, provided, or made available that shall include:

(i) The species and breed or type (for mixed breeds, estimate the two dominant breeds or types);

(ii) The sex;

(iii) The date of birth or, if unknown, then the approximate age;

(iv) The color and any distinctive markings; and

(v) The Official USDA-approved identification number of the animal. However, if the certification is attached to a certificate provided by a prior dealer which contains the required description, then only the official identification numbers are required;

(4) The name and address of the person, pound, or shelter from which the dog or cat was acquired by the dealer, and an assurance that the person, pound, or shelter was notified that the cat or dog might be used for research or educational purposes;

(5) The date the dealer acquired the dog or cat from the person, pound, or shelter referred to in paragraph (b)(4) of this section; and

(6) If the dealer acquired the dog or cat from a pound or shelter, a signed statement by the pound or shelter that it met the requirements of paragraph (a) of this section. This statement must at least describe the animals by their official USDA identification numbers. It may be incorporated within the certification if the dealer makes the certification at the time that the animals are acquired from the pound or shelter or it may be made separately and attached to the certification later. If made separately, it must include the same information describing each animal as is required in the certification. A photocopy of the statement will be regarded as a duplicate original.

(c) The original certification required under paragraph (b) of this section shall accompany the shipment of a live dog or cat to be sold, provided, or otherwise made available by the dealer.

(d) A dealer who acquires a live dog or cat from another dealer must obtain from that dealer the certification required by paragraph (b) of this section and must attach that certification (including any previously attached certification) to the certification which he or she provides pursuant to paragraph (b) of this section (a photocopy of the original certification will be deemed a duplicate original if the dealer does not dispose of all of the dogs or cats in a single transaction).

(e) A dealer who completes, provides, or receives a certification required under paragraph (b) of this section shall keep, maintain, and make available for APHIS inspection a copy of the certification for at least 1 year following disposition.

(f) A research facility which acquires any live random source dog or cat from a dealer must obtain the certification required under paragraph (b) of this section and shall keep, maintain, and make available for APHIS inspection the original for at least 3 years following disposition.

(g) In instances where a research facility transfers ownership of a live random source dog or cat acquired from a dealer to another research facility, a copy of the certification required by paragraph (b) of this section must accompany the dog or cat transferred. The research facility to which the dog or cat is transferred shall keep, maintain, and make available for APHIS inspection the copy of the certification for at least 3 years following disposition.

Done in Washington, DC, this 16th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-17439 Filed 7-21-93; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30 and 35

RIN 3150—AE58

Prepare Radiopharmaceutical Reagent Kits and Elute Radiopharmaceutical Generators; Use of Radiopharmaceuticals for Therapy; Extension of Expiration Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: Extension of expiration date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is extending the expiration date of the interim final rule related to the preparation and therapeutic use of radiopharmaceuticals from August 23, 1993, to December 31, 1994. The action allows licensees to continue to use byproduct material under the provisions of the interim final rule until the NRC completes a related rulemaking to address broader issues for the medical use of byproduct material (including those issues addressed by the interim final rule). The NRC expects that this broader rule would be completed and issued as a final rule before the end of 1994. This extension of the expiration date is necessary to maintain the relief provided by the interim final rule.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3797.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 1989, the American College of Nuclear Physicians (ACNP) and the Society of Nuclear Medicine (SNM) submitted a petition for rulemaking (PRM-35-9), requesting the Commission to amend its regulations to permit licensed nuclear pharmacists and physicians greater flexibility in the preparation and use of radiopharmaceuticals. After reviewing the petition and consulting with the U.S. Food and Drug Administration (FDA), the NRC determined that some issues raised in the petition needed to be resolved expeditiously.

Subsequently, on August 23, 1990 (55 FR 34513), the Commission published an interim final rule in the **Federal Register** to allow medical use licensees, under certain conditions and limitations, to use therapeutic radiopharmaceuticals for indications

and methods of administration not listed in the FDA-approved package inserts. In addition, the interim final rule allows medical use licensees and commercial nuclear pharmacies to depart from the manufacturer's instructions for preparing diagnostic radiopharmaceuticals using radionuclide generators and reagent kits, provided that the licensees follow the directions of a physician authorized user. The NRC amended the interim final rule to eliminate certain recordkeeping requirements related to the preparation and use of radiopharmaceuticals (57 FR 45566, October 2, 1992). The interim final rule will expire on August 23, 1993 unless it is extended.

The NRC has published for comment a broader proposed rule in response to PRM-35-9 (58 FR 33396, June 17, 1993) that would resolve the issues raised in the petition, including the issues addressed by the interim final rule. The Commission intends to replace the provisions of the interim final rule with the provisions of this broader rule. The NRC expects that this broader rule will be promulgated and effective before the end of 1994.

The Proposed Rule and Public Comment

The NRC proposed to extend the expiration date of the interim final rule from August 23, 1993, to December 31, 1994 (58 FR 26938, May 6, 1993). A 30-day public comment period expired on June 7, 1993. Comments were received from three respondents. All three commenters supported, without modifications, the proposed extension of the expiration date of the interim final rule.

Discussion of the Final Rule

Because no suggestions were made to modify the proposed rule, the regulatory text in the final rule is the same as the proposed rule.

Section 30.34 Terms and Conditions of Licenses

The NRC is extending the expiration date in paragraph (i)(1) of this section from August 23, 1993, to December 31, 1994. This extension is necessary to allow commercial nuclear pharmacies to continue to prepare byproduct material under the provisions of the interim final rule until the broader rule is effective.

Section 35.200 Use of Radiopharmaceuticals, Generators, and Reagent Kits for Imaging and Localization Studies

The NRC is extending the expiration date in paragraph (c)(1) of this section from August 23, 1993, to December 31, 1994. This extension is necessary to allow medical use licensees to continue to use byproduct material under the provisions of the interim final rule until the broader rule is effective.

Section 35.300 Use of Radiopharmaceuticals for Therapy

The NRC is extending the expiration date in paragraph (b)(1) of this section from August 23, 1993, to December 31, 1994. This extension is necessary to allow medical use licensees to continue to use byproduct material under the provisions of the interim final rule until the broader rule is effective.

Also, the NRC is replacing the word "method" with the word "methods" in paragraph (b)(1) of this section to correct a typographical error.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget under approval numbers 3150-0010 and 3150-0017.

Regulatory Analysis

In August 1990, the NRC implemented an Interim Final Rule allowing licensees to depart from (a) the manufacturer's instructions for preparing diagnostic radiopharmaceuticals and (b) the package insert instructions regarding use of radiopharmaceuticals for therapy. The effective period for the rule is from August 23, 1990, to August 23, 1993.

The NRC is extending the expiration date from August 23, 1993, to December 31, 1994. This extension allows licensees to continue to use byproduct material under the provisions of the interim final rule until there is an effective final rule in a related rulemaking in response to the ACNP-SNM petition to address broader issues for the medical use of byproduct material (including those issues addressed by the interim final rule). The NRC expects that this broader rule would be completed and effective before the end of 1994. This extension of the expiration date is necessary to continue the relief from restrictions provided by the interim final rule until the effective date of the broader rule.

The alternative to this extension is to maintain the existing expiration date. Under this alternative, the provisions in the interim final rule would expire on August 23, 1993, as would the relief from restrictions provided by the interim final rule.

The NRC concludes that this extension is justified to continue to allow licensees to use byproduct material under the provisions of the interim final rule until the broader rule is effective.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects medical use licensees including some private practice physicians. Some of these licensees would be considered small entities under the NRC's size standards published in the **Federal Register** on November 6, 1991 (56 FR 56672). This rule extends the expiration date of the interim final rule from August 23, 1993, to December 31, 1994. The extension allows licensees to continue to use byproduct material under the provisions of the interim final rule until the NRC completes a related rulemaking to address broader issues for the medical use of byproduct material (including those issues addressed by the interim final rule). Therefore, for the reasons provided above, this rule does not have a significant economic impact on a substantial number of small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because this amendment does not impose requirements on existing nuclear power reactor licensees. Therefore, a backfit analysis was not prepared for this final rule.

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety

and health, Radiation protection, Reporting and recordkeeping requirements.

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. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 30 and 35.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.34, paragraph (i)(1) is revised to read as follows:

§ 30.34 Terms and conditions of licenses.

* * * * *

(i)(1) From August 23, 1990, to December 31, 1994, each licensee eluting generators and processing radioactive material with diagnostic reagent kits for which the Food and Drug Administration (FDA) has approved a "New Drug Application" (NDA), may depart from the manufacturer's elution and preparation instructions (for radiopharmaceuticals authorized for use pursuant to 10 CFR 35.200), provided that the licensee follows the directions of an authorized user physician.

* * * * *

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

3. The authority citation for part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

4. In § 35.200, paragraph (c)(1) is revised to read as follows:

§ 35.200 Use of radiopharmaceuticals, generators, and reagent kits for imaging and localization studies.

* * * * *

(c)(1) From August 23, 1990, to December 31, 1994, a licensee may depart from the manufacturer's instructions for eluting generators and preparing reagent kits for which the Food and Drug Administration (FDA) has approved a "New Drug Application" (NDA), by following the directions of an authorized user physician.

* * * * *

5. In § 35.300, paragraph (b)(1) is revised to read as follows:

§ 35.300 Use of radiopharmaceuticals for therapy.

* * * * *

(b)(1) From August 23, 1990, to December 31, 1994, a licensee may depart from the package insert instructions regarding indications or methods of administration for a radiopharmaceutical for which the Food and Drug Administration (FDA) has approved a "New Drug Application" (NDA), provided that the authorized user physician has prepared a written directive as required by § 35.32(a).

* * * * *

Dated at Rockville, Maryland, this 9th day of July, 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 93–17463 Filed 7–21–93; 8:45 am]

BILLING CODE 7590–01–P

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10 CFR Part 50

Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statement.

SUMMARY: This statement presents the policy of the Nuclear Regulatory Commission (NRC) with respect to the scope and purpose of Technical Specifications for nuclear power plants as required by 10 CFR 50.36. It establishes a specific set of objective criteria as guidance for determining which regulatory requirements and operating restrictions should be included in Technical Specifications. It encourages licensees to implement a voluntary program to update their Technical Specifications to be consistent with improved vendor-specific Standard Technical Specifications (STS) issued by the NRC in September 1992. The improved STS were published as the following NRC Reports: NUREG–1430, "Standard Technical Specifications, Babcock and Wilcox Plants", NUREG–1431, "Standard Technical Specifications, Westinghouse Plants", NUREG–1432, "Standard Technical Specifications, Combustion Engineering Plants", NUREG–1433, "Standard Technical Specifications, General Electric Plants, BWR/4", NUREG–1434, "Standard Technical Specifications, General Electric Plants, BWR/6".

These improved STS were the result of extensive technical meetings and discussions among the NRC staff, industry owners groups, vendors, and the Nuclear Management and Resources Council (NUMARC). The improved STS were developed based on the criteria in the interim Policy Statement published in February 1987. The Policy Statement now reflects modifications resulting from public comments on the interim Policy Statement and from the experience gained in developing the improved STS. Implementation of the Policy Statement through implementation of the improved STS is expected to produce an improvement in the safety of nuclear power plants through the use of more operator-oriented Technical Specifications, improved Technical Specification Bases, reduced action statement induced plant transients, and more efficient use of NRC and industry resources. The Policy Statement is not a regulation and does not establish binding requirements or limit the scope of safety issues for case-specific adjudication.

EFFECTIVE DATE: July 22, 1993.

ADDRESSES: Copies of NUREGs–1430, 1431, 1432, 1433, and 1434 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, 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 public inspection and/or copying at the NRC Public Document Room, 2120 L Street NW., Lower Level of the Gelman Building, Washington, DC. The NUREGs can also be accessed through the NRC electronic bulletin board system. Details of how to use this system were published in the **Federal Register** on November 25, 1992 (57 FR 55602).

FOR FURTHER INFORMATION CONTACT: Nanette V. Gilles, Technical Specifications Branch, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–1180.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182a. of the Atomic Energy Act of 1954 (Act), as amended (42 U.S.C. 2232), mandates the inclusion of Technical Specifications in licenses for the operation of production and utilization facilities. The Act requires that Technical Specifications include information of the amount, kind, and source of special nuclear material, the place of use, and the specific characteristics of the facility. That section also indicates that Technical Specifications should contain such information as the Commission may by rule deem necessary to enable it to find that the utilization of special nuclear material will be in accord with the common defense and security and will provide adequate protection of public health and safety. Finally, that section requires Technical Specifications to be made a part of any license issued to operate production or utilization facilities.

Section 50.36, "Technical Specifications," which implements section 182a. of the Atomic Energy Act, was promulgated by the Commission on December 17, 1968 (33 FR 18610). This rule delineates requirements for determining the contents of Technical Specifications. Technical Specifications set forth the specific characteristics of the facility and the conditions for its operation that are required to provide adequate protection to the health and safety of the public. Specifically, 10 CFR 50.36 requires that:

> Each license authorizing operation of a production or utilization facility of a type described in § 50.21 or § 50.22 will include technical specifications. The technical specifications will be derived from the analyses and evaluation included in the safety analysis report, and amendments thereto, submitted pursuant to § 50.34. The Commission may include such additional technical specifications as the Commission finds appropriate.

Technical Specifications cannot be changed by licensees without prior NRC approval. However, since 1969, there has been a trend towards including in Technical Specifications not only those requirements derived from the analyses and evaluation included in the safety analysis report but also essentially all other Commission requirements governing the operation of nuclear power reactors. This extensive use of Technical Specifications is due in part to a lack of well-defined criteria (in either the body of the rule or in some other regulatory document) for what should be included in Technical Specifications. This has contributed to the volume of Technical Specifications and to the several-fold increase, since 1969, in the number of license amendment applications to effect changes to the Technical Specifications. It has diverted both staff and licensee attention from the more important requirements in these documents to the extent that it has resulted in an adverse but unquantifiable impact on safety.

On March 30, 1982, the NRC published in the **Federal Register** (47 FR 13369) a proposed amendment to its regulations, 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities." The proposed amendment would have revised § 50.36, "Technical Specifications," to establish a new system of specifications divided into two general categories. Only those specifications contained in the first general category as Technical Specifications would have become part of the operating license and would have required prior NRC approval for any changes. Those specifications contained in the second general category would have become supplemental specifications and would not have required prior NRC approval for most changes. The NRC review of the first general category of specifications would have been the same as currently performed for Technical Specification changes, which are amendments to the operating license. For the second category, supplemental specifications, the licensee would have been allowed to make changes within specified conditions without prior NRC approval. The NRC would have reviewed these changes when they were made and would have done so in a manner similar to that currently used for reviewing design changes, tests, and experiments performed under the provisions of 10 CFR 50.59. Because of difficulties with defining the criteria for dividing the Technical Specifications into the two categories of the proposed rule and because of other higher priority licensing work, the rule change was deferred.

In the early 1980s, the nuclear industry and the NRC staff began studying the question of whether improvement to the existing system of establishing Technical Specification requirements for nuclear power plants was needed. During this time frame, two studies of this issue were performed by an NRC task group known as the Technical Specifications Improvement Project (TSIP) and a Subcommittee of the Atomic Industrial Forum's (AIF) Committee on Reactor Licensing and Safety.[1] The overall conclusion of these studies was that many improvements in the scope and content of Technical Specifications were needed, and that a joint NRC and industry program should be initiated to implement these improvements. Both of these groups made specific recommendations which are summarized as follows:

(1) The NRC should adopt the criteria for defining the scope of Technical Specifications proposed in the AIF and TSIP reports. Those criteria should then be used by the NRC and each of the nuclear steam supply system vendor owners groups to completely rewrite and streamline the existing STS. This process would result in many requirements being transferred from control by Technical Specifications requirements to control by other mechanisms (e.g., the Final Safety Analysis Report (FSAR), Operating Procedures, Quality Assurance (QA) Plan) which would not require a license amendment or prior NRC approval when changes are needed. The new STS should include greater emphasis on human factors principles in order to add clarity and understanding to the text of the STS. The new STS should also provide improvements to the Bases Section of Technical Specifications which provides the purpose for each requirement in the specification.

(2) A parallel program of short-term improvements in both the scope and substance of the existing Technical Specifications should be initiated in addition to developing a new STS as identified in paragraph (1) above.

On February 6, 1987, the NRC published in the **Federal Register** for public comment (52 FR 3788) an interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors containing proposed criteria in response to item (1). These criteria were generally derived from the criteria proposed in the AIF and TSIP reports and were modified slightly based on discussions between the NRC staff and the industry. The public comment period expired on March 23, 1987.

The NRC has developed a program for short-term improvements as described in item (2). These are known as "line-item" improvements and are generic improvements developed and

[1] SECY-86-10, "Recommendations for Improving Technical Specifications," dated January 13, 1986, contains both "Recommendations for Improving Technical Specifications," NRC Technical Specifications Improvement Project, September 30, 1985, and "Technical Specifications Improvements," AIF Subcommittee on Technical Specifications Improvements, October 1, 1985.

promulgated by the NRC staff for voluntary adoption by licensees.

Subsequently, improved vendor-specific STS were developed and issued by the NRC in September 1992. The improved STS were published as the following NRC Reports:

- NUREG–1430, "Standard Technical Specifications, Babcock and Wilcox Plants"
- NUREG–1431, "Standard Technical Specifications, Westinghouse Plants"
- NUREG–1432, "Standard Technical Specifications, Combustion Engineering Plants"
- NUREG–1433, "Standard Technical Specifications, General Electric Plants, BWR/4"
- NUREG–1434, "Standard Technical Specifications, General Electric Plants, BWR/6"

These improved STS were the result of extensive technical meetings and discussions among the NRC staff, industry owners groups, vendors, and NUMARC.

II. Summary of Public Comments on the Interim Policy Statement and NRC Responses

In early 1987, the Commission received 29 letters with comments on the Interim Policy Statement on Technical Specification Improvements. A list of the commenters and a detailed analysis of public comments are available for public inspection in the NRC Public Document Room at 2120 L Street NW., Lower Level of the Gelman Building, Washington, DC 20555.

Twenty-five of the 29 commenters were generally supportive of the Commission Policy Statement and the overall Technical Specifications Improvement Program; 3 commenters were generally not supportive; and 1 commenter was neutral. Of the 29 commenters, 23 can be categorized as representing industry views, 3 are government agencies, and 3 are interested members of the public. The industry group stated strong support for the Policy Statement and its criteria. The comments included extensive support for the overall Commission objectives of improving Technical Specifications so they are clearer and less ambiguous. The three commenters opposed to the Policy Statement were primarily concerned that moving any requirements to other documents might make them "less enforceable" than Technical Specifications or might weaken the inspection process.

Based on the criteria in this Policy Statement that define requirements that should be controlled by Technical Specifications, the Commission concludes that some requirements previously contained in Technical Specifications should be relocated to other documents that do not have the direct enforceability of Technical Specifications and do not require NRC staff approval before changes are made. Many of the requirements will be relocated to the FSAR and will be controlled through 10 CFR 50.59. Other requirements will be relocated to more appropriate documents (e.g., Security Plan, QA Plan) and controlled by the applicable regulatory requirements. The adequacy of controls for relocated requirements which do not fit in the above categories will be reviewed and approved by the NRC staff on a case-by-case basis to determine, among other things, whether an enforceable control method will need to be established. NRC approval would still be required for any changes to requirements covered by 10 CFR 50.59 that involved an unreviewed safety question and for changes which exceed the threshold criteria in the regulations for other controlled documents. The Commission believes that this control and enforcement posture is commensurate with the safety importance of the relocated requirements.

Many of the commenters addressed specific issues discussed in the Policy Statement. The following paragraphs discuss issues addressed by a significant portion of the commenters or that are of particular interest.

A slight majority of the industry commenters stated that they agreed with the Policy Statement that improvements should be voluntary. In addition, four of the commenters stated that if licensees elect to implement the Policy Statement, they should not be required to convert to STS. The Commission has concluded that where STS requirements are generally applicable, the STS should be adopted unless adequate justification for acceptance of a plant-specific Technical Specification is provided. Cases may arise where there is a question concerning the NRC staff proposed addition of requirements in the improved STS that are not in a licensee's current Technical Specifications. In such cases, the Commission intends to control the process by evaluating the imposition of additional requirements in accordance with the Commission regulations on backfitting (10 CFR 50.109).

The interim Policy Statement identified three criteria to be used to define which of the current Technical Specification requirements should be retained or included in Technical Specifications and which requirements could be relocated to licensee-controlled documents. Half of the industry commenters stated that licensees should be allowed to selectively apply the criteria without fully adopting the improvement process (e.g., not improving Bases and not applying accepted human factors principles to Technical Specifications). In this regard, it is the Commission policy that licensees may adopt portions of the improved STS without fully implementing all STS improvements. The Commission will, however, place the highest priority on the review and approval of Technical Specifications related submittals for complete conversions to the improved STS. For licensees who adopt portions of the improved STS, these portions shall include all related requirements and will normally be developed as line-item improvements by the NRC staff. In all cases, the Commission expects improved Bases to accompany requests for improved Technical Specifications. The Commission realizes, however, that it may not always be practical for licensees to apply all of the human factors principles used in the improved STS. The Commission believes that the above approach will result in safety improvements as well as consistency in Technical Specifications requirements and will allow the most efficient use of NRC and industry resources.

When the interim Policy Statement was issued, the Commission believed that it was only the overall package of improvements which, if adopted, would produce an improvement in safety. However, experience in the development of the improved STS and in the review of license amendment requests has led the Commission to conclude that safety benefits can be realized from adopting portions of the improved STS without fully implementing all STS improvements. The NRC staff has developed several line-item improvements since the publication of the interim Policy Statement. These improvements have been reviewed by the Committee to Review Generic Requirements and have been made available for voluntary implementation through generic letters. While the Commission continues to believe that the greatest improvement to safety can be realized by implementing all of the improvements in the improved STS, it also believes there is considerable merit in allowing licensees to improve portions of their Technical Specifications that could result in a safety benefit.

Fifteen industry respondents strongly supported the use of the criteria to determine which future requirements (e.g., from generic issues) would be included in Technical Specifications.

This has been the Commission intent and the Policy Statement has been modified accordingly.

Ten commenters stated that the proposed criteria were acceptable as is, and several recommended prompt rulemaking to codify the criteria. Five other commenters indicated that the criteria were inadequate or that additional discussion of the criteria scope and intent was needed. After studying comments and use of the criteria, the Commission determined that further discussion of the criteria was needed and this is included in Section IV. The Department of Nuclear Safety, State of Illinois, recommended adding a fourth criterion and delaying implementation of the Policy Statement until rule changes necessary for implementation are promulgated. The criterion suggested would expand on Criterion 3 to cover all anticipated operational sequences. The Commission believes that safety significant operational sequences are adequately addressed by Criteria 2 and 3. The Commission has added a fourth criterion (different from that proposed by the State of Illinois) to capture requirements which operating experience or probabilistic safety assessment (PSA) show to be significant to public health and safety.

In considering the specific comments on the criteria and based on experience in applying the criteria, the Commission concluded that the criteria should be codified through rulemaking. Currently, there is a common understanding between the NRC staff and the industry that the criteria provide a template to develop improved Technical Specifications. The criteria are being used by licensees to prepare Technical Specification submittals to the NRC. If the NRC staff does not believe a licensee has properly applied the criteria, the staff will not issue a license amendment until the licensee has properly applied the criteria. For these reasons, the Commission believes it is appropriate to codify the criteria in a rule which will be consistent with this Policy Statement. The Commission will ensure that the voluntary nature of the Technical Specifications Improvement Program is preserved in the rulemaking process. Comments on this Policy Statement are welcomed and will be considered and addressed during preparation of the proposed rule.

In addition to the comments on the three original criteria, seven of the commenters were opposed to using PSA to define the contents of the Technical Specifications. They expressed concern that PSA has only limited applicability and that its use is not well defined. Moreover, these commenters noted that plant licensing is based primarily on Design Basis Accident analysis which lends itself to a deterministic process rather than a PSA-based process for identifying Technical Specification requirements. The Commission believes that plant- and design-specific PSAs have yielded valuable insight to unique plant vulnerabilities not fully recognized in the safety analysis report Design Basis Accident or Transient analyses.

Some commenters stated that if PSA is used to impose Technical Specifications for some high-risk items, it should also be used to remove some low-risk items. The Commission notes that this approach to Technical Specifications has been considered at length during the development of the Policy Statement. Since the first three criteria in the Policy Statement are derived from the plant safety analysis report which is deterministic in nature, (but which itself incorporates qualitative risk insights) the Commission believes that a broad application of PSA to remove individual requirements from Technical Specifications is generally counter to the philosophy of the first three criteria. However, risk insights were used to determine the values of some completion times and surveillance frequencies for items retained in the improved STS.

The extension of the sole use of PSA to remove individual requirements from Technical Specifications would need to be founded in a broader policy of risk-based regulation which the Commission is currently pursuing at a level more inclusive than Technical Specifications improvements. Specifically, if a requirement meets any one of the four criteria, it should be retained or included in Technical Specifications. The Commission believes that it would be inappropriate at this time to allow requirements which meet one or more of the first three criteria to be deleted from Technical Specifications based solely on PSA (Criterion 4). However, if the results of PSA indicate that Technical Specifications can be relaxed or removed, a deterministic review will be performed. If the results of the deterministic review also support relaxing or removing the Technical Specifications, the NRC staff will not preclude relaxing or removing such Technical Specifications.

The Commission Policy in this regard is consistent with its Policy Statement on "Safety Goals for the Operation of Nuclear Power Plants," 51 FR 30028, published on August 21, 1986. The Policy Statement on Safety Goals states in part, "* * * probabilistic results should also be reasonably balanced and supported through use of deterministic arguments. In this way, judgments can be made * * * about the degree of confidence to be given to these [probabilistic] estimates and assumptions. This is a key part of the process of determining the degree of regulatory conservatism that may be warranted for particular decisions. This defense-in-depth approach is expected to continue to ensure the protection of public health and safety." At its conclusion, the Policy Statement on Safety Goals adds, "Nor are the safety goals and these implementation guidelines in and of themselves meant to serve as a sole basis for licensing decisions. However, if pursuant to these guidelines, information is developed that is applicable to a particular licensing decision, it may be considered as one factor in the licensing decision."

The Commission will continue to use PSA, consistent with its policy on Safety Goals, as a tool in evaluating specific line-item improvements to Technical Specifications, new requirements, and industry proposals for risk-based Technical Specification changes.

About a third of the respondents stated that NRC should place a high priority on making available specific line-item improvements to current Technical Specifications. The Commission agrees with these comments but will continue to give the highest priority to complete conversions to the improved STS.

III. Discussion

The Commission recognizes the advantages of improved Technical Specifications. Clarification of the scope and purpose of Technical Specifications has provided useful guidance to both the NRC and industry and has served as an important incentive for industry participation in a voluntary program to improve Technical Specifications. It has resulted in improved STS that are intended to focus licensee and plant operator attention on those plant conditions most important to safety. This should also result in more efficient use of agency and industry resources.

The Policy Statement identifies four criteria for defining the scope of Technical Specifications. These criteria are intended to be consistent with the scope of Technical Specifications as stated in the Statement of Consideration accompanying the current rule, 10 CFR 50.36.

The Statement of Consideration for the final rule issuing 10 CFR 50.36 (33 FR 18610, December 17, 1968) discusses

the scope of Technical Specifications as including the following:

In the revised system, emphasis is placed on two general classes of technical matters: (1) those related to prevention of accidents, and (2) those related to mitigation of the consequences of accidents. By systematic analysis and evaluation of a particular facility, each applicant is required to identify at the construction permit stage, those items that are directly related to maintaining the integrity of the physical barriers designed to contain radioactivity. Such items are expected to be the subjects of Technical Specifications in the operating license.

The first of these two general classes of technical matters to be included in Technical Specifications is captured by criteria (1), (4), and to some extent criterion (2) in that they address systems and process variables that alert the operator to a situation when accident initiation is more likely. The second general class of technical matters is explicitly addressed and captured by criteria (2), (3), and (4). By applying the four criteria contained in the Policy Statement a licensee should capture all of those specific characteristics of its facility and the conditions for its operation that are required to meet the principal operative standard in Section 182a. of the Atomic Energy Act, that is, that adequate protection is provided to the health and safety of the public.

The Commission recognizes that the four criteria carry a theme of focusing on the technical requirements for features of controlling importance to safety. Since many of the requirements are of immediate concern to the health and safety of the public, this Policy Statement adopts, for the purpose of relocating requirements from Technical Specifications to licensee-controlled documents, the subjective statement of the purpose of Technical Specifications expressed by the Atomic Safety and Licensing Appeal Board in Portland General Electric Company (Trojan Nuclear Plant), ALAB–531, 9 NRC 263 (1979). There, the Appeal Board interpreted Technical Specifications as being reserved for those conditions or limitations upon reactor operation necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety.

The Commission wishes to emphasize that this Policy Statement is intended to be consistent with the language of section 182a. of the Atomic Energy Act, 10 CFR 50.36, and previous interpretations of the regulations. The Policy Statement merely clarifies the scope and purpose of Technical Specifications by identifying criteria which can be used to establish, more clearly, the framework for Technical Specifications (i.e., identify those requirements derived from the analyses and evaluation included in the safety analysis report and which are of immediate concern to the health and safety of the public). The Commission intends to codify these criteria in a rule which will be consistent with the Policy Statement. The Policy Statement also describes a mechanism whereby requirements that do not meet these criteria can be identified and controlled through mechanisms other than Technical Specifications.

Over the past several years, the Commission has seen an improvement in industry development of effective maintenance programs. In addition, there has been an overall improvement in the industry in the conduct of 10 CFR 50.59 safety evaluations since the NUMARC publication of NSAC–125, "Guidelines for 10 CFR 50.59 Safety Evaluations," in June 1989. Furthermore, the ongoing NRC study on shutdown and low-power operation should provide some important insights for additional Technical Specification improvements in the areas of shutdown and low power operations. The Commission believes that these improvements, combined with improved Technical Specifications developed based on this Policy Statement, can lead to significant improvements in the operational safety of nuclear power facilities.

IV. The Commission Policy

The purpose of Technical Specifications is to impose those conditions or limitations upon reactor operation necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety by identifying those features that are of controlling importance to safety and establishing on them certain conditions of operation which cannot be changed without prior Commission approval.

Licensees are encouraged to implement a program to upgrade their Technical Specifications consistent with this purpose. The Commission will place the highest priority on requests based on the criteria below (as clarified by the supporting discussion) for individual license amendments that evaluate all of the Limiting Conditions for Operation (LCOs) for an individual plant to determine which LCOs should be included in the Technical Specifications. In addition, the Commission will also entertain requests to adopt portions of the improved STS, even if the licensee does not adopt all STS improvements. These portions shall include all related requirements and will normally be developed as line-item improvements by the NRC staff. The Commission encourages all licensees who submit Technical Specification related submittals based on this Policy Statement to emphasize human factors principles.

LCOs which do not meet any of the criteria below may be proposed for removal from the Technical Specifications and relocation to licensee-controlled documents, such as the FSAR. The criteria may be applied to either standard or custom Technical Specifications. The Commission will also consider the criteria in evaluating future generic requirements for inclusion in Technical Specifications.

In accordance with this Policy Statement, improved STS have been developed and will be maintained for each NSSS owners group. The Commission encourages licensees to use the improved STS as the basis for plant-specific Technical Specifications. During individual Technical Specification conversions, the nonvoluntary addition of new requirements from the improved STS to individual plant Technical Specifications will be evaluated in accordance with the Commission regulations on backfitting (10 CFR 50.109) unless the staff suggested additional changes are needed to make the licensee requested changes acceptable from the standpoint of adequate protection or compliance with NRC regulations, in which case § 50.109 does not apply and the request may be denied without the additional items. However, in all other cases, it is the Commission intent that the wording and Bases of the improved STS be used in the Technical Specification related submittal to the extent practicable.

The following criteria delineate those constraints on design and operation of nuclear power plants that are derived from the plant safety analysis report or PSA information and that belong in Technical Specifications in accordance with 10 CFR 50.36 and the purpose of Technical Specifications stated above.

Criterion 1

Installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary.

Discussion of Criterion 1

A basic concept in the adequate protection of the public health and safety is the prevention of accidents. Instrumentation is installed to detect significant abnormal degradation of the

reactor coolant pressure boundary so as to allow operator actions to either correct the condition or to shut down the plant safely, thus reducing the likelihood of a loss-of-coolant accident.

This criterion is intended to ensure that Technical Specifications control those instruments specifically installed to detect excessive reactor coolant system leakage. This criterion should not, however, be interpreted to include instrumentation to detect precursors to reactor coolant pressure boundary leakage or instrumentation to identify the source of actual leakage (e.g., loose parts monitor, seismic instrumentation, valve position indicators).

Criterion 2

A process variable, design feature, or operating restriction that is an initial condition of a Design Basis Accident or Transient analysis that either assumes the failure of or presents a challenge to the integrity of a fission product barrier.

Discussion of Criterion 2

Another basic concept in the adequate protection of the public health and safety is that the plant shall be operated within the bounds of the initial conditions assumed in the existing Design Basis Accident and Transient analyses and that the plant will be operated to preclude unanalyzed transients and accidents. These analyses consist of postulated events, analyzed in the FSAR, for which a structure, system, or component must meet specified functional goals.

These analyses are contained in Chapters 6 and 15 of the FSAR (or equivalent chapters) and are identified as Condition II, III, or IV events (ANSI N 18.2) (or equivalent) that either assume the failure of or present a challenge to the integrity of a fission product barrier.

As used in Criterion 2, process variables are only those parameters for which specific values or ranges of values have been chosen as reference bounds in the Design Basis Accident or Transient analyses and which are monitored and controlled during power operation such that process values remain within the analysis bounds. Process variables captured by Criterion 2 are not, however, limited to only those directly monitored and controlled from the control room. These could also include other features or characteristics that are specifically assumed in Design Basis Accident and Transient analyses even if they cannot be directly observed in the control room (e.g., moderator temperature coefficient and hot channel factors).

The purpose of this criterion is to capture those process variables that have initial values assumed in the Design Basis Accident and Transient analyses, and which are monitored and controlled during power operation. As long as these variables are maintained within the established values, risk to the public safety is presumed to be acceptably low. This criterion also includes active design features (e.g., high pressure/low pressure system valves and interlocks) and operating restrictions (pressure/temperature limits) needed to preclude unanalyzed accidents and transients.

Criterion 3

A structure, system, or component that is part of the primary success path and which functions or actuates to mitigate a Design Basis Accident or Transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier.

Discussion of Criterion 3

A third concept in the adequate protection of the public health and safety is that in the event that a postulated Design Basis Accident or Transient should occur, structures, systems, and components are available to function or to actuate in order to mitigate the consequence of the Design Basis Accident or Transient. Safety sequence analyses or their equivalent have been performed in recent years and provide a method of presenting the plant response to an accident. These can be used to define the primary success paths.

A safety sequence analysis is a systematic examination of the actions required to mitigate the consequences of events considered in the plant's Design Basis Accident and Transient analyses, as presented in Chapters 6 and 15 of the plant's FSAR (or equivalent chapters). Such a safety sequence analysis considers all applicable events, whether explicitly or implicitly presented. The primary success path of a safety sequence analysis consists of the combination and sequences of equipment needed to operate (including consideration of the single failure criteria), so that the plant response to Design Basis Accidents and Transients limits the consequences of these events to within the appropriate acceptance criteria.

It is the intent of this criterion to capture into Technical Specifications only those structures, systems, and components that are part of the primary success path of a safety sequence analysis. Also captured by this criterion are those support and actuation systems that are necessary for items in the primary success path to successfully function. The primary success path for a particular mode of operation does not include backup and diverse equipment (e.g., rod withdrawal block which is a backup to the average power range monitor high flux trip in the startup mode, safety valves which are backup to low temperature overpressure relief valves during cold shutdown).

Criterion 4

A structure, system, or component which operating experience or probabilistic safety assessment has shown to be significant to public health and safety.

Discussion of Criterion 4

It is the Commission policy that licensees retain in their Technical Specifications LCOs, action statements and Surveillance Requirements for the following systems (as applicable), which operating experience and PSA have generally shown to be significant to public health and safety and any other structures, systems, or components that meet this criterion:

- Reactor Core Isolation Cooling/ Isolation Condenser,
- Residual Heat Removal,
- Standby Liquid Control, and
- Recirculation Pump Trip.

The Commission recognizes that other structures, systems, or components may meet this criterion. Plant- and design-specific PSAs have yielded valuable insight to unique plant vulnerabilities not fully recognized in the safety analysis report Design Basis Accident or Transient analyses. It is the intent of this criterion that those requirements that PSA or operating experience exposes as significant to public health and safety, consistent with the Commission's Safety Goal and Severe Accident Policies, be retained or included in Technical Specifications.

The Commission expects that licensees, in preparing their Technical Specification related submittals, will utilize any plant-specific PSA or risk survey and any available literature on risk insights and PSAs. This material should be employed to strengthen the technical bases for those requirements that remain in Technical Specifications, when applicable, and to verify that none of the requirements to be relocated contain constraints of prime importance in limiting the likelihood or severity of the accident sequences that are commonly found to dominate risk. Similarly, the NRC staff will also employ risk insights and PSAs in evaluating Technical Specifications related submittals. Further, as a part of

the Commission's ongoing program of improving Technical Specifications, it will continue to consider methods to make better use of risk and reliability information for defining future generic Technical Specification requirements.

Requirements which would be relocated from Technical Specifications to a licensee-controlled document (e.g., the FSAR, the Security Plan, the QA Plan, or Fire Protection Plan) may be changed or deleted in conjunction with the filing of individual Technical Specifications related requests to implement this Policy Statement. The package containing the amendment request must contain a clear statement of the basis for the change or deletion, a safety evaluation, and a statement that the changes have been reviewed by a multidisciplinary group of responsible, technical supervisory personnel, including onsite operations personnel.

Appropriate Surveillance Requirements and Actions should be retained for each LCO which remains or is included in the Technical Specifications. Each LCO, Action, and Surveillance Requirement should have supporting Bases. The Bases should at a minimum address the following questions and cite references to appropriate licensing documentation (e.g., FSAR, Topical Report) to support the Bases.

1. What is the justification for the Technical Specification, i.e., which Policy Statement criterion requires it to be in the Technical Specifications?

2. What are the Bases for each LCO, i.e., why was it determined to be the lowest functional capability or performance level for the system or component in question necessary for safe operation of the facility and, what are the reasons for the Applicability of the LCO?

3. What are the Bases for each Action, i.e., why should this remedial action be taken if the associated LCO cannot be met; how does this Action relate to other Actions associated with the LCO; and what justifies continued operation of the system or component at the reduced state from the state specified in the LCO for the allowed time period?

4. What are the Bases for each Safety Limit?

5. What are the Bases for each Surveillance Requirement and Surveillance Frequency; i.e., what specific functional requirement is the surveillance designed to verify? Why is this surveillance necessary at the specified frequency to assure that the system or component function is maintained, that facility operation will be within the Safety Limits, and that the LCO will be met?

Note: In answering these questions the Bases for each number (e.g., Allowable Value, Response Time, Completion Time, Surveillance Frequency), state, condition, and definition (e.g., operability) should be clearly specified. As an example, a number might be based on engineering judgment, past experience, or PSA insights; but this should be clearly stated.

When licensees submit amendment requests based on this Policy Statement, they should identify the location of and controls for the technical and administrative requirements of the relocated requirements. The NRC staff will carefully review these submittals to ensure the accountability and the acceptability of controls for each relocated requirement. Many of the requirements will be relocated to the FSAR and will be enforceable through 10 CFR 50.59. Other requirements will be relocated to more appropriate documents (e.g., Security Plan, QA Plan) and controlled by the applicable regulatory requirements. The adequacy of controls for relocated requirements which do not fit in the above categories will be reviewed and approved by the NRC staff on a case-by-case basis to determine, among other things, whether an enforceable control method will need to be established.

Since some of the requirements currently contained in the Technical Specifications will be relocated to licensee-controlled documents to which changes will be controlled by 10 CFR 50.59, the NRC has been giving increased attention to the 10 CFR 50.59 change process. In the interim Policy Statement the Commission encouraged industry to obtain the support of NUMARC in sponsoring activities to encourage the highest quality for utility review of changes made pursuant to 10 CFR 50.59. In June 1989, NUMARC published NSAC–25, "Guidelines for 10 CFR 50.59 Safety Evaluations." During the development of these guidelines, the NRC staff and NUMARC met on several occasions to discuss the content of NSAC–25. Since its publication, nearly all of the industry has been using NSAC–25 as guidance in performing 10 CFR 50.59 safety evaluations. While the NRC and the industry do not fully agree on all issues associated with NSAC–25, based on inspections and reviews since its issuance, the NRC staff has seen an overall improvement in the conduct of 10 CFR 50.59 safety evaluations. Moreover, the guidelines described in NSAC–25 go beyond what is required by 10 CFR 50.59 in certain respects. Thus, the Commission does not believe that the guidelines are appropriate for endorsement as regulatory guidance.

In addition, in December 1992, the Office of Nuclear Reactor Regulation issued Inspection Procedure 37001, "10 CFR 50.59 Safety Evaluation Program," to provide NRC inspectors with updated guidance for evaluating utility performance in implementing the requirements of 10 CFR 50.59. The Commission believes use of this inspection guidance will provide continued assurance that the NRC is appropriately monitoring 10 CFR 50.59 safety evaluation programs for licensees who convert to the improved STS.

The Commission emphasizes the importance of a well-planned transition for licensees who plan to convert to the improved STS. Such a transition should include careful consideration of procedure revisions and operator training to ensure safe operation during and following the conversion.

The NRC will, consistent with its mission, allocate resources as necessary to implement this Policy Statement.

V. Enforcement Policy

Any changes to a licensee's Technical Specifications to apply this Policy Statement's criteria will be made by the license amendment process prior to implementation. Compliance with Technical Specifications is required by the Commission, and adherence to commitments contained in licensee-controlled documents is expected by the Commission. Violations and deviations will, as in the past, be handled in accordance with the NRC Enforcement Policy in 10 CFR part 2, appendix C (1992).

If a licensee elects to apply these criteria, the requirements of the removed specifications will be relocated to the FSAR or other licensee-controlled documents. Licensees are to operate their facilities in conformance with the descriptions of their facilities and procedures in their FSAR. Changes to the facility or to procedures described in the FSAR are to be made in accordance with 10 CFR 50.59. The Commission will take appropriate enforcement action to ensure that licensees comply with 10 CFR 50.59. Changes made in accordance with the provisions of other licensee-controlled documents (e.g., QA plan, Security Plan) are subject to the specific requirements for those documents. Nothing in this Policy Statement shall limit the authority of the NRC to conduct inspections as deemed necessary and to take appropriate enforcement action when regulatory requirements or commitments are not met.

This draft final Policy Statement amends information collection requirements that are subject to the

Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*). This Policy Statement has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this voluntary collection of information is estimated to average 4000 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-0019, (3150-0011), Office of Management and Budget, Washington, DC 20503.

Dated at Washington, DC, this 16th day of July, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93-17344 Filed 7-21-93; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-ANE-25; Amendment 39-8583; AD 93-09-04]

Airworthiness Directives; Hartzell Model HC-B4TN-5(D,G,J)L Propellers Installed on Mitsubishi Model MU-2B-60 Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 93-09-04 that was sent previously to all known U.S. owners and operators of Hartzell Model HC-B4TN-5(D,G,J)L propellers Installed on Mitsubishi Model MU-2B-60 aircraft by individual letters. This AD requires removal from service of propeller hub assemblies and replacement with serviceable propeller hub assemblies. This amendment is prompted by two reports of propeller hub arm assembly fatigue failures and subsequent propeller blade separations from aircraft in flight. The actions specified by this AD are intended to prevent fatigue cracks in propeller hub arm assemblies progressing to failure, resulting in departure of the hub arm and blade, and may result in engine separation and subsequent loss of aircraft control.

DATES: Effective August 6, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 93-09-04, issued on April 28, 1993, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 6, 1993.

Comments for inclusion in the Rules Docket must be received on or before September 20, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-ANE-25, 12 New England Executive Park, Burlington, MA 01803-5299.

The applicable service information may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356-2634. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, room 232, Des Plaines, IL 60018; telephone (312) 694-7130, fax (312) 694-7834.

SUPPLEMENTARY INFORMATION: On April 28, 1993, the Federal Aviation Administration (FAA) issued priority letter AD 93-09-04, applicable to Hartzell Model HC-B4TN-5(D,G,J)L propellers Installed on Mitsubishi Model MU-2B-60 aircraft, which requires removal from service of propeller hub assemblies and replacement with serviceable propeller hub assemblies. That action was prompted by two reports of propeller hub arm assembly fatigue failures and subsequent propeller blade separations from aircraft in flight. Preliminary data indicates that fatigue cracks can originate in the propeller hub arm assembly. This condition, if not corrected, could result in fatigue cracks in propeller hub arm assemblies progressing to failure, resulting in departure of the hub arm and blade, and may result in engine separation and subsequent loss of aircraft control.

The FAA has reviewed and approved the technical contents of Hartzell Alert Service Bulletin (ASB) No. A182, dated April 28, 1993, that describes procedures for removal from service, inspection, rework, and replacement of propeller hub assemblies.

Since the unsafe condition described is likely to exist or develop on other propellers of the same type design, the FAA issued priority letter AD 93-09-04 to prevent propeller hub arm assembly failure. The AD requires removal from service of propeller hub assemblies and replacement with serviceable propeller hub assemblies. This AD is an interim action until more data is available on the cause of propeller hub arm assembly failures. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on April 28, 1993, to all known U.S. owners and operators of Hartzell Model HC-B4TN-5(D,G,J)L propellers installed on Mitsubishi Model MU-2B-60 aircraft. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule.

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-ANE-25." The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, 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:

93-09-04 Hartzell Propeller Inc.: Amendment 39-8583. Docket 93-ANE-25.

Applicability: Hartzell Propeller Inc. HC-B4TN-5(D,G,J)L/LT10282(B,K)-5.3R and HC-B4TN-5(D,G,J)L/LT10282N(B,K)-5.3R Propellers installed on Mitsubishi Model MU-2B-60 Aircraft.

Note: The parentheses indicate the presence or absence of an additional letter(s) which vary the basic propeller hub and blade model designation. This Airworthiness Directive (AD) still applies regardless of whether these letters are present or absent on the propeller hub and blade model designation.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracks in propeller hub arm assemblies progressing to failure, resulting in departure of the hub arm and blade, and that may result in engine separation and subsequent loss of aircraft control, accomplish the following in accordance with the compliance schedule as indicated:

Time-since-new (TSN) in hours on the effective date of this ad or propeller hub assemblies that have experienced a blade strike	Compliance required
TSN greater than or equal to 3000 hours or TSN unknown.	Within the next 10 hours time in service (TIS) or two calendar months after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 600 hours TIS or 60 calendar months since last inspection, whichever occurs first.
TSN less than 3000 hours.	Prior to the accumulation of 3010 hours TSN, or within the next 200 hours TIS or 12 months after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 600 hours TIS or 60 calendar months since last inspection, whichever occurs first.
Regardless of TSN, propeller hub assemblies that have experienced a blade strike prior to the effective date of this AD. See paragraph (c) of this AD for the definition of a blade strike.	Within the next 10 hours TIS or two calendar months after the effective date of this AD, whichever occurs first and thereafter at intervals not to exceed 600 hours TIS or 60 calendar months since last inspection, whichever occurs first.
Regardless of TSN, propeller hub assemblies that experience a blade strike after the effective date of this AD. See paragraph (c) of this AD for the definition of a blade strike.	Prior to further flight, and thereafter at intervals not to exceed 600 hours TIS or 60 calendar months since last inspection, whichever occurs first.

(a) Remove affected propeller hub assemblies from the aircraft and return to Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356-2634 U.S.A. for inspection and specified rework procedures, in accordance with Hartzell Alert Service Bulletin (ASB) No. A182, dated April 28, 1993. Propeller hubs removed from Mitsubishi Model MU-2B-60 aircraft may not be installed on any other aircraft unless an inspection is performed in accordance with Hartzell ASB No. A182, dated April 28, 1993.

(b) Reinstall affected propeller hub assemblies that have had the hub arm bores inspected and reworked as necessary, pilot tubes replaced, and marked at the end of the hub serial number with suffix letter "M", followed by a number (1,2,3, etc.) to indicate the number of repetitive inspections performed in accordance with Hartzell ASB No. A182, dated April 28, 1993; or install new production hubs which have passed the inspection and have been marked at the end of the hub serial number with the suffix letter "M".

(c) A blade strike is defined as a propeller having any blade(s) that has been bent beyond repair limits in accordance with

Hartzell Service Letter 61R, dated February 28, 1992.

(d) The "calendar month" compliance time stated in this AD allow the performance of the required action prior to the last day of the month in which compliance is required.

Note: For example, if action is required 2 calendar months from April 28, 1993, the required actions are to be performed not later than June 30, 1993.

(e) An alternate method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 1: Information concerning the existence of approved alternative methods of compliance with this Airworthiness Directive, if any, may be obtained from Chicago Aircraft Certification Office.

Note 2: Although Hartzell Propeller is presently the only FAA-approved repair facility authorized to conduct the requirements of this AD, other facilities may be authorized through the alternative method of compliance procedure in paragraph (e) of this AD.

(f) Except when propeller hub assemblies experience a blade strike after the effective date of this AD, 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.

(g) The removal from service, inspection, rework, and reinstallation shall be done in accordance with the following alert service bulletin:

Document No.	Pages	Revision	Date
Hartzell ASB No. A182	1–3	Original	April 28, 1993.
Total pages: 3.			

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 Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective August 6, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 93–09–04, issued April 28, 1993, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on June 17, 1993.

Michael H. Borfitz,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–17420 Filed 7–21–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; FDA Center Directors

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to redelegate to center directors the authority of the Commissioner of Food and Drugs (the Commissioner) or the Commissioner's designee to select temporary voting members for advisory committees if the temporary voting members are already serving on other advisory committees within the center. In addition, this delegation will add to the authorities listed in 21 CFR part 5 the current authority of the center directors to sign conflict of interest waivers.

EFFECTIVE DATE: July 22, 1993.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA is amending the delegations of authority under 21 CFR part 5 by adding new § 5.34 *Authority to select temporary voting members for advisory committees and authority to sign conflict of interest waivers.* This section redelegates to center directors for advisory committees under their management the authority of the Commissioner or the Commissioner's designee to select members and consultants from one advisory committee to serve as temporary voting members on another advisory committee if expertise is required that is unavailable among current voting standing members of a committee or to comprise a quorum. In addition, FDA is publishing as part of new § 5.34 the current authority of center directors, under 18 U.S.C. 208(b)(1), to sign conflict of interest waivers for special government employees without substantial interest to serve as consultants to advisory committees or in any other capacity within the centers except as advisory committee members.

The authority to select temporary voting members to advisory committees if such members are serving on an advisory committee managed by another center is not redelegated. This authority will continue to be administered by the Commissioner or the Deputy Commissioner for Operations. Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. New § 5.34 is added to subpart B to read as follows:

§ 5.34 Authority to select temporary voting members for advisory committees and authority to sign conflict of interest waivers.

(a) Each center director is authorized to select members of, and consultants to, scientific and technical FDA advisory committees under that center's management to serve temporarily as voting members on another advisory committee under that center's management when expertise is required that is not available among current voting standing members of a committee or to comprise a quorum when, because of unforeseen circumstances, a quorum is or will be lacking. When additional voting members are added to a committee to provide needed expertise not available among current voting standing members of a committee, a quorum will be based on the total of regular and added members. Authority to select temporary voting members to advisory committees if such voting members are serving on an advisory committee managed by another center has not been redelegated. This authority will continue to be exercised by the Commissioner or his designee.

(b) Each center director is authorized, under 18 U.S.C. 208(b)(1), to sign conflict of interest waivers for special government employees without substantial interest to serve as consultants to advisory committees or in any other capacity within the centers except as advisory committee members.

Dated: July 13, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–17345 Filed 7–21–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 140

RIN 2125–AD16

Construction Engineering Costs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulations on reimbursement for construction engineering (CE) costs to comply with the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA of 1991). Under the existing regulation, CE costs were limited to 15% of the cost per construction project. Section 1018 of the ISTEA of 1991 established that a State highway agency's (SHA's) obligations for CE costs will be limited, per fiscal year, to 15 percent of the total estimated costs of all projects financed within the State with Federal-aid highway funds, excluding the estimated costs of right-of-way, preliminary engineering, and CE. This regulation establishes a uniform process for controlling the CE limitation.

EFFECTIVE DATE: July 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Weseman, Chief, Construction and Maintenance Division, Office of Engineering, 202–366–0392; Mr. Wilbert Baccus, Office of Chief Counsel, 202–366–0780; or Mr. Max Inman, Chief, Federal/States Financial Management Branch, 202–366–2853, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: On December 18, 1991, the President signed into law the ISTEA of 1991 (Pub. L. 102–240, 105 Stat. 1914) to develop a national intermodal surface transportation system, and to authorize funds for construction of highways, for highway safety programs, for mass transit programs, and for other purposes. Section 1018(a) of the ISTEA of 1991 amended sections 106(c) and 121(d) of title 23, United States Code, and thus changed the 15 percent CE limitation from a project cost basis to an aggregate of all estimates (obligations) for projects financed with applicable Federal-aid funds within a State during a fiscal year. The specific changes for each section of the regulation are as follows:

Section 140.201 Purpose

This section has not been changed.

Section 140.203 Policy

Section 140.203(a) is retained unchanged but the provisions relating to the 15 percent limitation have been revised in accordance with section 1018(a) of the ISTEA, and moved to a new § 140.205, Limitation. The new § 140.203(b) references the limitation provisions of § 140.205.

Section 140.205 Limitation

The title and provisions of former § 140.205, Application of Limitation, have been moved to a new § 140.207. A new § 140.205, Limitation, has been added which includes provisions relating to the revised 15 percent limitation and FHWA's policy on reimbursement of CE costs.

(1) Section 140.205(a) sets forth the basic limitation policy that estimated CE costs approved for a SHA for a fiscal year cannot exceed 15 percent of the total estimated costs of all projects financed within the State with Federal-aid highway funds in the fiscal year, exclusive of the costs of rights-of-way, preliminary engineering, and CE.

(2) Section 140.205(b) establishes a uniform process for controlling the CE limitation. It provides that a SHA's CE limitation percentage be determined by the ratio of the total amount obligated for CE to the total amount obligated for all projects financed with Federal-aid highway funds during the fiscal year, after excluding the obligated amounts for rights-of-way, preliminary engineering, and CE. It further provides that a SHA may use, as the annual period for CE limitation determination, either the Federal or State fiscal year. The CE limitation determination for each fiscal year is to be treated separately and may not be adjusted after the end of that fiscal year.

Because the CE limitation is calculated based on the total construction costs obligated during the fiscal year, initial fiscal year project requests containing estimated CE costs higher than 15 percent may be authorized and funds obligated. More restrictive CE obligation limitations may have to be implemented toward the end of a fiscal year if it becomes apparent that total CE obligations for the fiscal year are at or near 15 percent of the total construction obligation.

(3) Section 140.205(c) provides guidance for projects that were closed (final voucher processed) as of December 18, 1991. These projects may be reopened to accept adjustments and additional eligible project charges with the obligation/deobligation adjustments included in the current fiscal year calculation. However, the CE cost of each of these projects shall be limited to 15 percent of the project construction cost in accordance with the provisions in effect prior to enactment of section 1018.

(4) Section 140.205(d) addresses the situation where a SHA may wish to claim CE costs as an average percentage of the actual construction costs in accordance with 23 U.S.C. 120(g). In these cases, the average rate will be determined based upon reimbursable CE costs and car.not exceed 15 percent, exclusive of the costs of rights-of-way, preliminary engineering, and CE.

Section 140.207 Application of Limitation

This new section (formerly § 140.205) has been changed to conform to the requirements of 23 U.S.C. 106(c). The limitation applies to all projects

financed with Federal-aid highway funds.

Rulemaking Analysis and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291, or a significant regulation. Because the revisions in this document substantially reflect statutory language mandated by the ISTEA of 1991, the FHWA for good cause finds that public comment is unnecessary under section 553(b)(3)(B) of the Administrative Procedure Act. In addition, notice and opportunity for comment are not required because the FHWA for good cause finds that such action would not result in meaningful or practicable comments. First, in revising these regulations to conform to the ISTEA, the FHWA has issued informal guidance in February 1992, informing its regional offices and the State transportation departments of the changes effected by section 1018, so the FHWA has apprised interested persons of the actions covered by this final rule. Second, in revising these regulations to conform to the ISTEA, the FHWA is not interpreting the statute nor exercising discretion in a way that could be meaningfully affected by public comment. The required publication or service of a substantive rule 30 days before its effective date is being waived for the reasons expressed above relating to notice and opportunity for comment. The FHWA finds for good cause shown that the rule should be made effective upon publication since the rule implements the provisions of Section 1018 of the ISTEA.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this rule on small entities. The rule impacts State highway agencies and should not have an effect on small business entities. Hence, the FHWA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that this document has federalism implications. However, we believe that the federalism implications are mitigated by the need to meet requirements mandated by statute, and the agency has allowed the States maximum administrative discretion to meet the intent of the statute. Therefore, the FHWA certifies that this action has insufficient federalism implications to warrant the preparation of a separate Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*).

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 140

Accounting, Grant programs—transportation, Highways and roads.

Issued on: July 14, 1993.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA hereby amends part 140 of chapter I of title 23, Code of Federal Regulations, as set forth below.

PART 140—REIMBURSEMENT 1

The authority citation for part 140 is revised to read as follows:

Authority: 23 U.S.C. 101(e), 106(c), 109(e), 114(a), 120(g), 121(d), 122, 130, and 315; and 49 CFR 1.48(b).

2. Subpart B of part 140 is revised to read as follows:

Subpart B—Construction Engineering Costs

140.201 Purpose.
140.203 Policy.
140.205 Limitation
140.207 Application of limitation.

Subpart B—Construction Engineering Costs

§ 140.201 Purpose.

The purpose of this subpart is to prescribe policies for claiming reimbursement for eligible construction engineering (CE) costs.

§ 140.203 Policy.

(a) State highway agencies (SHA) may be reimbursed for the Federal share of CE costs incurred as described in § 140.703.

(b) Reimbursement for CE costs for Federal-aid construction projects shall be subject to the limitation set forth in § 140.205.

§ 140.205 Limitation.

(a) The estimated CE costs for a SHA for a fiscal year shall not exceed, in the aggregate, 15 percent of the total estimated costs of all projects financed within the boundaries of the State with Federal-aid highway funds in such fiscal year, exclusive of the costs of rights-of-way, preliminary engineering, and CE.

(b) For control purposes, a SHA's estimated CE costs percentage will be determined by the ratio of the total amount obligated for CE to the total amount obligated for all projects financed with Federal-aid highway funds during the fiscal year, after excluding from such totals, the obligations for rights-of-way, preliminary engineering, and CE. This percentage shall not exceed 15 percent at the end of the fiscal year. The CE limitation may be applied on either a Federal or State fiscal year basis.

(1) Amounts to be included in the determination for CE will be the aggregate total of all obligations of CE, including original project obligations at the authorization stage, all subsequent adjustments during the fiscal year, and all adjustments (debits or credits) to projects authorized in previous fiscal years.

(2) The CE limitation determination for each fiscal year will be treated separately and may not be adjusted after the end of that fiscal year.

(c) Projects which are closed (final voucher processed) as of December 18, 1991, may be reopened to accept adjustments and additional eligible project charges. All obligation/deobligation adjustments must be included in the current fiscal year

calculation. However, the CE cost for each of these projects shall be limited to 15 percent of each project construction cost in accordance with the provisions in effect prior to December 18, 1991.

(d) If the SHA claims CE costs as an average percentage of the actual construction costs in accordance with 23 U.S.C. 120(g), the average rate shall be determined based upon reimbursable CE costs and shall not exceed 15 percent, exclusive of the costs of rights-of-way, preliminary engineering, and CE.

§ 140.207 Application of limitation.

The limitation applies to all projects financed with Federal-aid highway funds.

[FR Doc. 93-17310 Filed 7-21-93; 8:45 am]

BILLING CODE 4910-22-P

Coast Guard

33 CFR Part 100

[CGD02 93-009]

Special Local Regulations; Lacrosse Thunderfest 1993

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Lacrosse Thunderfest 1993 which will be held on the Mississippi River near Lacrosse, Wisconsin on August 19, 20 and 21, 1993. These regulations are needed to control vessel traffic in the immediate vicinity of the event. The regulations will restrict general navigation in the regulated area for the safety of spectators, participants and through traffic.

EFFECTIVE DATE: These regulations become effective daily from 9:30 p.m. to 11:30 p.m. local time on August 19, 20, and 21, 1993.

FOR FURTHER INFORMATION CONTACT: Ensign D.R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis Missouri 63103-2832. The telephone number is (314) 539-3971, fax (314) 539-2685.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are ENS D.R. Dean, Project Officer, Second Coast Guard District Boating Safety Division and LCDR A.O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, although the sponsor's application was received on May 3, 1993, the event had to be rescheduled because of flood conditions on the Mississippi River eventually leaving insufficient time to publish a notice of proposed rulemaking in advance of the rescheduled event.

Background and Purpose

The 1993 Lacrosse Thunderfest is a three-day event consisting of a nightly fireworks display competition. The fireworks will be shot over the Upper Mississippi River at Lacrosse, Wisconsin. The event will be held from August 19, 1993 through August 21, 1993, from 9:30 p.m. until 11:30 p.m. local time each day. Last year the event attracted an audience ranging from 5,000 to 50,000 each night. Many spectators will moor their vessels in the main channel of the Mississippi River. In order to provide for the safety of spectators and participants, and for the safe passage of through traffic, the Coast Guard will restrict vessel movement in the regatta area. The river will be closed during part or all of the effective periods to all vessel traffic except participants, official regatta vessels, and patrol craft. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal due to its short duration.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

Under section 2.B.2.c of Commandant Instruction M16475.1B, this regulation is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Records and recordkeeping requirements, Waterways.

Temporary Regulations

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

PART 100—[AMENDED]

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

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

2. A temporary § 100.35-T0209 is added, to read as follows:

§ 100.35-T0209 Mississippi River, Lacrosse, Wisconsin.

(a) *Regulated area.* Upper Mississippi River from mile 697.5 to mile 699.0.

(b) *Special local regulations.* (1) Except for participants in the Lacrosse Thunderfest and for vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without permission of the Patrol Commander.

(2) The Coast Guard Patrol Commander will be a commissioned or petty officer designated by the Commanding Officer, USCG Group Upper Mississippi River and may be contacted, during the event, on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." The Patrol Commander may:

(i) Direct the anchoring, mooring, or movement of any vessel within the regulated area,

(ii) Restrict vessel operation within the regulated area to vessels having particular operating characteristics,

(iii) Terminate the marine event or the operation of any vessel when necessary for the protection of life and property, and

(iv) Allow vessels to transit the regulated area whenever an event is not being conducted and the transit can be completed before another event begins.

(3) Coast Guard commissioned or petty officers will patrol the event on board patrol vessels which display the Coast Guard ensign. If radio or other voice communications are not available to communicate with a vessel, they will use a series of sharp, short blasts by whistle or horn to signal the operator of any vessel in the vicinity of the regulated area to stop. When signaled, the operator of any vessel in the immediate vicinity of the regulated area shall stop the vessel immediately and shall proceed as directed.

(4) Vessels desiring to transit the regulated area may do so only with the

prior approval and direction of the Patrol Commander.

(5) The Patrol Commander will terminate enforcement of the regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective dates.* These regulations become effective daily from 9:30 p.m. to 11:30 p.m. local time on August 19, 20 and 21, 1993.

Dated: July 2, 1993.

N.T. Saunders,

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

[FR Doc. 93-17448 Filed 7-21-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD 11-93-006]

Deviation From Drawbridge Operation Regulations; Cerritos Channel, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of deviation.

SUMMARY: On December 7, 1992, the Coast Guard issued authorization for temporary deviation from the drawbridge operation regulation for the Commodore Schuyler Heim Bridge (Heim Bridge) which crosses Cerritos Channel of Los Angeles/Long Beach Harbor. The deviation is needed to facilitate replacement of a submarine control cable, and will take the bridge out of service to navigation from August 2, 1993 until August 20, 1993. The bridge will not be required to open for the passage of vessels during that period. The Heim Bridge carries California Route 47 across Cerritos Channel between Wilmington and Terminal Island in Los Angeles County, California.

EFFECTIVE DATE: The deviation is effective from August 2, 1993 through August 20, 1993.

FOR FURTHER INFORMATION CONTACT: Susan Worden, Bridge Section, Office of Aids to Navigation and Waterways Management Branch; Address: Commander (oan-br), Eleventh Coast Guard District, room 214, Building 10, Coast Guard Island, CA 94501-5100; Telephone: (510) 437-3514.

SUPPLEMENTARY INFORMATION: At the request of the California Department of Transportation (CalTrans), the Coast Guard has issued authorization for temporary deviation from the drawbridge operation regulation Heim Bridge over the Cerritos Channel (33 CFR 117.147), mile 4.5 at Long Beach, a secondary waterway in the Los Angeles/Long Beach Harbor complex which connects the Port of Long Beach and the Port of Los Angeles. An alternate route past the bridge is available through the outer harbor. The maximum distance via the alternate route is 10 miles. Current regulations allow the bridge to remain closed during the peak traffic hours from 6 a.m. to 8 a.m. and from 3:30 p.m. to 6 p.m., Monday through Friday except Federal Holidays. The bridge opens upon demand at all other times.

The submarine cable which controls the operation of the bridge is damaged and must be replaced. The existing cable must be removed to provide sufficient room for the new cable to be placed in the cable runs on the bridge. The bridge cannot be safely operated without this control cable. The bridge will therefore not be required to open for the passage of vessels during the period from 6 a.m. August 2, 1993, through 6 p.m. August 20, 1993. The Coast Guard has met with CalTrans representatives and reviewed the proposed work, and the time requirements are the minimum needed to complete the work safely. Authority for the deviation alleviating the requirement to open for the passage of vessels is found at 33 CFR 117.35(d).

A temporary channel closure will also be needed to safeguard divers entrenching the cable. The Captain of the Port Los Angeles/Long Beach will establish a safety zone within 100 yards of the bridge during the period August 9 through August 13, 1993 for those diving operations.

Dated: June 23, 1993.

M.E. Gilbert,

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

[FR Doc. 93-17441 Filed 7-21-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD07-93-019]

Drawbridge Operation Regulations; Marathon, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the County Administrator of Monroe County, the Coast Guard is adding regulations governing the operation of the Boot Key Harbor Drawbridge, at mile 0.13, between Marathon and Boot Key, Monroe County, Florida, by requiring two-hour advance notification for an opening of the draw during certain periods. This addition is being made because of infrequent requests to open the draw during the nighttime hours from 10 p.m. to 6 a.m. This action would relieve the bridgeowner of the burden of having a person constantly available to open the draw while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Brodie Rich, Project Manager, Bridge Section at (305) 536-4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Brodie Rich, Project Manager, and LT J.M. Losego, Project Counsel.

Regulatory History

On May 3, 1992, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations in the **Federal Register** (58 FR 26281). The Coast Guard received no letters commenting on the rule. A public hearing was not requested and one was not held.

Background and Purpose

The drawbridge presently opens on signal. The owner of the Boot Key Harbor drawbridge has requested relief from the requirement to maintain full time drawtender service due to the lack of openings during evening hours from 10 p.m. to 6 a.m. The Coast Guard is adding an advance notification requirement of 2 hours daily from 10 p.m. to 6 a.m. This should reduce the owner's operating cost while still meeting the needs of navigation.

Discussion of Comments and Changes

A Coast Guard analysis showed there were 67 vessels logged through the Boot Key Harbor drawbridge from September 1991 through September 1992 between the hours of 10 p.m. to 6 a.m. This represents an average of only 1.3 openings per week during that time period.

This rule would reduce the operating costs for the owner while still providing for the reasonable needs of navigation at Boot Key Harbor.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not sufficient under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a regulatory evaluation is unnecessary. We conclude this because there is no commercial traffic on the waterway.

Small Entities

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

Since the rule effects no commercial users, the economic impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

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

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. § 117.272 is added to read as follows:

§ 117.272 Boot Key Harbor.

The draw of the Boot Key Harbor drawbridge, mile 0.13, between Marathon and Book Key, shall open on signal; except that during the evening hours from 10 p.m. to 6 a.m., the draw shall open on signal if at least 2 hours notice is given.

Dated: July 1, 1993

William P. Leahy,

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

[FR Doc. 93–17442 Filed 7–21–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD05–93–033]

Drawbridge Operation Regulations; Scuppernong River, Columbia, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment removes the regulations for the US 64 bridge across the Scuppernong River, mile 4.5, Columbia, North Carolina, because the swing bridge has been removed. A notice of proposed rulemaking has not been issued for this regulation because removal of the bridge eliminates the need for regulation.

EFFECTIVE DATE: These regulations become effective on August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principle persons involved in drafting this document are Linda L. Gilliam, Project Officer, and LCDR C.A. Abel, Project Attorney.

Background and Purpose

The swing bridge across the Scuppernong River, mile 4.5 in Columbia, North Carolina, was removed, making it necessary to remove 33 CFR 117.839. This action has no economic consequences. It merely removes regulations for a swing bridge that no longer exists.

Regulatory Evaluation

This action is considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. Furthermore, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.g(5) of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

§ 117.839 [Removed]

2. Section 117.839 is removed.

Dated: June 23, 1993.

W.T. Leland,

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

[FR Doc. 93–17444 Filed 7–21–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CCGD01–91–029]

Drawbridge Operation Regulations; Hackensack River, NJ, et al.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of New Jersey Transit Rail Operations (NJTRO) and Bergen County Department of Public Works, the Coast Guard is changing the regulations governing the NJTRO, Lower Hack drawbridge, mile 3.4 at Jersey City,

N.J., the NJTRO, Upper Hack drawbridge, mile 6.9 at Secaucus, N.J., the NJTRO, HX (Jacknife) drawbridge, mile 7.7 at Secaucus, N.J., and the Harold J. Dillard Memorial (Court Street) drawbridge, mile 16.2 at Hackensack, N.J. all across the Hackensack River and the NJTRO, Newark-Harrison (Morristown Line) drawbridge across the Passaic River, mile 5.8 at Harrison, New Jersey. The NJTRO change permits their drawbridges to be operated on an advance notice basis using roving crews. The Bergen County change permits a one hour shift in the crewing and staffing time of the Harold J. Dillard Memorial (Court Street) Bridge and requires at least eight (8) hours advance notice for openings at night and at all times on weekends and Federal Holidays. These changes relieve the bridge owners of the burden of having persons constantly available at each draw, but will still provide for the reasonable needs of navigation. Editorial changes were made to clarify the proposed regulations and to update call sign information in appendix A.

EFFECTIVE DATE: This rule becomes effective August 23, 1993.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District at (212) 668–7170.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Mr. Si Brown, Project Manager, and Lieutenant Commander Jeffrey Stieb, Project Counsel, First Coast Guard District, Legal Office.

Regulatory History

On June 4, 1991, the Coast Guard published proposed rules (56 FR 25397), concerning this amendment. The Commander, First Coast Guard District, also published the proposal as Public Notice 1–748 dated June 14, 1991. Interested persons were given until July 19 and July 15, 1991, respectively, to submit comments. The Coast Guard received six letters commenting on the proposals. The Coast Guard determined there was no need for a public hearing and none was held.

Background and Purpose

The Hackensack and Passaic Rivers in New Jersey contain a mix of commercial and recreational traffic. Presently all the aforementioned NJTRO bridges are crewed and staffed 24 hours per day throughout the entire year and open on signal, except NJTRO's Newark/Harrison bridge which need not open during weekday morning and evening rush hours. There has been a steady decrease in requests for openings at these bridges to the extent that two of them, Lower Hack and Newark/Harrison now open on an average of once every two and a half days.

NJTRO plans to operate these four (4) bridges utilizing around the clock, two person roving crews. Each crew would be split between the HX and Upper Hack Bridges. The Upper Hack drawtender would provide openings of the Upper Hack and would also operate HX bridge when the HX operator was not present. The HX drawtender would normally handle requests for openings at the HX, Lower Hack and Newark/Harrison bridges. NJTRO made this request because of the proximity and limited number of openings of these bridges, as well as a desire to achieve more effective use of its workforce.

Bergen County's Harold J. Dillard Memorial (Court Street) Bridge, mile 16.2 across the Hackensack River provides a vertical clearance of 7 feet at MHW and 12 feet at MLW. Current regulations provide that the drawbridge shall open on signal from 8 a.m. to 12 midnight. From 12 midnight to 8 a.m., the draw opens on signal if at least eight (8) hours notice is given. The regulation will advance the time period one hour when the bridge is crewed and staffed (7 a.m. to 11 p.m.) and will place the bridge on eight hour advance notice from 11 p.m. to 7 a.m. and all day on weekends and federal holidays. Bergen County will maintain an on-call rotating work shift that will provide emergency and eight hour advance notice openings.

Discussion of Comments and Changes

Five letters were received in response to Public Notice 1–748 and one letter was received referencing the **Federal Register** Notice of Proposed Rulemaking. No objections were received regarding the Harold J. Dillard Memorial (Court Street) Bridge. Five (5) of six (6) responses opposed the NJTRO proposal to use a roving crew to respond to requests for openings. The other response only requested clarification regarding the special whistle signal for demand opening vessels. Clarification was provided to this individual by separate correspondence. One (1) of the six (6) responses requested a public hearing. The five (5) responses opposing the NJTRO proposal represented a labor union, recreational boaters, fishermen, commercial towboats, and the Towboat and Harbor Carrier's Conference. The following paragraphs address the concerns raised.

A. Opening Delays

As discussed in the Notice of Proposed Rulemaking (NPRM), the Coast Guard believes that the use of the two person roving crews will respond to the mariner's needs with minimal or no delays provided advance notice of the desired time of transit is given. This opinion is based on the limited number of openings at all the NJTRO bridges but particularly at the Lower Hack Bridge on the Hackensack River and the Newark-Harrison Bridge on the Passaic River.

To further minimize the occasional possibility of concurrent or short notice openings at the HX and Upper Hack, the two lower level bridges, NJTRO clarified their roving crew proposal to provide that the crew would normally man both of these bridges, unless responding to a request for opening at Lower Hack or Newark/Harrison bridges. Paragraph (a)(4) of both Hackensack and Passaic River regulations, paragraphs (b), (d) and (e) of the Hackensack River regulation, and paragraph (e)(1) of the Passaic River regulation were reworded to reflect this change.

On August 31, 1992, to demonstrate their confidence in this concept, New Jersey Transit entered into a written, private agreement with the Towboat and Harbor Carrier's Association which include specific language that the Association requested in order to insure that the roving crews would respond to the advance notice requests in a timely fashion. Further, the agreement provides a commitment that New Jersey Transit will intensively monitor the roving crew program during the initial three months of operation and at three month intervals thereafter to insure that the change in operation mode is continuing to meet the needs of the mariners. This private agreement was not a condition imposed by the Coast Guard but was considered by the Coast Guard in evaluating the comments received. Should they prove unable to open these bridges in accordance with these new regulations, the Coast Guard will consider changing this rule.

NJTRO has also stated that establishment of the roving crews will permit them to enhance personnel training, and provide additional people for improving maintenance and upgrading the bridges.

In response to the concerns of the pleasure boat owners, paragraphs (d) and (e) of the Hackensack River Regulations 33 CFR 117.723 were revised to reduce the permissible delay at the Upper Hack Bridge from one hour to one half hour and clarify its mandatory language, and to reduce the

advance notification required for HX Bridge from one hour to one half hour.

B. Ability of Tenders To Get Between Bridges

The mariners were concerned that the drawtender would not be able to travel between the bridges in sufficient time to provide the requested openings. As stated in the NPRM, the Coast Guard examined both the driving time, the marine transit time and the access road improvements being made by NJTRO and concluded that sufficient time was provided. NJTRO has also divided the drawtenders between Upper Hack and HX bridges to facilitate timely openings.

C. Security of Unattended Structures

Concern over security of the structures from vandalism or as a result of an allision when unattended was raised by the mariners and the union. NJTRO has performed an extensive security survey of these bridges and is now in the process of installing fencing and intrusion deterrents to assure the security of the bridge operating cabins and controls, as well as the bridge operating mechanisms. Additionally, paragraph (a)(4) of both the Hackensack and Passaic River regulations were reworded to require NJTRO to maintain security measures at each bridge.

D. Adverse Weather

The ability to accommodate the needs of mariners in adverse weather conditions with roving crew was a concern. 33 CFR 117.59 provides adequate provisions for the District Commander to require NJTRO to crew and staff any or all of these bridges in the event of hazardous conditions such as major storms, floods or damage to the bridge or its appurtenances. The Coast Guard believes that the NPRM adequately addressed the concerns regarding the ability of the drawtender to provide timely openings.

E. Ability To Give and Receive Timely Notice

With regard to giving timely advance notice to the drawtender for an opening, each of the affected NJTRO bridges are equipped with a marine radio capable of receiving and sending on channels 13 and 16 as well as cellular telephones. Additionally, the roving crew vehicles are equipped to answer channel 13 calls while in transit. Existing sections 117.55 and 117.57 provide that adequate information for contacting the drawtender by telephone or marine radio be posted at each bridge. No additional requirements for signage are deemed warranted.

F. Clearance Gauges

Comments supporting the requirement for clearance gauges at all bridges were received. The NPRM proposed changing the height of the numbers on the clearance gauges on Hackensack River bridges below the turning basin at mile 4.0 so as to enhance navigation safety.

G. Need for Public Hearing

The Coast Guard determined that in light of meetings between NJTRO and the commercial and recreational interests, there was no need for a public hearing.

H. Minor Changes

Subparagraph 117.739(a)(3) of the Passaic River regulations has been modified to include a prior omission with respect to referencing both paragraph (a)(1) and (c) in the exception clause and by adding the phase "or reversing" to the last sentence in order to provide consistent language with respect to rail operations for the Passaic and Hackensack River regulations. Appendix A to part 117, which is primarily informational, has been updated in the final rule to reflect the most current information regarding radiotelephone equipped bridges on these waterways and their call signs.

Regulatory Evaluation

This rulemaking is not major under Executive Order 12291 on Federal Regulation, and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a Regulatory Evaluation is unnecessary. This opinion is based on the fact that regulations will not prevent the mariners from transiting the bridges, but just require advance planning and notice for openings. The commercial marine interests regularly provide this type of notification and, thus, there will not be a substantial burden on commercial users.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this action will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because of the reasons discussed in the Regulation Evaluation above, the Coast Guard certifies under U.S.C. 605(b) that this action will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g(5) of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection at the office of Commander, First Coast Guard District, Bldg. 135A, Governors Island, NY 10004–5073.

List of Subjects in 33 CFR Part 177

Bridges.

Regulations

In consideration of the foregoing, part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.723 is revised to read as follows:

§ 117.723 Hackensack River.

(a) The following requirements apply to all bridges across the Hackensack River:

(1) Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed through the draw of each bridge as soon as possible without delay. The opening signal for these vessels is four or more short blasts of a whistle or horn, or a radio request.

(2) The owners of each bridge shall provide and keep in good legible condition clearance gauges for each draw, with figures not less than 18 inches high for bridges below the turning basin at mile 4.0, and 12 inches

high for bridges above mile 4.0. The gauges shall be designed, installed and maintained according to the provisions of section 118.160 of this chapter.

(3) Train and locomotives shall be controlled so that any delay in opening the draw shall not exceed 10 minutes except as provided in paragraph (a)(1) of this section. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting the opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping or reversing.

(4) New Jersey Transit Rail Operations' (NJTRO) roving crews shall consist of two qualified operators on each shift, each having a vehicle which is equipped with marine and railroad radios, a cellular telephone, and emergency bridge repair and maintenance tools. This crew shall be split with one drawtender stationed at Upper Hack and the other drawtender at the HX drawbridge. Adequate security measures shall be provided to prevent vandalism to the bridge operating controls and mechanisms to ensure prompt openings of NJTRO bridges.

(5) Except as provided in paragraphs (b) through (h) of this section, the draws shall open on signal.

(b) Except as provided in paragraph (a)(1) of this section, the draw of the NJTRO Lower Hack Bridge, mile 3.4 at Jersey City shall open on signal if at least one hour advance notice is given to the drawtender at the Upper Hack bridge, mile 6.9 at Secaucus, New Jersey. In the event the HX drawtender is at the Newark/Harrison (Morristown Line) Bridge, mile 5.8 on the Passaic River, up to an additional half hour delay is permitted.

(c) Except as provided in paragraph (a)(1) of this section, the draw of AMTRAK's Portal bridge, mile 5.0 at Little Snake Hill, need not be opened Monday through Friday, except federal holidays, from 7:20 a.m. to 9:20 a.m. and from 4:30 p.m. to 6:50 p.m. At all other times, an opening may not be delayed for more than 10 minutes, unless the drawtender and the vessel operator communicating by radiotelephone, agree to a longer delay.

(d) Except as provided in paragraph (a)(1) of this section, the draw of the NJTRO Upper Hack Bridge, mile 6.9 at Secaucus, N.J. shall open on signal unless the drawtender is at the HX bridge, mile 7.7 at Secaucus, N.J. over the Hackensack River; then up to a half hour delay is permitted.

(e) Except as provided in paragraph (a)(1) of this section, the draw of the NJTRO HX bridge, mile 7.7 at Secaucus, shall open on signal if at least one half hour notice is given to the drawtender at the Upper Hack Bridge.

(f) Except as provided by paragraph (a)(1) of this section, the draw of the S46 bridge mile 14.0 at Little Ferry, shall open on signal if at least six hours notice is given.

(g) The draw of the Harold J. Dillard Memorial (Court Street) bridge, mile 16.2 at Hackensack, N.J. shall open on signal from 7 a.m. to 11 p.m. From 11 p.m. to 7 a.m., and at all times on weekends and Federal Holidays, the draw shall open on signal if at least eight hours notice is given to the drawtender or the Bergen County Police Communication Center in Hackensack, New Jersey, except as provided by paragraph (a)(1) of this section.

(h) The draw of the New York Susquehanna and Western Railroad bridge, mile 16.3, and the Midtown bridge, mile 16.5, both at Hackensack, need not be opened for the passage of vessels, however, the draws shall be restored to operable condition within 12 months after notification by the District Commander to do so.

3. Section 117.739 is amended by adding paragraph (a)(5) and revising paragraphs (a) (3) and (4) and (e) to read as follows:

§ 117.739 Passaic River.

(a) * * *

(3) Trains and locomotives shall be controlled so that any delay in opening the draws shall not exceed five (5) minutes except as provided in paragraphs (a) (1) and (c) of this section However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting the opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping or reversing.

(4) New Jersey Transit Rail Operations' (NJTRO) roving crews shall consist of two qualified operators, on each shift, each having a vehicle which is equipped with marine and railroad radios, a cellular telphone, and emergency bridge repair and maintenance tools. This crew shall be split with one drawtender stationed at the Upper Hack and the other drawtender at the HX drawbridge on the Hackensack River. "Adequate security measures" shall be provided to prevent vandalism to the bridge operating controls and mechanisms to insure prompt openings of NJTRO bridges.

(5) Except as provided in paragraphs (b) through (m) of this section, the draws shall open on signal.

* * * * *

(e) The draw of the NJTRO Newark-Harrison (Morristown Line) bridge, mile 5.8 at Harrison, New Jersey shall operate as follows:

(1) Open on signal if at least one hour advance notice is given to the drawtender at the Upper Hack bridge mile 6.9, across the Hackensack River at Secaucus, N.J. In the event, the HX drawtender is at the Lower Hack Bridge, mile 3.4 on the Hackensack River at Jersey City then up to an additional half hour delay is permitted.

(2) Need not open from 7:15 a.m. to 9 a.m. and from 4:30 p.m. to 6:50 p.m. Monday through Friday except federal holidays.

* * * * *

4. Appendix to part 117 is amended to revise Hackensack River and the Passaic River entries under the State of New Jersey.

APPENDIX A TO PART 117—DRAWBRIDGE EQUIPPED WITH RADIOTELEPHONES

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
*	*	*	*	*		*
New Jersey:						
*	*		*	*		*
Hackensack River	1.8	Jersey City	Lincoln Hwy (Rt 1&9), NJDOT	WHG 954	13	13
	3.0	Jersey City	PATH, PATH	KQ 7198	13	13
	3.1	Jersey City	Hack Freight, Conrail	KQ 7198	13	13
	3.1	Jersey City	Witt-Penn, NJDOT	KZH 872	13	13

APPENDIX A TO PART 117—DRAWBRIDGE EQUIPPED WITH RADIOTELEPHONES—Continued

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
	3.4	Jersey City	Laurel Hill (Lower Hack), NJTRO	KX 7465	13	13
	5.0	Snake Hill	Portal, Amtrak	KMC 297	13	13
	5.4	Snake Hill	DB (Erie Swing), NJTRO	KR 6962	13	13
	6.9	Secaucus	Erie Lift (Upper Hack), NJTRO	KR 7035	13	13
	7.7	Secaucus	Jacknife (HX), NJTRO	KR 7034	13	13
*	*	*	*	*	*	*
Passaic River	1.8	Newark	Lincoln Hwy (Rt 1&9), NJDOT	WHH 329	13	13
	2.6	Newark	Point-No-Point, Conrail	KR 6938	13	13
	5.0	Newark	Dock, Amtrak	WRY 593	13	13
	5.8	Newark	Morristown Line, NJTRO	KH6 109	13	13
			Route 7 (Bellville)	WHD 786	13	13
	11.7	Lyndhurst	Lyndhurst, NJTRO	KR 7041	13	13
*	*	*	*	*	*	*

Dated: July 12, 1993.

Kent H. Williams,

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

[FR Doc. 93-17443 Filed 7-21-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD01-93-087]

Safety Zone Regulations; Kill Van Kull, NY and NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the waters near Bergen Point West Reach in the Kill Van Kull of New York and New Jersey. This regulation replaces the previous regulation 33 CFR 165.T 01-019 published on Friday, May 28, 1993 (58 FR 30987). This zone imposes requirements in addition to the Regulated Navigation Area (RNA) already in existence for these waters. This zone is divided into two sections. The first is the southern portion of the channel which contains a work area where concentrated drilling and blasting will be conducted and no vessel is permitted to transit. The second section includes the remainder of the safety zone which surrounds the work area. Vessel pacsage in this section is permitted under the criteria set forth in these regulations. This action is necessary to protect the maritime community from the possible dangers and hazards to navigation associated with the extensive blasting and dredging operations which are being conducted in the work area of the channel and with the restrictions in channel width.

EFFECTIVE DATE: These regulations become effective at 8 a.m., July 7, 1993 and will terminate at 8 a.m., December 1, 1993, unless terminated sooner by Captain of the Port (COTP) NY.

FOR FURTHER INFORMATION CONTACT:

LT R. Trabocchi of Captain of the Port, New York, (212) 668-7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LT R. Trabocchi, Project Manager, Captain of the Port, New York, and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing a NPRM would be contrary to the public interest since this regulation is intended to lessen the restrictions imposed on vessels transiting this area while maintaining requirements sufficient to ensure the safety of the port.

On May 28, 1993, the U.S. Coast Guard Captain of the Port, New York published a final rule (58 FR 30987) implementing requirements in addition to the RNA in existence in the Kill Van Kull located at 33 CFR 165.165. Due to comments received from the local industry, the Coast Guard Captain of the Port deems it appropriate to lessen the restrictions imposed by that final rule. This final rule replaces 33 CFR 165.T-019 (58 FR 30987).

Background and Purpose

The area included within this safety zone is now regulated by regulations (1) through (7) of the RNA and the additional regulations implemented in this rulemaking. These safety zone regulations, in conjunction with the existing RNA regulations, are designed to allow vessels to transit safely and to protect the port and maritime community. Due to the experience gained through the duration of this project, the Coast Guard Captain of the Port, New York considered it appropriate to lessen the restrictions previously imposed. The previous requirements for tugs read that all vessels 350 feet to 700 feet require one assist vessel and all vessels greater than 700 feet require tow assist vessels when transiting for the Kill Van Kull (or vice versa) or from Neward Bay to the Arthur Kill (or vice versa) by way of the work area. The new requirement eliminates the need for assist vessels if under 700 feet and only requires vessels greater than 700 feet to have two assist vessels when transiting from Kill Van Kull to the Authur Kill (or vice versa). This rule also removes the restrictions of having an assist vessel accompany all hawser tows. Removing these restrictions will create less of a burden on the vessel traffic needing to transit this area".

Regulatory Evaluation

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). In light of the regulations limited scope, the small size of the affected area, the minimal restrictions that are in place and the advance notice available to the community, the Coast Guard

expects the economic impact of this rulemaking to be so minimal that a Regulatory Evaluation is unnecessary. The channel will not be completely closed therefore allowing vessels to still make their destination with minor restrictions. Vessel operators who do not wish to comply with the safety zone restrictions in this area of the KVK have the option of choosing an alternative route by taking the Arthur Kill to or from Newark Bay.

Small Entities

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

Collection of Information

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

Federalism

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

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

List of Subjects in 33 CFR Part 165

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

Regulations

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

PART 165—[AMENDED]

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

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

2. A temporary § 165.T 01–87 is added to read as follows:

§ 165.T 01–87 Safety Zone: Kill Van Kull, Bergen Point West Reach (Western Portion)—New York and New Jersey.

(a) *Location.* (1) The following area has been declared a Safety Zone: All waters of the Kill Van Kull West of the 074°08′00″W line of longitude, East of the 074°09′36″W line of longitude and South of the 40°39′06″N line of latitude.

(2) Within this safety zone exists a "Work Area" where concentrated drilling and blasting is being conducted. The "Work Area" includes all waters bounded by the following points:

Latitude	*Longitude*
40°38′24″N	074°08′52″W
40°38′24″N	074°09′03″W
40°38′31″N	074°09′15″W
40°38′37″N	074°09′06″W
40°38′31″N	074°08′54″W

Thence to the point of the beginning.

The eastern and western edges of this "Work Area" are marked by lighted buoys set by the Coast Guard.

(b) *Effective date.* These regulations become effective at 8 a.m., on July 7, 1993 and will terminate at 8 a.m., December 1, 1993, unless terminated sooner by Captain of the Port, New York.

(c) *Regulations.* (1) "Work Area": In accordance with the general regulations in Section 165.23 of this part, entry into or movement within the "Work Area" of the safety zone is prohibited unless authorized by the Captain of the Port.

(2) For all other waters of the safety zone described in paragraph (a)(1) the COTP has included the following requirement in addition to paragraphs (d)(1) through (6) of § 165.165:

(i) Prior to entering this safety zone, the master, pilot, or operator of each vessel, 300 gross tons or greater and tugs with tows, shall notify Vessel Traffic Center (VTC) New York regarding the employment of assist vessels and intentions while transiting the safety zone.

(ii) Tug requirements: All vessels greater than 700 feet require two assist vessels when transiting from Kill Van Kull to the Arthur Kill (or vice versa).

(iii) Transit between Bergen Point West Reach and South of Shooters Island Reach is prohibited.

(3) Waiver. The Captain of the Port New York may, upon request, authorize a deviation from any regulation in this section if it is found that the proposed operations can be done safely. An application for deviation must be received at least 4 hours before the intended operation(s) and must state the need and describe the proposal.

§ 165.T01–019 [Removed]

3. Section 165.T 01–919 is removed.

Dated: July 1, 1993.

T.H. Gilmour,

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

[FR Doc. 93–17445 Filed 7–21–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP St. Louis Regulation 93–025]

Safety Zone Regulations: Upper Mississippi River Between Mile 179.0 and 184.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Upper Mississippi River between mile 179.0 and 184.0, requiring minimum horsepower for all towboats and restricting the length of south bound tows during night transit. The safety zone is necessary to protect commercial vessels from hazards associated with high water conditions.

EFFECTIVE DATE: This regulation is effective on June 26, 1993 and will terminate on July 28, 1993 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Tim Deal, Operations Officer, Captain of the Port St. Louis, Missouri at 314–539–3823.

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 less than 30 days after publication in the **Federal Register.** Publishing an NPRM and delaying the effective date would be contrary to the public interest since immediate action is necessary to ensure the safety of structures and vessels operating in the regulated area.

DRAFTING INFORMATION: The drafter of this regulation is Chief Joseph D. Cosgrove, Port Environmental Safety Officer, under the Captain of the Port.

DISCUSSION OF REGULATION: The circumstance requiring this regulation is the rapid rise in the Upper Mississippi River water level as determined by the Captain of the Port. This regulation will be in effect from June 26, 1993 and remain in effect until July 28, 1993 unless sooner terminated by the Captain of the Port. This regulation is required to protect the port and commercial vessels from dangers associated with high water levels on the Upper Mississippi River. Entry into this zone is prohibited for towing vessels unless they have at least 250 horsepower for each 1500 tons of cargo. South bound

tows greater than 600 feet in length (excluding the tow boat) may transit the safety zone during daylight hours only. Questions can be directed to Coast Guard Group Upper Mississippi River on VHF channel 16. Reopening broadcasts will be made by Coast Guard Group Upper Mississippi River. This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of 33 CFR part 165.

List of Subjects in 33 CFR Part 165

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

Regulation

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

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

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

2. A new § 165.T0248 is added to read as follows:

§ 165.T0248 Safety Zone: Upper Mississippi River.

(a) *Location.* The following area is a safety zone: Upper Mississippi River between mile 179.0 through 184.0.

(b) *Effective date.* This regulation becomes effective at 9 a.m. local time on June 26, 1993 and will remain in effect until July 28, 1993 unless sooner terminated by the Captain of the Port.

(c) *Regulations.* Entry into this zone by towing vessels is prohibited unless the following restrictions are complied with:

(1) The towing vessel must have a minimum of 250 horsepower for each 1500 tons of cargo.

(2) South bound tows greater than 600 feet in length (excluding the towboat) may transit the safety zone during daylight hours only.

Dated: 26 June 1993.

Scott P. Cooper

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 93–17447 Filed 7–21–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 2 and 14

RIN 2900–AF96

Delegations of Authority/Claims for Cost of Medical Care and Services

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) has amended VA regulations to increase the settlement and waiver authority delegated to officials within the Office of the General Counsel and District Counsels. This change follows increased authority delegated by the Department of Justice to heads of departments and agencies of the United States.

EFFECTIVE DATE: March 5, 1993.

FOR FURTHER INFORMATION CONTACT: Douglas W. Bartow, Director of Debt Management (021G), Department of Veterans Affairs, Office of the General Counsel, 810 Vermont Avenue NW., Washington, DC 20420 (202) 523–3355.

SUPPLEMENTARY INFORMATION: AG Order No. 1594–92, published in the **Federal Register** of June 19, 1992, at pages 27356 and 27357, amended Department of Justice regulations (28 CFR part 43) pertaining to the recovery of the cost of hospital and medical care and treatment furnished by the United States. This change increased the settlement and waiver authority delegated to heads of departments and agencies of the United States responsible for the furnishing of hospital, medical surgical, or dental care.

Under the prior authority VA was permitted to compromise, settle, or waive claims not in excess of $40,000. AG Order No. 1594–92 increases VA's authority to $100,000. This change was intended to correspond to the increased cost of medical care and treatment since the last change to this authority in 1978.

VA has amended 38 CFR 2.6(e)(3) and 14.619 in order to further delegate this authority to the General Counsel, Deputy General Counsel, Assistant General Counsels, Deputy Assistant General Counsels, Director of Debt Management, and District Counsels, or those acting for them, except that claims being compromised, settled, or waived by District Counsels in excess of $40,000 will require approval of the Office of the General Counsel.

VA for good cause finds that prior publication of these changes for public notice and comment is unnecessary since they concern Department management and are primarily internal to VA. Because a notice of proposed rule making will not be published, these changes do not come within the definition of a "rule" (5 U.S.C. 601(2)) subject to the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Nevertheless, these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA because their effect is primarily internal to the Department of Veterans Affairs.

These final regulations have also been reviewed under Executive Order 12291 and have been determined to be nonmajor because they will not have a $100 million annual effect on the economy and will not have any adverse economic impact on or increase costs to consumers, individual industries, Federal, State, and local government agencies or geographic regions.

There is no Catalog of Federal Domestic Assistance number.

List of Subjects

38 CFR Part 2

Authority, Delegations (government agencies).

38 CFR Part 14

Claims, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions, Veterans.

Approved: March 5, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 2 and 14 are amended as set forth below:

PART 2—DELEGATIONS OF AUTHORITY

1. The authority citation for part 2 continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 510, unless otherwise noted.

2. In § 2.6, paragraph (e)(3) is revised to read as follows:

§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).

* * * * *

(e) General Counsel.

* * * * *

(3) Under the provisions of "The Federal Medical Care Recovery Act," 42 U.S.C. 2651, *et seq.* (as implemented by part 43, title 28, Code of Federal Regulations), authority is delegated to the General Counsel, Deputy General Counsel, Assistant General Counsel, Deputy Assistant General Counsel, Director of Debt Management, and District Counsels or those authorized to

act for them, to collect in full, compromise, settle, or waive any claim and execute the release thereof; however, claims in excess of $40,000 may be compromised, settled, or waived only with the prior approval of the Office of the General Counsel, and further provided that claims in excess of $100,00 may be compromised, settled, or waived only with the prior approval of the Department of Justice.

* * * * *

PART 14—LEGAL SERVICES, GENERAL COUNSEL

1. The authority citation for part 14 is amended to read as follows:

Authority: 72 Stat. 1114, 1238; 38 U.S.C. 510, 5901–5905, unless otherwise noted.

2. In § 14.619, paragraph (b) is revised to read as follows:

§ 14.619 Collection action.

* * * * *

(b) The District Counsel may collect, compromise, suspend, or terminate collection activity on any such claim as is authorized under § 2.6(e)(3) of this chapter. However, claims in excess of $40,000 may be compromised, settled, or waived only with the prior approval of the General Counsel and claims in excess of $100,000 may be compromised, settled, or waived only with the prior approval of the Department of Justice, which will be obtained through the General Counsel. Any such claim that has not been collected in full and which has not been compromised, suspended or terminated will be referred by the District Counsel to the appropriate U.S. Attorney along with appropriate information necessary to protect the interest of the Government. A copy of the referral to the U.S. Attorney will be sent to the General Counsel's office.

* * * * *

[FR Doc. 93–17456 Filed 7–21–93; 8:45 am]
BILLING CODE 6320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300242A; FRL–4590–6]

RIN 2070–AB78

Sodium Arsenite; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule removes all tolerances listed in 40 CFR part 180 for sodium arsenite. All tolerances for sodium arsenite residues (expressed as arsenic trioxide (As_2O_3)) resulting from the insecticidal use of sodium arsenite under 40 CFR 180.335 for use in liver, kidney, fat, meat, and meat byproducts of cattle and horses are being revoked immediately, and the interim tolerance for residues of sodium arsenite, expressed as arsenic trioxide (As_2O_3), resulting from the fungicidal use of sodium arsenite in or on grapes under 40 CFR 180.319 are being revoked as of June 30, 1994. These actions are being taken because EPA canceled the insecticidal use of sodium arsenite in 1988, and Agtrol Chemical Products, the sole registrant of the fungicidal use, requested and was granted voluntary cancellation of its two registrations of products containing sodium arsenite (EPA registration numbers 55146-35 and 55146-25).

EFFECTIVE DATE: July 22, 1993.

ADDRESSES: Written objections and/or requests for a hearing, identified by the document control number OPP-300242A, may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Brian Steinwand, Special Review and Reregistration Division (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Rm. WF32N4, 2800 Jefferson Davis Hwy., Arlington, VA, (703)-308-8174.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 13, 1992 (57 FR 1244), EPA proposed to revoke all tolerances and the interim tolerance for sodium arsenite expressed as arsenic trioxide (As_2O_3), under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq. No requests for referral to an advisory committee or comments were submitted related to EPA's rationale for revoking sodium arsenite tolerances set forth in the January 13, 1992 proposal, on the schedules set for expiration of the tolerances and interim tolerance, or on any other issue related to these tolerance revocations.

Tolerances for residues of sodium arsenite in or on raw agricultural commodities, expressed in parts per million (ppm) arsenic trioxide, are listed at 40 CFR 180.335. The tolerances are 2.7 ppm in the kidney and liver of cattle and horses and 0.7 ppm in the meat, fat, and meat byproducts (except kidney and liver) of cattle and horses. For grapes, an interim tolerance of 0.05 ppm is listed at 40 CFR 180.319.

In the Federal Register of June 30, 1988 (53 FR 24787), EPA issued the Final Notice of Intent to Cancel for the nonwood preservative uses of inorganic arsenicals. In that Notice, any sale, distribution, or use of products containing sodium arsenite, except the fungicidal use on grapes, was prohibited effective August 1, 1988. A provision for the sale and/or use of existing stocks was not granted because EPA determined that carcinogenic risks posed to workers and acute risks due to accidental ingestion by the insecticidal use of sodium arsenite outweighed the limited benefits of allowing sale and use of existing stocks. EPA deferred action on the fungicidal use of sodium arsenite until further information could be obtained on dietary exposure to inorganic arsenicals (worker risks for this use are estimated to be small since the application system yields low exposures).

The sole registrant of fungicidal-use products, Agtrol Chemicals Products, requested voluntary cancellation of the last two sodium arsenite registrations in November 1990. A final order canceling these registrations was published in the Federal Register of January 13, 1992 (57 FR 1262).

EPA predicts there will be insignificant or no economic impact from revoking the tolerances at 40 CFR 180.335 because the insecticidal use of sodium arsenite was canceled in 1988. Consequently, ample time has passed to allow legally treated commodities (i.e., treated before the 1988 cancellation) to pass through the channels of trade.

In the January 13, 1992 cancellation order, EPA announced Agtrol Chemical Products would be allowed to sell its existing stocks until January 13, 1993 and any other person would be allowed to distribute, sell, and use existing stocks until depletion. EPA believes all existing sodium arsenite stocks will be exhausted by January 1994. EPA believes that all legally treated grapes will pass through the channels of trade prior to June 30, 1994. EPA expects little adverse economic impact from revoking the interim tolerance since ample time is being granted for use of stocks and clearance of treated commodities through channels of trade.

This tolerance revocation will make it unlawful to import any food commodity containing sodium arsenite. Based on the reasons set forth above and in the January 13, 1992 proposal, EPA is revoking the tolerances for sodium arsenite on animal parts at this time, and revoking the interim tolerance for sodium arsenite on grapes by amending

that tolerance to include an expiration date of June 30, 1994.

Request for a Hearing and Objections

Pursuant to section 408(d) of FFDCA, 21 U.S.C. 346a(d), and 40 CFR part 178, any person adversely affected by this regulation revoking the tolerances for sodium arsenite may, within 30 days after the date of publication of this final rule in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestors' contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Executive Order 12291

As explained in the proposal of January 13, 1992 (57 FR 1244), EPA determined, pursuant to the requirements of E.O. 12291, that the revocation of these tolerances will not cause a major increase in prices and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This rule has been reviewed by the Office of Management and Budget as required under section 3 of E.O. 12291.

Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the January 13, 1992 proposal.

Accordingly, I certify that this rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

Paperwork Reduction Act

This regulatory action does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.
(Section 408(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346 (m)).

List of Subjects in 40 CFR Part 180

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

Dated: July 9, 1993.

Susan H. Wayland,
Acting Assistant Administrator for Prevention, Pesticides, and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.319 [Amended]

2. By amending § 180.319 *Interim tolerances* in the table therein by revising the footnote at the end of the table that references the entry for sodium arsenite and currently reads "[1]Calculated as As_2O_3" to read "[1]Calculated as As_2O_3 and expires on June 30, 1994."

§ 180.335 [Removed]

3. By removing § 180.335 *Sodium Arsenite; tolerances for residues.*

[FR Doc. 93-17426 Filed 7-21-93; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 493

[HSQ-202-CN]

Medicare, Medicaid and CLIA Programs; Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988

AGENCY: Health Care Financing Administration (HCFA) and Public Health Service (PHS), HHS.

ACTION: Final rule; correction.

SUMMARY: On January 19, 1993, we updated the rules originally published on February 28, 1992, concerning requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). We have identified a number of typographical errors and we are correcting them in this notice. We also add regulatory text that was inadvertently omitted on January 19, 1993 relating to quality control requirements for cytology testing and qualifications for general supervision.

EFFECTIVE DATE: This correction is effective January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Tracy Mummert, (410) 597-5904.

SUPPLEMENTARY INFORMATION:

Omitted Material

In **Federal Register** document 93-1169, (58 FR 5215), published on January 19, 1993, we explained in the preamble to that rule (58 FR 5219) that we were modifying § 493.1461 to prevent the inadvertent exclusion of those individuals who qualified or could have qualified as general supervisor under § 493.1427 of our March 14, 1990 regulations, which these rules supersede. Those 1990 rules permitted persons who were serving as general supervisors and who had successfully completed the examination offered by HHS plus 6 years of experience, to continue in the capacity as general supervisors. We explained in the January 19 publication that, because this examination was discontinued in 1987, we inadvertently excluded, as qualified supervisors, those individuals who successfully completed the examination after March 1, 1986 but who, as of September 1, 1992, when the CLIA regulations generally became effective, would have had less than 6 years of experience, thus leaving them unqualified to continue in a general supervisor capacity under the February 28, 1992, rule. In preparing the January 19 document for publication, however the regulations text resolving this issue was omitted. We are publishing it now as a new § 493.1461(c)(3). Because the content of the March 14, 1990 rule has been superseded, we are adding a new § 493.1462 that presents the requirements of the March 14, 1990 rule.

Inasmuch as this new section for general supervisor qualification requirements includes reference to the previous laboratory regulation for technologist, and because we want readers to have ready access to this language instead of referring them to the previous regulations under which they are now qualifying, we are also

republishing in substance the regulations for laboratory technologist that appeared at 42 CFR 493.1433 (published on March 14, 1990), as a new § 493.1491.

At § 493.1257, we are reinserting the word "gynecologic" to specifically include gynecologic as well as nongynecologic slide preparations made using non-traditional techniques to be counted as half-slides for purposes of workload calculations. We inadvertently omitted the word gynecologic in the January 19 publication in paragraph (b)(2), which concerns workload calculations. No change was intended in this area.

Those comments that may have been submitted from the public based on omissions will be reviewed, evaluated and addressed in the publication of a subsequent CLIA rule.

Corrections

We also correct a number of editorial errors and typographical errors.

§ 493.20 [Corrected]

1. On page 5222, in column two, § 493.20(b), line four is corrected to read, "in subpart C, registration certificate, certificate for physician-performed microscopy procedures, and ".

§ 493.43 [Corrected]

2. On page 5223, in the first column, § 493.43(c)(2), line eight "Act;" is corrected to read "Act; and"

§ 493.45 [Corrected]

3. On page 5223, in column one, § 493.45(a)(1), line three, "of moderate and high complexity" is corrected to read "of moderate or high complexity, or both".

§ 493.53 [Corrected]

4. We are making the following corrections to § 493.53:

a. On page 5224, in column one, in the third line of the section heading, "physician-performed microscopy." is corrected to read "physician-performed microscopy procedures."

b. On page 5224, column one, § 493.53(a), line three, "§§ 493.15" is corrected to read "§§ 493.15(c)".

5. On page 5224, in the first column, in the first line of amendment 16, "493.35" is corrected to read "493.55".

§ 493.55 [Corrected]

6. On page 5224, in column one, § 493.55(b)(1), line two, "are not a fixed location, that is" is corrected to read, "are not at fixed locations, that is,".

§ 493.646 [Corrected]

7. On page 5228, in column one, § 493.646(a), line one, "State-exempt" is corrected to read "CLIA-exempt".

§ 493.1215 [Corrected]

8. On page 5231, in column one, § 493.1215(a)(1)(ii), line one, "(ii) Document as maintenance" is corrected to read, "(ii) Document all maintenance".

§ 493.1257 [Corrected]

9. On page 5232, in column three, § 493.1257(b)(2), line three, "(nongynecologic) made using" is corrected to read "(gynecologic and nongynecologic) made using".

10. On page 5235, in column two, line two of amendment 73, "revising paragraphs (c)(1) and (d)(2) to" is corrected to read, "revising paragraphs (c)(1), (c)(3), and (d)(2) to".

§ 493.1461 [Corrected]

11. On page 5235, in the third column, immediately preceding § 493.1461(d), add revised paragraph (c)(3) to read as follows:

"(3)(i) Except as specified in paragraph (3)(ii) of this section, have previously qualified as a general supervisor under § 493.1462 on or before February 28, 1992.

(ii) *Exception.* An individual who achieved a satisfactory grade in a proficiency examination for technologist given by HHS between March 1, 1986 and December 31, 1987, qualifies as a general supervisor if he or she meets the requirements of § 493.1462 on or before January 1, 1994."

12. On page 5235, in the third column, immediately before amendment 74, insert the following:

"73a. A new § 493.1462 is added to read as follows:

§ 493.1462 General supervisor qualifications on or before February 28, 1992.

To qualify as a general supervisor under § 493.1461(c)(3), an individual must have met or could have met the following qualifications as they were in effect on or before February 28, 1992.

(a) Each supervisor possesses a current license as a laboratory supervisor issued by the State, if such licensing exists; and

(b) The laboratory supervisor—

(1) Who qualifies as a laboratory director under § 493.1406(b)(1), (2), (4), or (5) is also qualified as a general supervisor; therefore, depending upon the size and functions of the laboratory, the laboratory director may also serve as the laboratory supervisor; or

(2)(i) Is a physician or has earned a doctoral degree from an accredited institution with a major in one of the chemical, physical, or biological sciences; and

(ii) Subsequent to graduation, has had at least 2 years of experience in one of the laboratory specialties in a laboratory; or

(3)(i) Holds a master's degree from an accredited institution with a major in one of the chemical, physical, or biological sciences; and

(ii) Subsequent to graduation has had at least 4 years of pertinent full-time laboratory experience of which not less than 2 years have been spent working in the designated specialty in a laboratory; or

(4)(i) Is qualified as a laboratory technologist under § 493.1491; and

(ii) After qualifying as a laboratory technologist, has had at least 6 years of pertinent full-time laboratory experience of which not less than 2 years have been spent working in the designated laboratory specialty in a laboratory; or

(5) With respect to individuals first qualifying before July 1, 1971, has had at least 15 years of pertinent full-time laboratory experience before January 1, 1968; this required experience may be met by the substitution of education for experience."

13. On page 5235, in the third column, line one of amendment 75, "(b)(3)," is inserted after "(b)(1),".

§ 493.1489 [Corrected]

14. On page 5236, in the first column, immediately before § 493.1489(b)(4), insert the following:

"(3) Have previously qualified or could have qualified as a technologist under § 493.1491 on or before February 28, 1992;"

15. On page 5236, in the first column, immediately before amendment 76, insert the following:

"75a. A new § 493.1491 is added to read as follows:

§ 493.1491 Technologist qualifications on or before February 28, 1992.

In order to qualify as high complexity testing personnel under § 493.1489(b)(3), the individual must have met or could have met the following qualifications for technologist as they were in effect on or before February 28, 1992. Each technologist must—

(a) Possess a current license as a laboratory technologist issued by the State, if such licensing exists; and

(b)(1) Have earned a bachelor's degree in medical technology from an accredited university; or

(2) Have successfully completed 3 years of academic study (a minimum of

90 semester hours or equivalent) in an accredited college or university, which met the specific requirements for entrance into a school of medical technology accredited by an accrediting agency approved by the Secretary, and has successfully completed a course of training of at least 12 months in such a school; or

(3) Have earned a bachelor's degree in one of the chemical, physical, or biological sciences and, in addition, has at least 1 year of pertinent full-time laboratory experience or training, or both, in the specialty or subspecialty in which the individual performs tests; or

(4)(i) Have successfully completed 3 years (90 semester hours or equivalent) in an accredited college or university with the following distribution of courses—

(A) *For those whose training was completed before September 15, 1963.* At least 24 semester hours in chemistry and biology courses of which—

(*1*) At least 6 semester hours were in inorganic chemistry and at least 3 semester hours were in other chemistry courses; and

(*2*) At least 12 semester hours in biology courses pertinent to the medical sciences; or

(B) *For those whose training was completed after September 14, 1963.*

(*1*) 16 semester hours in chemistry courses that included at least 6 semester hours in inorganic chemistry and that are acceptable toward a major in chemistry;

(*2*) 16 semester hours in biology courses that are pertinent to the medical sciences and are acceptable toward a major in the biological sciences; and

(*3*) 3 semester hours of mathematics; and

(ii) Has experience, training, or both, covering several fields of medical laboratory work of at least 1 year and of such quality as to provide him or her with education and training in medical technology equivalent to that described in paragraphs (b)(1) and (2) of this section; or

(5) With respect to individuals first qualifying before July 1, 1971, the technologist—

(i) Was performing the duties of a laboratory technologist at any time between July 1, 1961, and January 1, 1968, and

(ii) Has had at least 10 years of pertinent laboratory experience prior to January 1, 1968. (This required experience may be met by the substitution of education for experience); or

(6) Achieves a satisfactory grade in a proficiency examination approved by HHS.

§ 493.1776 [Corrected]

16. On page 5236, in the third column, § 493.1776(b)(1), in line seven, "noted in paragraph (e) of this section;" is corrected to read "noted in § 493.16 (e) of this part;".

§ 493.1780 [Corrected]

17. On page 5237, in the first column, § 493.1780(e)(4), in line two, "3 years" is corrected to read "2 years".

Authority: Sec. 353 of the Public Health Service Act (42 U.S.C. 263a)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program), Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, (Medicare—Supplementary Medical Insurance Program)

Dated: July 14, 1993.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 93–17276 Filed 7–21–93; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 93–8, FCC 93–345]

Cable Television Service; Cable Carriage of Home Shopping Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This rule finds that television broadcast stations that are predominantly utilized for the transmission of sales presentations or program length commercials ("home shopping stations") are serving the public interest, convenience, and necessity. The rule further qualifies such stations as local commercial television stations for the purposes of mandatory cable carriage. The rule was prompted by section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992, and is intended to implement section 4(g) of the Act by determining whether home shopping stations are serving the public interest and whether they should be qualified for mandatory cable carriage.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Paul R. Gordon, Mass Media Bureau, Video Services Division, (202) 632–6357.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 93–8, adopted July 2, 1993, and released July 19, 1993. The Notice of Proposed Rulemaking initiating this proceeding may be found at 58 FR 7875 (February 10, 1993).

The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, at the Federal Communications Commission, 1919 M Street, NW., Washington, DC, 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of Report and Order

1. This R&O adopts the rules and policies needed to implement the provision of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992" or "1992 Cable Act") relating to stations that are predominantly utilized for the transmission of sales presentations or program length commercials ("home shopping stations") and issues regarding the carriage of such stations on cable systems.

2. Section 4(g) of the 1992 Cable Act added a new section 614(g) to the Communications Act of 1934, as amended, 47 U.S.C. 533(g), which requires the Commission to determine, regardless of prior proceedings, whether home shopping broadcast stations are serving the public interest. That section further provides that we shall consider in making our determination the viewing of home shopping stations, the level of competing demands for the spectrum allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming. The 1992 Cable Act further requires that if we find that these stations do serve the public interest, then we shall qualify them as local commercial television stations for the purposes of mandatory cable carriages ("must-carry"). If the Commission finds that one or more such stations do not serve the public interest, then the Act requires that the Commission provide them with reasonable time to provide different programming. Based on the record before us, we conclude that home shopping stations serve the public interest, and we thereby qualify them as local commercial television stations for the purposes of mandatory cable carriage.[1]

[1] The Commission recently adopted rules concerning the mandatory cable carriage of

Are Home Shopping Stations Serving the "Public Interest, Convenience, and Necessity?"

The Three Statutory Factors

3. Viewership. To the extent data on the viewership of home shopping stations may not generally be reported, we asked how we can best determine the levels of viewership of home shopping broadcast stations. Although commenters did not present specific ratings data, several argued that conventional ratings are not the most appropriate method for ascertaining viewership. For example, NAB and NABOB assert that the quantity of viewers of a service does not reflect its importance to those viewers.

4. Several commenters suggested that the best way to gauge the viewership of home shopping stations is to determine how many people purchase the products sold by such stations. Silver King claims that seven to 15% of the television households in each of its markets (or approximately 27,526,000 households) are members of the Home Shopping Club. A number of commenters contend that additional evidence of significant viewership of home shopping stations is their inception and rapid growth since 1984, when the format was first allowed. In that regard, HSN states that its programming is carried "full time" by 35 television stations and part time by approximately 70 television stations.

5. Based on the information before us, and with no quantifiable data demonstrating otherwise, we conclude that home shopping stations have significant viewership. Moreover, we agree with the commenters who state that the format's continued success and expansion would not likely occur without significant viewer support.

6. Competing Demands for the Spectrum. The second factor on which we sought comment involves the level of competing demands for the spectrum allocated to home shopping stations. We first asked whether the 1992 Cable Act directs the Commission to consider the demands only of other television broadcasters or, more generally, those of applicants, permittees, and licensees in other services (such as land mobile and advanced television). Several commenters argue that Congress did not intend for the Commission to reallocate spectrum from the broadcast service as a result of this proceeding. For example, NAB states that, by directing the Commission to allow home shopping licensees to develop other broadcast formats if their stations were found not to serve the public interest, Congress contemplated only broadcast uses for those channels. Several other commenters also contend that this proceeding is not the appropriate forum to consider spectrum reallocation, because there is nothing unique about the spectrum (as opposed to the programming) utilized by home shopping stations. On the other hand, CSC states that the language and legislative history of the statute compel a broader interpretation. In that regard, CSC argues that the spectrum could be better used for public safety, emergency, or high definition television use, as well as for traditional television broadcasting.

7. We disagree with CSC. We do not believe that Congress intended for us to consider the demands of nonbroadcast services in this proceeding. In support of its position, CSC's only citation to the legislative history is an exchange between Representatives Eckart and Dingell, in which they affirm that the Commission "should consider the scarcity of broadcasting frequencies" in making the public interest determination. We reject CSC's claim that this exchange demonstrates Congress's intent that we consider the demands of other, nonbroadcast services. If anything, in discussing the scarcity of broadcasting frequencies, this exchange implies a concern with spectrum scarcity for broadcasters and whether home shopping stations were precluding other potential broadcasters from the spectrum. We also believe that there is nothing unique about the spectrum now utilized by home shopping stations that justifies a reallocation inquiry. Finally, we believe that by directing the Commission to allow home shopping licensees to develop other broadcast formats if their stations were found not to serve the public interest, Congress contemplated only broadcast uses for those channels. Accordingly, we interpret the second criterion to refer to competing demands only of other television broadcasters.

8. In the Notice we observed that the licensees of home shopping stations, like those of all other television broadcast stations, must demonstrate every five years to the Commission that the public interest will be served by renewal of their licenses. We also stated that home shopping stations already have the same fundamental obligation as other broadcast stations to provide programming that responds to issues of concern to their communities of license, as well as programming that serves the needs and interests of children. Moreover, we noted that any party qualified to hold a Commission license can file a competing application against the renewal of a home shopping station licensee, giving the challenger the opportunity to replace the existing licensee, should that be in the public interest. We therefore asked commenters to address whether the existing license renewal scheme adequately takes into account the competing demands of applicants for the television broadcast spectrum.

9. Several commenters addressed this aspect of our inquiry in the affirmative. HSN, for example, states that a competing application against a license renewal is the best indicator of any competing demand for the particular spectrum. NAB asserts that the fact that no home shopping station has been denied renewal demonstrates either that there is little competing demand for the spectrum, or that home shopping stations have been able to demonstrate that they are serving the public interest. Moreover, a significant number of licensees note that the only factor that allowed them to complete the construction of their stations or to keep them from going dark was the financial assistance that affiliation agreements with HSN provided. HSN and Silver King claim that the Commission can therefore conclude that there are no competing broadcast demands for those channels.

10. In response, CSC argues that there may now be competing demands for those channels, even if none existed when the affiliation agreements were negotiated. Further, CSC states that applicants face hurdles that prevent them from filing competing applications against a license renewal. Specifically, according to CSC, renewal expectancy and limitations on settlements make renewal challenges costly and futile.

11. Based on the evidence before us, we conclude that the existing renewal system, as well as the initial licensing process, adequately takes into account the competing demands of television broadcasters for the television broadcast spectrum. Moreover, we find the lack of competing applications against the renewal of home shopping stations to be a compelling indication that the level of competing demands for the spectrum utilized by home shopping stations is minimal.

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television broadcast stations in general. Report and Order in MM Docket No. 92–259 (Broadcast Signal Carriage Issues), 58 FR 17350 (April 2, 1993). In that proceeding, we defined on an interim basis stations that are predominantly utilized for sales presentations and program length commercials as stations devoting more than 50% of their programming to such commercial material. However, based on our conclusions in this proceeding, the question of how to define "predominantly utilized" is moot. Accordingly, we are eliminating the interim definition.

12. Competition With Nonbroadcast Home Shopping Services. The third factor the 1992 Cable Act requires us to consider is the role of home shopping stations in providing competition to nonbroadcast services offering similar programming. We stated in the Notice that two aspects of the competitive relationship appear to be implicated in addressing this statutory factor. First, we asked whether broadcast services suffer from potential commercial disadvantages as a result of their Commission-imposed public interest obligations, and whether a conclusion that broadcast home shopping stations are operating in the public interest (thus entitling them to local cable carriage) is an appropriate response to any potential competitive disparity.

13. The limited comments addressing the first issue are conclusory and unsupported by substantiating data. Thus, they do not provide information upon which we can rely in determining whether broadcast stations do in fact suffer from potential commercial disadvantages as a result of their Commission-imposed public interest obligations.

14. The second aspect of the competitive analysis involves the question of the public interest in providing competitive home shopping options to television viewers. The Notice observed that competition could be affected by a cable operator's having either an ownership or a contractual interest in a nonbroadcast provider of home shopping programming. We therefore sought comment on whether cable operators with either ownership or contractual interests in nonbroadcast providers of home shopping programming have elected not to carry home shopping broadcast stations or have treated such stations less favorably than nonbroadcast home shopping services with which they are affiliated. We also requested comment on whether any such carriage decisions have resulted in stifling competition and reducing the viewing choices of the public.

15. Based on the comments submitted in this proceeding, we cannot determine whether cable operators with either ownership or contractual interests in nonbroadcast providers of home shopping programming have discriminated against home shopping broadcast stations. None of the commenters addressing this issue has submitted any specific information to support its conclusions. However, we note one of the findings upon which Congress expressly based the 1992 Cable Act: That vertically integrated cable systems have an incentive and ability to favor their affiliated programmers. Keeping that in mind, we will look elsewhere in order to analyze the role of home shopping stations in providing competition to nonbroadcast services offering similar programming.

16. In this regard, HSN and Silver King claim that home shopping broadcast stations provide the principal competition to cable home shopping providers. They allege that denial of carriage to broadcast home shopping stations would limit viewers to services offered only on cable. However, CSC asserts that any benefit from competition between cable and broadcast home shopping services is undermined by growing common ownership of QVC and HSN. NCTA claims that mandatory carriage would destroy competition in home shopping programming, because only broadcast stations would be ensured carriage on the basic tier, while their competitors would have to vie for carriage in the marketplace of a diminished number of available cable channels.

17. Continental contends that competition has not produced materially different programming services. Therefore, according to Continental, requiring carriage of both a nonbroadcast and a broadcast home shopping channel could diminish the much greater program diversity that it claims exists between other services. In addition, Continental suggests that a cable operator that carries HSN's cable channel should not be required to carry an HSN-affiliated broadcast station that is largely duplicative of the cable version. Moreover, Continental claims that must-carry of home shopping broadcast stations would result in HSN's having an unfair market advantage over QVC and any new market players, because it would enjoy carriage of both its broadcast (through must-carry) and its cable (through negotiated agreements) programming services. At the same time, Continental also contends that granting must-carry status to home shopping stations would encourage new entrants into the market, by forcing home shopping programmers either to purchase or affiliate with broadcast stations in order to have guaranteed access to a cable channel; Continental claims that the Commission would be replacing the marketplace in determining the level of home shopping programming.

18. Valuevision further addresses the effect of our public interest determination on new market entrants. Claiming that the television home shopping industry is highly concentrated and vertically integrated, Valuevision asserts that must-carry is essential to the ability of new home shopping program providers to obtain and maintain access to cable subscribers, who compose the majority of television viewers. Valuevision adds that without carriage, many such small program providers have failed.

19. We reject the claims of some commenters that grant of must-carry status would create an unfair competitive advantage for broadcast home shopping stations in general, and for HSN in particular. Proponents of that view seem mistakenly to assume that HSN, for example, could enjoy two channels on a cable system, one broadcast and the other nonbroadcast. However, cable operators are not required to carry specific cable home shopping program providers (such as HSN, QVC, or any combination of these cable services). Further, Continental's suggestion that a cable system already carrying HSN's cable programming not be required to carry a home shopping broadcast station ignores the fundamental purpose of Congress's must-carry scheme: Preservation of local television service and the local public interest programming provided by these broadcast stations. Finally, we note that Congress expressly based the 1992 Cable Act on a finding that vertically integrated cable systems have an incentive and ability to favor their affiliated programmers. We find no evidence in the record that Congress's general finding is not applicable to the specific environment of home shopping programming. Moreover, we seek under this criterion to enhance the menu of competitive choices available to viewers who desire the advantages of home shopping. In this regard, we believe the public would not be served by diminishing the competition to cable home shopping services. Accordingly, we conclude that the existence and carriage of home shopping broadcast stations play a role in providing competition for nonbroadcast services supplying similar programming.

20. In summary, we find that each of the three factors which Congress directed us to consider in our analysis leads us to conclude that home shopping stations are serving the public interest. We shall now turn to other matters that may also affect our determination.

Other Public Interest Factors

21. Assumptions of Deregulation. We invited commenters to address whether the assumptions underlying the deregulation of the commercial guidelines are still valid. CSC notes that the Commission premised the deregulation of commercial time on the

assumption that market forces would protect the public from excessive commercialization. However, according to CSC, use of a home shopping format allows licensees to "evade" market forces, thereby demonstrating that the market has failed. CSC also argues that the 1992 Cable Act and its legislative history demonstrate Congress's belief that the market has failed to control commercial levels, thereby prompting this proceeding. Further, CSC claims that Congress's recent institution of commercial limits during children's programming demonstrates the failure of market forces to prevent excessive commercialization during such programming. NAB, on the other hand, cites the commercial success of HSN and argues that market forces have succeeded in reflecting viewer preferences. NIMA asserts that new forms of video advertising, including program length commercials, are made possible only by consumer interest, and that they are a product of the commercial flexibility that the Commission believed would develop in response to the deregulation of commercial time.

22. There is no evidence that the marketplace has failed to serve television viewers with its evolution to the present number and variety of home shopping services. CSC's claim that the use of a home shopping format allows broadcasters to "evade" market forces is not supported by any data. Indeed, the record clearly demonstrates that market forces have revealed a desire among a significant number of television viewers for home shopping programming. We find no reason to believe that home shopping stations would survive in an increasingly competitive video marketplace if viewers were dissatisfied with their level of commercialization. We also disagree with CSC's interpretation of the 1992 Cable Act and its legislative history. We note that the passages cited by CSC expressly state that the Commission would undertake a *de novo* review of the overall regulatory treatment of home shopping stations, which includes commercial time limits. They do not express a finding that the marketplace has failed to control the level of commercialization. Had Congress found that the market had failed, we believe that it would specifically have so stated.

23. Services Provided by Home Shopping Stations. Several commenters state that they provide valuable services to the disabled and others confined to their homes, the elderly, families without time to shop by other means, people without ready access to retail outlets or whose outlets do not stock the goods they want, people without cars or other transportation, people who dislike shopping, and people who are afraid of violent crime in conventional shopping areas. Accordingly, based on the record before us, we find that home shopping stations provide an important service to viewers who either have difficulty obtaining or do not otherwise wish to purchase goods in a more traditional manner.

24. Public Interest Obligations. Commenters were also invited to demonstrate how home shopping stations have satisfied their obligation to address the needs and interests of their communities of license. In response, we have received detailed listings of the public interest programming of many licensees of home shopping stations. According to these submissions, licensees of home shopping stations have addressed such issues as drug and alcohol abuse, AIDS, race relations, homelessness, basic legal knowledge for non-English-speaking viewers, and local political debates and election returns. These commenters assert that home shopping stations utilize a variety of formats for this type of programming, including public service announcements (PSAs) and program length features. In addition, Silver King contends that its stations meet or exceed the former levels of public interest programming that required full Commission review of renewal under previous Commission policies. Finally, several commenters submit evidence that their stations' proportion of local and public interest programming meets or exceeds that of most independent UHF television stations in their respective markets.

25. Based upon the record before us, it appears that the chosen format of home shopping stations generally does not preclude them from adequately addressing the needs and interests of their communities of license. Further, with regard to serving the needs and interests of children, home shopping stations must comply with the same rules that apply to other television broadcast stations.

26. Effect on Minority Ownership of Television Stations. Several commenters assert that a determination that home shopping stations are not serving the public interest would have a devastating effect on the minority ownership of television broadcast stations. Silver King and HSN state that the latter is affiliated with 30% of all the nation's 34 minority-owned television stations. Since 1986, according to HSN, it has funded the acquisition or construction of seven minority-owned stations and has furthered the development of others through affiliation agreements that have been the owners' only source of financing.

27. According to CSC, because home shopping stations often devote 90% or more of their broadcast day to sales presentations provided by an often distant, non-minority-owned programmer, the licensees have little actual opportunity to influence the stations' programming. The Commission's minority ownership policies are intended to enhance the diversity of views and information available to the public, CSC argues, and this goal is not achieved by home shopping stations.

28. In this regard, however, we note Jovon's assertion that 49% of its broadcast day is nonentertainment programming and Pan Pacific's assertion that it devotes only 25% of its prime-time programming to home shopping. Moreover, even if a minority-controlled station devotes 90% of its broadcast day to HSN's programming, as claimed by CSC, the licensee still retains both the opportunity and the responsibility to control the station's programming generally, and its public interest programming specifically. We thus conclude that minority-controlled licensees of home shopping stations enhance the diversity of views and information available to the public.

29. As we have found earlier, it appears that home shopping stations, including those that are minority-owned, have generally been meeting their programming obligations. Moreover, several minority-controlled and other small and marginal station licensees have stated that their stations currently operate only because of their affiliation with HSN. We also note the express assertions of several minority-owned licensees that the income from their affiliation with HSN allows them to finance public interest programming that they otherwise would not be able to provide. For example, Pan Pacific states that it broadcasts Chinese language news and other public interest programming approximately 1.5 hours each night during prime time. Because a significant proportion of minority-owned television stations are affiliated with HSN, we find that requiring home shopping stations to substantially modify their format would have a destabilizing impact on the minority ownership of television stations. In addition, the record demonstrates that the home shopping format is important to the survival of a number of other small and marginal stations.

30. Accordingly, based on a wide variety of factors, we conclude that home shopping stations are serving the

public interest, convenience, and necessity. We thus find no need to require such stations to modify their program formats in order to retain or obtain renewal of their licenses. We also reject CSC's suggestion that such stations, due to the level of their commercial programming, should receive no renewal expectancy. Section 4(g)(2) of the 1992 Cable Act directs the Commission not to use home shopping stations' format as a basis to deny them a renewal expectancy, even if their commercial programming is found not to serve the public interest. Moreover, independent of whether we have the authority to deny a renewal expectancy to home shopping stations, the record reflects no detriment to the public caused by their existing program operations.

Process Following Public Interest Decision

Mandatory Carriage of Home Shopping Stations

31. Given our conclusion that home shopping stations are operating in the public interest, section 4(g)(2) of the 1992 Cable Act seems to suggest that such stations are automatically eligible for mandatory cable carriage. However, the Notice stated that another option might be to find that home shopping stations, although operating in the public interest in such a manner as to warrant continued authorization and renewal, do not warrant mandatory cable carriage. Noting that the language of the Act appears to preclude such a conclusion, we asked commenters to address whether the 1992 Cable Act permits the latter approach and, if so, what criteria we might use to distinguish those home shopping stations entitled to carriage.

32. Several commenters assert that the Act does not allow the Commission to authorize the continued operation of home shopping stations without making them eligible for mandatory carriage. Smolla claims that the must-carry rules have been upheld only because they are content-neutral, and that the must-carry system would be jeopardized by not granting eligibility to home shopping stations. Time Warner asserts that broadcast and nonbroadcast home shopping programming are similar, and that cable operators should have the discretion to determine which would best meet the needs of its subscribers. Time Warner and NCTA argue that home shopping stations do not carry the quality public interest programming that Congress crafted the must-carry rules to protect. Thus, according to NCTA, mandatory carriage of home shopping stations would displace cable channel space that could otherwise carry more substantive news programming, such as CNN or C–Span.

33. We are not persuaded that the 1992 Cable Act would allow the continued authorization of home shopping stations without granting them eligibility for mandatory carriage. Section 4(g)(2) provides that the Commission "shall" qualify such stations for mandatory carriage upon a finding that they are serving the public interest. We have made such a finding. Commenters opposing this interpretation have provided no reasonable means to read the statute otherwise. Moreover, we agree with Smolla that the failure to qualify certain licensed stations based upon their programming decisions would place the content-neutrality of the must-carry rules into serious doubt, thereby jeopardizing their constitutionality. We conclude that as long as a home shopping broadcast station remains authorized to hold a Commission license, it should be qualified for mandatory carriage.

Coordination With the Must-Carry Rule

34. Cable systems were required to begin carrying their full complement of must-carry broadcast stations by June 2, 1993, and broadcast stations were required to make their initial must-carry/retransmission consent elections by June 17, 1993. Silver King states that home shopping stations will be excluded from the pool of local broadcast stations for the purpose of mandatory carriage for at least six months, because:

(1) The note to § 76.58(a) of the Commission's rules prohibits cable systems from deleting or repositioning local commercial television stations during a major ratings ascertainment period (such as will occur in July, 1993);

(2) Section 76.58(a) of the Commission's rules directs cable system operators to provide 30 days' notice to a broadcast station before deleting or repositioning that station; and

(3) Retransmission consent agreements should be completed by mid-August, which will further finalize channel carriage and positioning.

Accordingly, Silver King requests a blanket waiver of the 30-day notice requirement thereby permitting cable systems to add home shopping stations that elect must-carry status immediately upon receipt of their must-carry elections.

35. We deny the waiver request. Silver King has failed to demonstrate that it would be unfairly harmed by application of the notice requirement. It has not shown that a significant number of cable systems carry enough broadcast stations on a must-carry basis to allow them to reject carriage of home shopping stations. It also has not demonstrated that the public interest reasons supporting the notice requirement will not be harmed by grant of the waiver request.

36. Pending our determination in the proceeding, cable systems were not required to carry home shopping stations, as defined by our interim rule. However, home shopping stations now are to be treated no differently from other local commercial television stations for purposes of cable carriage. Thus, these stations are, in terms of cable carriage rights, effectively equivalent to newly operating television stations. Accordingly, we shall commence the process of implementing these stations mandatory carriage, channel position, and retransmission consent rights on the same general schedule established in § 76.64(f)(4) for new stations making their initial election. Home shopping stations must make their initial must-carry/retransmission consent election by August 23, 1993.[2] Those stations that elect mandatory carriage must also notify cable operators of their preferred channel positions by the same date. The initial channel position and mandatory carriage obligations for stations not currently carried and that do select mandatory carriage by August 23, 1993 will take effect on October 6, 1993, in order that these carriage obligations may be coordinated with the other obligations that take effect on that date. Stations eligible for mandatory carriage that are already being carried will become subject to the mandatory carriage requirement (subject to the channel capacity and other limits set forth in the rules) July 22, 1993.

Conclusion

37. Based on the information submitted in this proceeding, we find that broadcast stations that are predominantly utilized for the transmission of sales presentations or program length commercials serve the public interest. Further, we qualify such stations as local commercial television stations for the purposes of cable carriage upon adoption of this Report and Order.

[2] This applies only to those stations tentatively defined as home shopping stations in Broadcast Signal Carriage Issues at 3003. Stations not meeting that definition were required to make their initial election on June 17, 1993.

Administrative Matters

Final Regulatory Flexibility Analysis

38. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

39. Need and purpose of this action. This action is taken to implement the provisions of the Cable Television Consumer Protection and Competition Act of 1992 relating to the development of mandatory cable carriage of home shopping stations.

40. Summary of issues raised by comments in response to the Initial Regulatory Flexibility Analysis. No comments were received in response to the Initial Regulatory Flexibility Analysis. However, comments received in response to the Notice of Proposed Rulemaking indicate that small, independent television stations that broadcast home shopping programming are concerned about their ability to compete effectively with television stations carried on cable systems.

41. Significant alternatives considered and rejected. We considered two other options before adopting the policies and rules set forth in this Report and Order. The first option, to terminate the authorization of home shopping stations, would impede the ability of small, independent television stations that broadcast home shopping programming to compete effectively with television stations carried on cable systems. The second option, to continue authorization without eligibility for mandatory cable carriage, would seem to be prohibited by statute. It would also fail to provide cable subscribers with the access to local news and public affairs programming that Congress intended to foster in passing the 1992 Cable Act.

Ordering Clauses

42. *It is ordered,* That the request of Silver King Communications, Inc. for waiver of § 76.58(a) of the Commission's Rules is denied.

43. *It is further ordered,* That, pursuant to the authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, sections 154 and 303, and section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992, Public Law 102–385, part 76 of the Commission's Rules, 47 CFR part 76, is amended as set forth below, effective August 23, 1993.

44. *It is further ordered,* That, pursuant to the need to avoid disruption to cable subscribers and broadcast television stations during the transition to the new broadcast signal carriage rules and the authority contained in the Administrative Procedure Act, 5 U.S.C. 553(d)(3), home shopping stations that are eligible for mandatory carriage and that are already being carried will become subject to the mandatory carriage requirement July 22, 1993.

45. *It is further ordered,* That MM Docket No. 93–8 is terminated.

List of Subjects in 47 CFR Part 76

Cable television.

Amendatory Text

Part 76 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552 as amended, 106 Stat. 1460.

§ 76.56 [Amended]

2. Section 76.56 is amended by removing paragraph (b)(6).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–17481 Filed 7–21–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 930402–3134; I.D. 071293A]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Inseason adjustments.

SUMMARY: NMFS announces that the recreational salmon fishery in the subarea from the Queets River to Leadbetter Point, Washington, was opened from 0 to 200 miles off shore beginning July 11, 1993. The Director, Northwest Region, NMFS (Regional Director), has determined that the preseason restriction for this subarea (open only inside the 25 fathom curve) should be rescinded because its use as a catch-dampening measure is too restrictive. This adjustment is intended to provide additional fishing opportunities to recreational fishermen and to maximize the harvest of chinook and coho salmon without exceeding the ocean share allocated to the recreational fishery in the this subarea.

DATES: Effective at 0001 hours local time, July 11, 1993. Comments will be accepted through August 5, 1993.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C157700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140.

SUPPLEMENTARY INFORMATION: In its amended emergency interim rule (58 FR 31664, June 4, 1993), NMFS announced that the 1993 recreational fishery in the subarea between the Queets River and Leadbetter Point, Washington, would allow fishing only within the 25 fathom curve.

Based on the best available information on July 8, 1993, recreational catch rates have been relatively low. The preseason objective for implementing the area closure outside 25 fathoms was to dampen catch rates and extend the fishing season for as long as possible. Recreational fishing representatives expressed their concern, and NMFS agrees, that the area closure is too restrictive and that additional fishing opportunities should be provided to recreational fishermen to increase access to coho and chinook salmon. Therefore, the recreational fishery in the subarea from the Queets River to Leadbetter Point, Washington, will be open from 0 to 200 miles off shore effective 0001 hours local time, July 11, 1993.

Modifications of boundaries and closed areas are authorized by regulations at 50 CFR 661.21(b)(1)(v). All other restrictions that apply to this subarea and fishery remain in effect as announced in the amended emergency rule (58 FR 31664) and apply from 0 to 200 miles off shore.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding this adjustment affecting the recreational fishery from the Queets River to Leadbetter Point, Washington. The State of Washington supports this opening and will manage the recreational fishery in state waters

adjacent to this area of the EEZ in accordance with this Federal action. In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 0001 hours local time, July 11, 1993, by telephone hotline number (206) 526–6667 or (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz. Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.21 and 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

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

Dated: July 16, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–17459 Filed 7–21–93; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 921185–3021; I.D. 071693A]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of the "other red rockfish" target species category in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI) and Greenland turbot in the BSAI. NMFS is requiring that incidental catches of these species categories be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the "other red rockfish" target species category total allowable catch (TAC) in the BS and the Greenland turbot TAC in the BSAI has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 16, 1993, through 12 midnight A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a), the final 1993 specifications (58 FR 8703, February 17, 1993) established the TAC specifications for "other red rockfish" target species category in the BS subarea as 1,200 metric tons (mt) and the Greenland turbot in the BSAI as 7,000 mt.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that the TAC for the "other red rockfish" species group in the BS and the TAC for Greenland turbot in the BSAI have been reached. Therefore, NMFS is requiring that further catches of the "other red rockfish" target species category in the BS and Greenland turbot in the BSAI be treated as prohibited species in accordance with § 675.20(c)(3), and is prohibiting their retention effective from 12 noon, A.l.t. July 16, 1993, through 12 midnight, A.l.t., December 31, 1993.

Classification

This action is taken under 50 CFR 675.20 and is in compliance with E.O. 12291.

List of Subjects in CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: July 16, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–17361 Filed 7–16–93; 4:57 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 139
Thursday, July 22, 1993

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 130 and 156

[Docket No. 92-042-1]

RIN 0579-AA43

User Fees—Import- and Export-Related Veterinary Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish user fees for certain import-related services we provide for live animals, animal products, organisms and vectors, and germplasm. This proposed rule replaces a portion of a proposed rule published in the **Federal Register** on August 7, 1991. We are also proposing to amend existing hourly user fees for certain export services provided for live animals.

These proposed user fees are authorized by section 2509(c) of the Food, Agriculture, Conservation and Trade Act of 1990, as amended.

The effect of these regulations would be to require certain persons to pay fees for services they receive.

DATES: Consideration will be given only to comments received on or before August 23, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-042-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817) to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information concerning services provided for live animals and germplasm, contact Dr. David Vogt, Senior Staff Veterinarian, National Center for Import-Export, VS, APHIS, USDA, room 767, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8172.

For information concerning services provided for animal products and byproducts, contact Dr. Kathleen Akin, Senior Staff Veterinarian, National Center for Import-Export, VS, APHIS, USDA, room 755, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7830.

For information concerning fees, contact Ms. Barbara Thompson, Chief, User Fee Branch, Budget and Accounting Division, M&B, APHIS, USDA, room 263, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-5901.

SUPPLEMENTARY INFORMATION:

Background

User Fees Authorized Under the Farm Bill

The Food, Agriculture, Conservation and Trade Act of 1990, as amended (referred to below as the Farm Bill), authorizes the Secretary of Agriculture, among other things, to prescribe and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal Animal Quarantine Laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance. (Section 2509(c)(1) of the Farm Bill.)

Section 2509(c) also provides procedures for the Secretary to follow in the case of nonpayment of assessed fees, late payment penalties, or accrued interest. The section states that the Secretary shall suspend performance of services to persons who have failed to pay fees, late payment penalty, or accrued interest.

Section 2509(d) of the Farm Bill provides in addition that the Secretary may prescribe such regulations as the Secretary determines necessary to carry out the provisions of section 2509.

Previously Published Regulations

We have previously published documents in the **Federal Register** establishing, or proposing to establish, user fees for various services provided by the Animal and Plant Health Inspection Service (APHIS). APHIS user fees currently in effect are published in 7 CFR 354.3 and 354.4, and 9 CFR part 130. Currently effective user fees include fees for:

(1) Inspecting various passengers and commercial aircraft, vessels, trucks and railroad cars arriving within the customs territory of the United States;

(2) Issuing certain certificates, such as phytosanitary certificates for plants and plant products, and endorsing export certificates for animals;

(3) Providing quarantine services within the United States for imported animals;

(4) Providing certain inspection and supervision services within the United States for animals intended for export; and

(5) Conducting certain veterinary inspections outside the United States.

On August 7, 1991, we published a document in the **Federal Register** (56 FR 37481-37499, Docket No. 91-021) in which we proposed to amend 7 CFR part 354 and 9 CFR chapter I to establish user fees for certain certification, inspection, and testing services we provide. On August 21, 1991, and September 24, 1991, documents were published in the **Federal Register** (56 FR 41605 and 56 FR 48270) which made various corrections to our proposals.

We made a portion of these regulations final in a document published in the **Federal Register** January 9, 1992 (57 FR 755-773, Docket No. 91-135). That document covered all of the APHIS user fees proposed in Docket No. 91-021, except the following three categories of fees: (1) User fees for inspecting commercial aircraft and commercial vessels departing Hawaii and Puerto Rico for other parts of the United States; (2) User fees for veterinary diagnostic services and diagnostic reagents; and (3) User fees for export health certificates for animal products and byproducts and germplasm.

Since then we have published documents dealing with two of these three fee categories. On April 21, 1992, we published in the **Federal Register** a document withdrawing our proposed user fees for inspecting commercial aircraft and commercial vessels departing Hawaii and Puerto Rico for other parts of the United States (57 FR 14498-14499, Docket No. 91-140).

Then, on March 22, 1993, we published in the **Federal Register** a document reproposing APHIS user fees for veterinary diagnostic services (58 FR 15292–15301, Docket No. 91–021–4).

Proposed Rule

This docket deals, among other things, with the third category of fees—user fees for export health certificates for animal products and byproducts and germplasm, which were discussed in the proposal published on August 7, 1991. In this docket, we are reproposing user fees for endorsing export certificates for germplasm. To the extent fees for this service were included in our document of August 7, 1991, the regulations proposed at that time are superseded by regulations proposed in this document.

We are also proposing to establish other user fees for various services we provide related to importation of live animals, animal products, organisms and vectors, and germplasm. These fees cover import-related inspections and services provided at ports along the United States border with Mexico and at other ports of entry; inspection and approval of facilities handling imported animals or certain animal products, organisms, or vectors; and miscellaneous services related to the import or export of live animals, animal products, organisms and vectors.

We have not proposed specific user fees for services we do not currently provide, even if our regulations provide for the services. For example, at this time animals are not shipped in-bond from Canada into the United States, although the regulations in title 9, Code of Federal Regulations, part 92, allow it. As another example, the regulations in 9 CFR part 92 also allow the importation of commercial birds into the United States through ports of entry along the United States-Mexico border. However, at this time shipments of commercial birds are not presented for importation through any of those ports.

If there is no demand for a service, we do not provide the service, and we are not proposing a specific user fee for it. If in the future there is demand for a service, we will determine the cost of providing that specific service and publish a proposed user fee for public comment in the **Federal Register**. In the meantime, if we are asked to provide an authorized service for which there is no demand and therefore no user fee, we would charge the hourly user fee proposed in this document.

User Fees for Services for Live Animals Provided at Ports on the United States-Mexico Border (proposed new Section 130.6)

Along the United States-Mexico border, APHIS provides various services related to import or entry of live animals into the United States. These services include clearing the following for import into the United States: feeder animals; slaughter animals; horses other than slaughter; in-bond and in transit animals; and any other ruminants.

We are proposing to charge an APHIS user fee for these services. A user fee would be charged for each animal imported into the United States or being moved through the United States. The user fee would be charged per animal, as all animals being imported into the United States through a port along the United States-Mexico border are individually handled. The proposed user fees vary with the type of animal, as different types of animals require different amounts and types of services. How our proposed user fees were calculated, and what costs they include, are discussed separately below. In addition, there would be a minimum user fee of $16.00. Our proposed minimum user fee is also discussed separately below.

Please note that the user fees proposed for services at ports along the United States-Mexico border are not identical to user fees proposed for similar services provided at other ports. This is because the cost of providing services for live animals at ports along the United States-Mexico border is not the same as at other ports of entry. Animals imported from Mexico must meet different requirements and require more services than animals imported from other locations (see 9 CFR part 92 for regulations concerning the importation of animals). For example, animals from Mexico must be individually inspected and dipped for ticks. This results in higher costs at ports along the United States-Mexico border. The user fees proposed in this section for animals from Mexico reflect these higher costs.

In addition, please note that pet birds imported from Mexico, which do not need to meet different requirements and therefore do not require more services than birds imported from other locations, are covered under proposed § 130.8.

User Fees for Services for Live Animals Provided at All Other Ports of Entry (proposed new Section 130.7)

APHIS provides inspection services related to the import or entry of live animals into the United States at ports of entry other than ports along the United States-Mexico border. These services include inspecting and processing importations of breeding animals (grade and registered); horses; feeder animals (cattle, swine and sheep); poultry (including eggs); and cattle, swine, sheep and goats moving in transit through the United States.

We are proposing to charge an APHIS user fee for each animal or each load of animals, as appropriate, imported into the United States or being moved in transit through the United States. Most animals are handled individually when presented for importation or in transit movement. Therefore, for most animals we are proposing to charge a user fee per animal. However, slaughter animals and poultry are handled as a group. In their cases, we are proposing to charge a user fee per load. We are also proposing to charge different user fees for different types of animals because the amount, duration, and type of services required are different. How our proposed user fees were calculated, and what costs they include, are discussed separately below. In addition, there would be a minimum user fee of $16.00. Our proposed minimum user fee is also discussed separately below.

In the case of animals moving in transit through the United States, we are proposing to charge a user fee for services when they enter the United States. We would also charge our proposed hourly user fee at the time they leave the United States. This is necessary because we provide services at both entry and exit points. As with all of our proposed fees, the amount of the user fee reflects the amount, type and duration of service required. The proposed user fee for animals entering the United States would be charged per head—these animals are individually inspected. The proposed user fee for animals exiting the United States would be charged per hour—these animals are handled as a group.

User Fees for Other Services (proposed new Section 130.8)

APHIS provides a variety of other services related to import or export of live animals and birds, animal products, organisms and vectors, and germplasm into or from the United States. These services may be provided at ports of entry or at other locations within the United States. These services include:

1. Approving slaughter establishments;

2. Inspecting pet birds returning to the United States and supervising their home quarantine;

3. Issuing import permits for live animals, birds, germplasm, fetal bovine serum (FBS), animal products, and organisms and vectors;
4. Endorsing export certificates for germplasm;
5. Pre-entry equine piroplasmosis screening;
6. Import compliance assistance;
7. Processing releases from export agricultural hold; and
8. Approving establishments to import animal products, organisms and vectors.

We are proposing to charge an APHIS user fee for these services.

One service for which we propose to charge a user fee is approving slaughter establishments. Slaughter establishments are approved, and reapproved, on a yearly basis, pursuant to 9 CFR part 92, subparts C, D and E. The user fee we are proposing—$235.75 for the first year of approval and $205.00 for each year the approval is renewed—would cover all inspections and other services required during the year. For example, we inspect slaughter establishments to ensure that animals can be safely unloaded and held separate from other animals until slaughtered. As discussed below, these proposed fees reflect the amount, type and duration of service required.

We are also proposing a user fee to cover the costs of inspecting pet birds returning to the United States. Under the requirements of 9 CFR 92.101, pet birds out of the United States 60 days or less may enter the country if they are accompanied by certain documents and are individually identified with a leg band or tattoo. At the port of entry all this information must be checked and verified. Pet birds out of the United States more than 60 days must be accompanied by certain paperwork and must be quarantined for not less than 30 days. Normally these birds are quarantined in the owner's home. An APHIS inspector must inspect the birds while in quarantine and release the birds from quarantine. Our proposed user fees for these services include all necessary paperwork, verification, travel, and inspections.

Another user fee we are proposing concerns imports of FBS. FBS requires a permit to be imported into the United States. Nothing else is required to import FBS from Canada and New Zealand. However, importers of FBS from other locations must, at the time they apply for import permits, specify whether they want to have the FBS irradiated at a facility in the United States, or allow APHIS to sample and verify every shipment on arrival at the processing facility in the United States. Importers's choices are specified on the import permits and in compliance agreements signed by both APHIS and the importer. Processing facilities in the United States which have not previously been inspected must be inspected prior to the first import of FBS to the facility. If inspection is required, that requirement is specified on the permit.

We are proposing to charge a user fee of $207.25 for handling the permit application, if the processing facility in the United States must be inspected. The proposed fee includes inspecting the processing facility and all costs of handling the application and issuing the compliance agreement. If no facility inspection is required, we propose to charge a user fee of $26.50. This is the same user fee we are proposing for all other applications for import permits, and includes all costs of handling the application and issuing the compliance agreement.

Permits for importing FBS are valid for an unlimited number of FBS shipments within 1 year from the date of issuance. However, each shipment of FBS must comply with the irradiation or sample verification requirements stated on the permit and included in the compliance agreement. If FBS is to be irradiated, importers make their own arrangements, including payment, to have the FBS irradiated. APHIS is not involved. However, if FBS is to be sampled and verified, APHIS must collect and verify the samples. We propose to charge a user fee of $660.75 for this service.

Occasionally FBS importers need to amend their permit applications. Permit applications contain various information, including, for example, the source of the FBS, the port of arrival in the United States, and the location of storage facilities. If the importer has to change any information after the application is submitted, we must adjust our paperwork and amend the permit if we have already issued it. We are proposing to charge a user fee of $11.00 per amended application for this service.

We are also proposing to charge a user fee for each permit we issue for germplasm being imported into the United States and each certificate we endorse for germplasm being exported from the United States. This includes checking the accuracy of information submitted, completing various forms, maintaining files, and issuing or endorsing documents. With regard to embryos being exported from the United States, the user fee would vary depending on the number of pairs of donor animals listed on the certificate. A user fee of $54.75 per certificate would cover up to 5 donor pairs. A user fee of $24.75 would be charged for each additional group of donor pairs, up to 5 pairs per group.

We are also proposing a user fee for pre-entry equine piroplasmosis screening. Piroplasmosis is an insect-borne disease of equines. As a courtesy, we offer pre-entry screening for this disease. If an importer uses the service, and we determine that an animal they wish to import is infected with the disease, and therefore ineligible for importation, the importer is saved the expense of shipping the animal to the United States, paying for quarantine and testing in this country, and then shipping the animal back or otherwise disposing of it. Importers must obtain an import permit for the sample. The user fee we propose to charge covers the costs of processing the permit application and informing the importer of the results of the test. The importer would also have to pay a user fee for the laboratory test itself. We proposed user fees for veterinary diagnostic tests on March 22, 1993 (58 FR 15292–15301, Docket No. 91–021–4).

Another service for which we are proposing to charge a user fee is "Import compliance assistance." We must determine whether all animals, animal products, organisms and vectors presented for importation into the United States meet all import requirements. Usually the necessary paperwork and other requirements have been met before the shipment arrives in the United States, and the importation is handled routinely. The cost of this routine handling is included in our proposed user fees for import permits.

However, if a shipment which does not meet all import requirements arrives at a port of entry, we must provide "import compliance assistance." In other words, APHIS personnel must assist the importer, if the shipment is to be brought into compliance. When paperwork has not been completed, or completed improperly, in advance as required, it must be done on an emergency basis after the shipment has arrived. APHIS personnel must fax forms, check them, refax them, and make numerous telephone calls. The costs of providing this service cannot be built into our standard user fees, because they do not apply in most cases, and it would be unfair to make all users pay for extraordinary service we provide only on an occasional basis.

We are also proposing to charge an APHIS user fee for getting certain shipments of exported animals and agricultural products released from agricultural holds placed by foreign

governments. This situation occurs when a shipment from the United States arrives in a foreign country and does not meet all of that country's import requirements. APHIS services are not necessary for most exports. However, when paperwork is missing or other requirements have not been met, APHIS provides special services to get shipments released. APHIS personnel fax information, check it, refax it, and make numerous telephone calls, all on an emergency basis. The cost of providing these services cannot be built into standard user fees because they do not apply in most cases and it would be unfair to make all users pay for extraordinary services we provide only on an occasional basis.

We are also proposing to charge a user fee for approving establishments, warehouses, and facilities under 9 CFR parts 94 through 96, to receive or treat various animal products and byproducts imported into the United States. Several inspections are required during the first year of approval. We propose to charge a user fee of $252.75 for all paperwork, agreements, and inspections required during that time. For each year that the original approval and compliance agreement is renewed, usually a maximum of 2 additional years, we propose to charge a user fee of $146.00. The proposed fee for each renewal is less than the user fee proposed for the first year of approval because the time needed for inspections is less, and because the compliance agreement remains in force and does not need to be redone.

Hourly User Fees for Miscellaneous Import- and Entry-Related Veterinary Services (proposed new Section 130.9) and for Export-Related Veterinary Services (Section 130.7, redesignated as Section 130.21)

We are proposing to adopt hourly fees for providing miscellaneous veterinary services related to the import or entry of live animals, animal products, organisms and vectors, and germplasm (proposed new § 130.9). For example, we would charge an hourly fee for the following services:

(1) Conducting inspections, including laboratory and facility inspections, required to obtain permits either to import animal products, organisms and vectors, or to maintain compliance with import permits;

(2) Obtaining samples required to be tested either to obtain import permits or to ensure compliance with import permits;

(3) Supervising the opening of in-bond shipments; and

(4) Other import or entry services not specified elsewhere in our user fee regulations.

The regulations at § 130.7 (which would be redesignated as § 130.21), currently list veterinary services provided for export animals and birds. We propose to amend the list of covered services to add inspecting means of conveyance used to transport export animals or birds, and conducting inspections under 9 CFR part 156. We also propose to amend § 130.7 (which would be redesignated as § 130.21), to clarify that when we inspect an export isolation facility, we also inspect the animals in the facility.

We are also proposing to amend § 156.7, Fees and Charges, to specify that user fees under part 130 may be due for services we provide under part 156, and to provide that they would be payable in the same manner as other fees and charges due for services provided under part 156.

The user fee we propose to charge for all of these services, both in proposed new § 130.9 and in current § 130.7, redesignated as § 130.21, is a single hourly fee. Our current regulations specify different fees for services provided by a veterinarian and services provided by an animal health technician (AHT). As many services are provided by both veterinarians and AHT's, we believe a single fee for veterinary services would be fairer to users.

We have determined that the hourly user fees should be $50.00 per hour, or $12.50 per quarter-hour.

We are also proposing to adopt a $16.00 minimum fee for any veterinary service provided in connection with the importation or exportation of animals and for other miscellaneous import services on a hourly basis. The proposed minimum user fee for services provided on an hourly basis is discussed separately below.

We are proposing to amend §§ 130.5 and 130.7 of the regulations in accordance with these determinations.

If an hourly user fee was payable for a service, the total due would be calculated as follows:

Example 1. If someone received veterinary services subject to the hourly fee, and those services took 10 minutes to perform, the person would owe the minimum user fee of $16.00.

Example 2. If someone received veterinary services subject to the hourly fee, and those services took 20 minutes to perform, the person would owe APHIS a user fee of $25.00, or twice the quarter-hour fee of $12.50.

Example 3. If someone received veterinary services subject to the hourly fee, and those services took 1 hour and 15 minutes to perform, the person would owe APHIS a user fee of $62.50, once the fee for one hour, plus once the fee for a quarter-hour.

User Fees for Individual Animals and Birds Quarantined in APHIS Animal Import Centers (Section 130.2)

We are proposing to amend § 130.2 of the regulations to add specific user fees for ratites and miniature horses quarantined in APHIS Animal Import Centers. There are no individual fees for these animals at this time. Instead, for ratites we are currently charging the highest applicable user fee for birds; for miniature horses we are currently charging the applicable user fee for equines, based on the number of days they are in quarantine.

The care, feed and handling required by ratites are different than that required by other birds. Ratites generally require more individual care and more expensive feed. They also require pesticide treatments not required by other birds. In addition, the cost of providing quarantine services to ratites is dependent on their age. Therefore, we are proposing to charge daily user fees of $5.50 for each ratite chick (from hatching to 3 months of age); $7.75 for each ratite juvenile (from 3 months to 11 months of age); and $15.50 for each adult ratite (11 months and older). These proposed fees are lower for ratite chicks and higher for ratite juveniles and adults than the user fees we are currently charging for ratites.

Miniature horses require less stall space, feed, and handling than other horses. Therefore, charging the same user fee for miniature horses as for other equines is not justified. We are therefore proposing to charge a daily user fee of $39.00 for each miniature horse. This proposed fee is less than the user fee we are currently charging for miniature horses.

User Fees for Exclusive Use of Buildings at APHIS Animal Import Centers (Section 130.3)

We are proposing to amend § 130.3(a) of the regulations to provide that an importer may have exclusive use of certain space at our Animal Import Center in Miami, FL. The regulations currently permit importers to occupy an entire building at our Animal Import Center in Newburgh, NY, but not at our other Animal Import Centers.

At our Animal Import Center in Miami, FL, there is no free-standing building available for exclusive use of importers. However, there is a building at that facility which is comprised of three discrete wings. Two of these wings can be made biologically secure from the rest of the building. Therefore, we are proposing to amend the regulation to

designate these two wings as being available for exclusive use of importers.

We are also proposing to amend the heading for § 130.3 and the text of § 130.3(a) to reflect this change by removing references to "buildings" and replacing them with "space" or "available space." In addition, we would amend the table in § 130.3(a) to show the square footage of the space available, rather than the dimensions of the space. We believe this information would be more useful.

Please note that the fee for exclusive use at our Animal Import Center in Newburgh, NY, is higher per square foot than the fee for exclusive use of space at our Animal Import Center in Miami, FL. The reason for this is that heating costs are considerably higher at the Newburgh facility, and a higher user fee is necessary to fully recover our operating costs.

To avoid problems collecting fees, we are proposing to amend § 130.3(a) to require that "the person for whom the service is provided and the person requesting the service are jointly and severally liable" for payment of the APHIS user fees. As explained above, this change, along with similar changes to other sections of the regulations, has already been proposed in another document (Docket No. 91–021–4; 58 FR 15292–15301, published March 22, 1993).

We are also proposing to add new paragraphs (1), (2), and (3) to § 130.3(a) to state that importers who reserve space for their exclusive use at an Animal Import Center must pay a minimum 30-day user fee, and must pay 1/30th of the minimum fee for each additional day or part of a day they retain use of the space beyond 30 days. Unless the reservation is canceled in time to refund the reservation fee (see 9 CFR 92.103, 92.204, 92.304, 92.404, or 92.504, as appropriate), the user would be liable for the minimum 30-day user fee as of the first day for which the space was reserved.

The 30-day minimum user fee for exclusive use of space at Animal Import Centers includes the services of two AHT's. However, certain importations, such as chicks requiring individual hand-feeding, may require additional service. We are proposing to amend § 130.3(c) to require importers to either eliminate the need for additional personnel by reducing the number of animals or birds to be quarantined in a space to the number which two AHT's could feed and care for, or pay, on an hourly basis, for the necessary additional veterinary services. If the importer chooses to pay for necessary additional veterinary services on an hourly basis, the user fees would be $50.00 per hour or $12.50 per quarter hour.

This is the same hourly user fee we are proposing to charge for other veterinary services we provide on an hourly basis (see proposed amendments to § 130.5, § 130.7 (which we propose to redesignate as § 130.21), and new proposed §§ 130.6, 130.7, and 130.9). Charging the same hourly user fee would eliminate confusion for importers, and would simplify calculation, billing, and collection.

However, we are not proposing to charge the $16.00 minimum user fee proposed elsewhere in our regulations (see proposed amendments to § 130.5, § 130.7 (which we propose to redesignate as § 130.21), and new proposed §§ 130.6, 130.7, and 130.9) in conjunction with hourly user fees. In this situation, we consider feeding and caring for the animals in quarantine to be a single service which occurs over a period of days. Therefore, we intend to keep a running account of the hours of additional veterinary service provided, and to charge for the actual time.

APHIS personnel at the Animal Import Center would determine how much additional service was needed.

Definitions (§ 130.1)

The term "germplasm" as used in our proposed regulations is standard industry terminology. It includes semen, embryos, and ova. We therefore propose to amend the regulations in 9 CFR part 130 to add a definition of "germplasm," as follows:

Germplasm. Embryos, semen or ova.

We are also proposing to amend the regulations to add definitions of "Breeding animal", "Feeder animal", "Grade animal", "In-bond", "Load", "Miniature horse", "Slaughter animal", and "Registered animal" as follows:

Breeding animal. Any animal imported into the United States for breeding purposes.

Feeder animal. Any animal imported into the United States under title 9, Code of Federal Regulations, part 92, for feeding at a quarantined feedlot under 9 CFR part 92.

Grade animal. Any unregistered animal.

In-bond animal. Any animal imported into the United States under a United States Customs Service bond, as described in title 19, Code of Federal Regulations, part 113.

Load. All the animals or birds carried on one vehicle.

Miniature horse. Any horse which at maturity measures 34 inches high or less from the ground to the base of the last hair of the mane at the withers.

Registered animal. Any animal recorded in the book of record of an animal registry association which issues certificates concerning the pedigree of animals.

Slaughter animal. Any animal moving directly to slaughter.

These definitions are consistent with general industry usage of the terms. With regard to a load, the type of animals or birds, and the size, capacity, and type of vehicle, are irrelevant when deciding what is a "load." For example, a load of cattle might be 45–60 animals on a tractor trailer, while a load of poultry might be 20,000 chickens on the same vehicle.

We are also proposing to add definitions of the terms "Approved establishment" and "Pet bird", consistent with definitions elsewhere in our regulations.

In addition, we are proposing to amend the existing definition of "Animal Import Center" to clarify that the Harry S Truman Animal Import Center (HSTAIC), is not an Animal Import Center within the meaning of 9 CFR part 130. This means that user fees in 9 CFR part 130, which apply to animals in quarantine at animal import centers, do not apply to animals in quarantine at HSTAIC.

Payment Procedures (Section 130.50)

We propose to add a new paragraph (a)(5) to § 130.50 to require that user fees for live animals presented for importation at any port of entry be paid either when the animals are presented or within the time specified in the bill for the fees. If hourly user fees are due, we propose that they must be paid when the service is provided or within the time specified in the bill.

Users would have to pay user fees at the time they receive the service until they have established an acceptable credit history. Once a user has established an acceptable credit history, they may choose either to pay when they receive the service or within the time specified in the bill.

We also propose to require that user fees for services specified in proposed new § 130.8 (miscellaneous import- and export-related inspection and permit services), accompany requests for service.

We are also proposing to amend § 130.50 to change the reference to § 130.7, which we are proposing in this document to redesignate as § 130.21, and to clarify that if user fees are due for services provided under 9 CFR part 156, those user fees are payable in accordance with the cooperative agreement signed in accordance with that part.

Penalties for Nonpayment

Under our current regulations in § 130.51(a), if a person requesting a service for which an APHIS user fee is payable, is delinquent in paying any APHIS user fee due under either title 7 or title 9, Code of Federal Regulations, or is delinquent in paying the interest on any delinquent APHIS user fee, then APHIS will not provide the service requested. Our current regulations in § 130.51(b)(1) and (2) further provide that when APHIS is in the process of providing services for which a user fee is due, and the user has not paid the fee within the time required, or payment offered by the user is inadequate or unacceptable, then we will not, as appropriate, either release animals in quarantine or provide export health certificates. Section 130.51(c) further states that, if user fees are paid later than 30 days after payment is due, APHIS will impose a late payment penalty and interest charges in accordance with 31 U.S.C. 3717. In addition, § 130.50(b) lists the forms of payment we will accept for APHIS user fees as follows: (1) Cash, if payment is made at area office or an Animal Import Center; (2) all types of checks, including traveler's checks; (3) money orders; and (4) credit cards (VISA and Master Card) if payment is made at the Animal Import Centers in Newburgh, NY, or in Miami, FL, or at the USDA, APHIS, VS, office at John F. Kennedy International Airport, Jamaica, NY. We are not proposing any amendments to § 130.50(b), which concerns methods of payment.

We intended that user fees unpaid after 30 days be considered delinquent. To ensure that this is clear in the regulations, we have proposed, in another document published in the **Federal Register** on March 22, 1993 (58 FR 15292–15301, Docket No. 91–021–4), to revise § 130.51, paragraphs (a) and (c), to clarify that accounts would be considered delinquent if fees are unpaid 30 days after service is provided, or if billed, 30 days after date of bill. If any person for whom a service is provided, or the person requesting the service, fails to pay when due, any debt to APHIS, payment must be made for subsequent user fee services before the service is provided, whether or not the fee is delinquent. An account is not delinquent and does not begin to accrue interest and penalties until 30 days after the services are rendered or 30 days after the date of the bill, if a bill was issued. A full explanation of this proposed change appears in that document.

Liability for Payment (Section 130.3 and proposed new Sections 130.6, 130.7, 130.8, and 130.9)

We are proposing to specify, wherever applicable in these proposed regulations (§ 130.3 and proposed new §§ 130.6, 130.7, 130.8, and 130.9), that "the person for whom the service is provided and the person requesting the service are jointly and severally liable" for payment of any APHIS fees due. We believe this is necessary to effectively collect fees, since the actual identity of the person for whom the service is provided may be unknown to us. We have already proposed (58 FR 15292–15301, Docket No. 91–021–4, published March 22, 1993) to amend our current regulations to add this language regarding most other APHIS user fees for services provided under title 9, Code of Federal Regulations. We are not proposing to amend current § 130.8, which concerns APHIS user fees for services outside the United States. That section, which would be redesignated § 130.23 under this proposed rule, already contains clear wording concerning liability for payment.

Minimum User Fee

We are proposing to charge a minimum user fee for the services we provide that are listed in § 130.5, § 130.7 (which we propose to redesignate as § 130.21), and new proposed §§ 130.6, 130.7, and 130.9). The proposed minimum fee was developed primarily to cover the costs of handling unusually small importations at ports of entry. Our proposed user fees are calculated to recover our costs to provide routine services. For example, feeder swine are almost always imported by the tractor-trailer load. Therefore, our proposed user fees for feeder swine were calculated to cover the cost of providing services for tractor-trailer loads of swine. However, there are occasional importations of 1 or 2 animals. We cannot predict or control the frequency of these importations. Therefore we cannot account for the cost of providing service for them when calculating our proposed fees. As a result, the proposed fees, applied at the same rate per head for 1 or 2 animals as for animals in a tractor-trailer load, would not recover our costs to provide services for 1 or 2 animals. Therefore, to ensure that our basic costs are always covered, we have determined that it is necessary to charge a minimum user fee.

We have calculated our minimum fee as follows: We determined that, of all the services we routinely provide nationwide at land border ports, the one which takes the least amount of time to provide is inspecting loads of slaughter animals at ports other than those along the United States-Mexico border. All other services take longer to provide, and therefore are more costly for us to provide. We then determined that the number of slaughter animals in a load does not significantly affect the minimum amount of time needed to provide this service. Therefore, we took the minimum time and, as explained later in this document, determined the cost of providing that amount of service. The result of these calculations was a proposed minimum user fee of $16.00.

Overtime (Section 130.6, redesignated as Section 130.20)

Veterinary Services offices occasionally receive requests for services outside of employees' normal tours of duty, to expedite a certificate or inspection. If we must provide any service covered under proposed §§ 130.6, 130.7, 130.8, or 130.9 on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, we propose to require those requesting the service to pay reimbursable overtime in accordance with existing regulations, in addition to the APHIS user fee for each service.

This is necessary to discourage unnecessary demands for overtime work and resulting high costs to APHIS, and to ensure full cost recovery. To date, reimbursable overtime costs have not been included in our proposed user fees.

Regulations governing reimbursable overtime are found in 9 CFR part 97.

In a previous document published January 9, 1992 (57 FR 755–773, Docket No. 91–135), we adopted user fees for various certification, inspection and testing services we provide. These user fees were effective February 9, 1992. Endorsement of export certificates for live animals was one of the services covered. At the time, we stated that we would charge either the user fee or reimbursable overtime for export certificate endorsement, but we would not charge both.

Unfortunately, this policy has resulted in incomplete cost recovery for services provided outside of normal business hours. Overtime charges do not cover the full cost of providing services, but user fees do. To fully recover costs and discourage unnecessary demands for overtime work and the resulting high cost to APHIS, it is necessary to charge both reimbursable overtime and APHIS user fees. We are therefore proposing to amend current § 130.6, which would be redesignated under this proposal as § 130.20, to state that we will charge reimbursable overtime for export

certificates endorsed outside of the normal tour of duty of the employee, in addition to the export certification user fee.

Costs Included in Proposed User Fees

We are proposing to charge a specific dollar amount for each individual service associated with import or entry of live animals, animal products, organisms and vectors, and germplasm. Each fee has been calculated to cover the full cost of providing the service, including direct labor, direct materials, administrative support, Agency overhead, and Departmental charges.

Direct labor costs are the costs of employee time spent specifically to provide the service. For example, the time to review paperwork or inspect animals for ticks would be part of the direct labor costs for processing cattle imported into the United States. Direct labor costs vary with the service provided.

Direct material costs include the cost of any materials needed to provide the service. For example, direct material costs would include the cost for facsimile paper. Again, direct material costs vary for different services.

Administrative support costs are incurred at the local level, that is, at the port or office where the service is obtained. They include clerical and administrative activities; indirect labor hours (supervision of personnel and time spent doing necessary work that is not directly connected with the service, such as repairing equipment); travel and transportation for personnel, supplies, equipment, and other necessary items; training; general supplies for offices, washrooms, cleaning, etc.; contractual services (such as guard service, maintenance, trash pickup, etc.); grounds maintenance; chemicals and glassware; and utilities (such as water, trash pickup, telephone, electricity, natural and propane gas, heating and diesel oil). Some administrative support items may be contractual or not, depending on local circumstances. For example, trash pickup may be provided as a utility or a contractual service. However, the costs are all administrative support. As with direct labor and direct material costs, the type, amount, and cost of administrative support vary.

Agency overhead is the pro-rata share, attributable to a particular service, of the management and support cost for all Agency activities at the regional level and above. Included are the cost of providing budget and accounting services, management support at the headquarters and regional levels, including the Administrator's office, and personnel services, public information service, and liaison with Congress.

Departmental charges are APHIS's share, expressed as a percentage of the total cost, of services provided centrally by the U.S. Department of Agriculture. Services the Department provides centrally include the Federal telephone service; mail; National Finance Center processing of payroll, billing, collections, and other money management; unemployment compensation; Office of Workers Compensation Programs; and central supply for storing and issuing commonly used supplies and Department forms. The Department notifies APHIS how much the Agency owes for these services. We have included a pro-rata share of these Departmental charges, as attributable to a particular service, in our fee calculations. An outline of the basic process is shown below. The actual components, quantities, and costs used to calculate the fee are different for each service.

Calculation of Proposed User Fees

The basic steps in the calculation, for each particular service, are:

1. Determine the following costs: direct labor; direct materials; pro-rata share of administrative support; pro-rata share of agency overhead; and pro-rata share of Departmental charges.
2. Add all costs; and
3. Round total costs up to the nearest quarter of a dollar.

The result of these calculations is a user fee which covers the total cost to provide a particular service one time, rounded up to the nearest quarter of a dollar.

We have individually calculated costs for each type of service using the same method of calculation we have used to determine user fees we have already implemented. Following are outlines of our calculations for certain user fees proposed in this document.

To arrive at the proposed hourly user fee, we determined the average salary of APHIS personnel performing the services which would be covered by the hourly user fee. We then added administrative support costs, Agency overhead, and Departmental charges.

To arrive at the proposed user fees for import or entry services for live animals at ports of entry along the United States-Mexico border, we determined the time in hours needed to provide services for each type of animal. Direct labor costs vary by category of animal. We then multiplied the number of hours per activity by the average hourly salary of personnel providing the service, and added direct material costs, administrative support costs, Agency overhead, and Departmental charges.

To arrive at the proposed user fees for import or entry services for live animals at all other ports of entry, we determined the time in hours needed to provide services for each category of animal. Direct labor costs vary by category of animal. We then multiplied the number of hours per activity by the average hourly salary of APHIS personnel providing the service, and added direct material costs, administrative support costs, Agency overhead, and Departmental charges.

To arrive at user fees for other services, we determined the time in hours needed to provide these services for each category of service. Direct labor costs vary by category of service. We then multiplied the number of hours per activity by the average hourly salary of APHIS personnel providing the service, and added direct material costs, administrative support costs, Agency overhead, and Departmental charges.

As is the case with all other APHIS user fees, we intend to review, at least annually, the user fees we are proposing in this document. We will publish any necessary adjustments in the **Federal Register**. We do not intend to collect user fees in excess of actual costs.

Additional data and computations for the fees we are proposing in this document are available for inspection at APHIS, Budget and Accounting Division, User Fee Branch, room 263, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Rounding

We have rounded our proposed user fees up to the nearest quarter. This is consistent with the methodology used to determine APHIS user fees for issuing phytosanitary certificates for plants and plant products being exported from the United States, and for services related to export or import of animals and birds, including APHIS user fees we have proposed for veterinary diagnostic services.

Based on our experience with billings and collections, we believe rounding up our fees is most practical. It makes calculations easier, reduces billing and collection errors, and compensates for the impossibility of calculating the exact cost of any service. Determining the exact cost is impossible because costs are based on many factors which vary unpredictably over time. For example, we cannot determine, in advance, exactly how many times a particular service will be requested during a year,

and we cannot know, in advance, the exact costs of direct materials that will be utilized over the course of a year. That is a function, among other things, of who wants to import or export animals, which types of animals are involved, and where the animals are being exported to or imported from. None of this data can be definitely determined in advance. Therefore, we must estimate, based on past experience.

Rounding up is also most practical because it would compensate APHIS for the portion of user fees which will never be paid and which we cannot collect. Based on our experience charging APHIS user fees for other services, we anticipate that unpaid user fees will be minimal.

Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, it has been determined that this rule is part of a series of documents which are being considered as a "major rule." This proposed rule is one of several rules which require certain persons to pay user fees for APHIS services they receive. We have already published final rules adopting user fees for various services we provide.

Rules covering user fees for commercial vessels, commercial trucks, commercial railroad cars, and passengers on commercial aircraft arriving in the United States from outside the country were effective May 13, 1991 (final rule published in the **Federal Register** on April 12, 1991 (56 FR 14837–14846)). Rules covering user fees for export certification and animal quarantine services were effective February 9, 1992 (final rule published in the **Federal Register** January 9, 1992 (57 FR 755–773)). On March 22, 1993, we published in the **Federal Register** proposed rules covering user fees for veterinary diagnostics (tests and reagents) (58 FR 15292–15301, Docket No. 91–021–4).

The rules currently in effect, along with the regulations proposed in the document of March 22, 1993 and in this document, are expected to provide total savings to taxpayers of $134.5 million annually. The discounted value of this amount is estimated at about $551.5 million over 5 years. The fees on the services proposed in this rule are expected to contribute between $3.5 to $4.6 million per year, or about 3 percent of the total savings. These anticipated savings would have a discounted value of between $14.6 and $18.9 million over 5 years.

Amended quarantine fees for imported ratites and miniature horses would decrease the user fee for importing ratite chicks and miniature horses and increase the user fee for ratite juveniles and adults. APHIS estimates that proposed fee reductions for ratite chicks and miniature horses would save importers about $58,275 per year. Conversely, importers of juvenile and adult ratites would incur additional costs totaling about $4,890 annually. APHIS estimates that revised quarantine fees for imported ratites and miniature horses would reduce total charges to importers by about $53,385 annually.

This proposed action may have a significant economic impact on a substantial number of small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential impacts. In particular, we are interested in determining the number and kind of small entities which may incur benefits or costs from the implementation of user fees for:

(1) Processing imported shipments of live animals, birds, and poultry;

(2) Processing imported shipments of animal products; and

(3) Issuing import permits and inspection certificates.

Our preliminary Regulatory Impact Analysis is available for inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect the document are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

Executive Order 12372

This program activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12606

We have analyzed these regulations in accordance with Executive Order 12606, and have determined that it would have no potential impact on family well-being. We have determined that this proposed rule: Would not affect the stability of the family, and particularly, the marital commitment; would not affect the authority and rights of parents in the education, nurture, and supervision of their children; would not help or hinder the family to perform its functions; would not substitute governmental activity for family functions; and would not have any significant effect on family earnings. We have also determined that the benefits of this action justify any impact it may have on the family budget, and that this activity cannot be carried out by a lower level of government or by the family itself. This rule sends no message, intended or otherwise, to the public concerning the status of the family or to young people concerning the relationship between their behavior, their personal responsibility, and the norms of our society.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted:

(1) All State and local laws and regulations that are inconsistent with this rule will be preempted;

(2) No retroactive effect will be given to this rule; and

(3) Administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to:

(1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; and

(2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

Lists of Subjects

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry, Quarantine, Reporting and recordkeeping requirements, Tests.

9 CFR Part 156

Exports, Livestock, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 130 and 156 would be amended as follows:

PART 130—USER FEES

1. The authority citation for part 130 would be revised to read as follows:

Authority: 21 U.S.C. 114, 114a, 136, and 136a; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 130.1, the definition of "Animal Import Center" would be revised, and the following definitions would be added, in alphabetical order, to read as follows:

§ 130.1 Definitions.

* * * * *

Animal Import Center. Quarantine facilities operated by APHIS in Newburgh, New York; Miami, Florida; and Honolulu, Hawaii.[1] The Harry S Truman Animal Import Center (HSTAIC) on Fleming Key, Florida, is not an "animal import center" within this definition.

* * * * *

Approved establishment. An establishment approved by the Animal and Plant Health Inspection Service for the receipt and handling of restricted import animal products or byproducts under 9 CFR chapter I, subchapter D.

* * * * *

Breeding animal. Any animal imported into the United States for breeding purposes.

* * * * *

Feeder animal. Any animal imported into the United States under 9 CFR part 92, for feeding at a quarantined feedlot.

Germplasm. Semen, embryos, or ova.

Grade animal. Any unregistered animal.

In-bond animal. Any animal imported into the United States under a United States Customs Service bond, as described in 19 CFR part 113.

Load. All the animals or birds carried on one vehicle.

Miniature horse. Any horse which at maturity measures 34 inches high or less from the ground to the base of the last hair of the mane at the withers.

* * * * *

Pet bird. Birds which are imported for the personal pleasure of their individual owners and are not intended for resale.

* * * * *

Registered animal. Any animal recorded in the book of record of an animal registry association which issues certificates concerning the pedigree of animals.

Slaughter animal. Any animal moving directly to slaughter.

* * * * *

3. In § 130.2, the table in paragraph (a) would be amended by revising the category headings for "Birds" and "Equines"; by adding a category for "Ratites" before the category for "Poultry"; and by adding a category for "Miniature horses" before the category for "Zoo animals" to read as follows:

§ 130.2 User fees for individual animals and birds quarantined in APHIS Animal Import Centers.

(a) * * *

Animal or bird	Daily fee
Birds (including zoo birds, but excluding ratites):	
* * * * *	
Ratites:	
Chicks (less than 3 months of age)	5.50
Juveniles (3 months through 10 months of age)	7.75
Adults (11 months of age and older)	15.50
* * * * *	
Equines (including zoo equines, but excluding miniature horses):	
* * * * *	
Miniature horses	39.00
* * * * *	

§ 130.3 [Amended]

4. Section 130.3 would be amended as follows:

a. The section heading and paragraph (a) would be revised to read as set forth below.

b. Paragraph (c) would be redesignated as paragraph (c)(1) and new paragraphs (c)(2) and (c)(3) would be added to read as set forth below.

As amended, § 130.3 would read as follows:

§ 130.3 User fees for exclusive use of space at APHIS Animal Import Centers.

(a)(1) An importer may, at his or her option, exclusively occupy space at APHIS Animal Import Centers as specified below. The person for whom the service is provided and the person requesting the service are jointly and severally liable for the user fee which will be charged for the space as follows:

Animal import center	Space available	Monthly fee
Miami, FL South Wing	6,952 sq. ft (645.9 sq. m.)	$25,233
North Wing	6,545 sq. ft (608.1 sq. m.)	24,476
Newburgh, NY.	5,904 sq. ft (548.5 sq. m.)	39,450

(2) Any importer who occupies space for more than 30 days must pay 1/30th of the 30-day fee for each additional day or part of a day. The person for whom the service is provided and the person requesting the service are jointly and severally liable for any additional charges.

(3) Unless the importer cancels the reservation for exclusive use of space in time to receive a refund of the reservation fee in accordance with 9 CFR 92.103, 92.204, 92.304, 92.404, or 92.504, as appropriate, the 30-day user fee will be effective as of the first day for which the importer has reserved the space, regardless of whether the user occupies the space on that date or not.

* * * * *

(c)(1) * * *

(2) If the number of animals and birds requested by the importer can be housed in the space requested, as determined by APHIS personnel at the Animal Import Center, but two animal health technicians cannot fulfill the routine husbandry needs of the number of animals or birds proposed by the importer, then the importer must pay for additional services on an hourly basis, or reduce the number of animals or birds to be quarantined to a number which APHIS personnel at the Animal Import Center determine can be handled by two animal health technicians.

(3) If the importer chooses to pay for additional services on an hourly basis, the user fees are:

(i) $50.00 per hour; and

(ii) $12.50 per quarter-hour.

* * * * *

5. In § 130.5, paragraph (b) would be revised to read as follows:

§ 130.5 User fees for services at privately operated temporary import-quarantine facilities.

* * * * *

(b) The user fees are:

(1) $50.00 per hour; and

(2) $12.50 per quarter-hour;

(3) with a minimum user fee of $16.00 for any service provided on an hourly basis.

§§ 130.20–130.23 [Redesignated from §§ 130.6–130.9]

6. Sections 130.6 through 130.9 would be redesignated as §§ 130.20 through 130.23, and new §§ 130.6 through 130.9 would be added to read as follows:

§ 130.6 User fees for import or entry services for live animals at land border ports along the United States-Mexico border.

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of the following user fees, with a minimum fee of $16.00, for

[1] The addresses of Animal Import Centers may be obtained from the Deputy Administrator, Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

live animals imported into or entering the United States through a land border port along the United States-Mexico border:

Type of live animal	User fee (per head)
Feeder animals	$1.50
Slaughter animals	2.50
Horses, other than slaughter	28.25
In-bond or in transit animals	2.25
Any ruminants not covered above	5.75

(b) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in 9 CFR part 97, must be paid for each service, in addition to the user fee listed in this section.

§ 130.7 User fees for import or entry services for live animals at all other ports of entry.

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of the following user fees, with a minimum fee of $16.00, for live animals imported into or entering the United States through any port of entry other than a land border port along the border between the United States and Mexico:

Type of live animal	User fee
Animals being imported into the United States:	
Horses, other than slaughter and in transit horses.	$18.25 per head.
Breeding animals, except horses:	
Grade animals	
Swine	0.50 per head.
Sheep and goats.	0.50 per head.
All others	2.25 per head.
Registered animals, all types.	3.75 per head.
Feeder animals:	
Cattle (not including calves).	1.00 per head.
Swine	0.25 per head.
Sheep and calves	0.25 per head.
Slaughter animals, all types.	16.00 per load.
Poultry (including eggs), imported for any purpose:.	30.25 per load.
Animals transiting [1] the United States:	
Cattle	0.75 per head.
Swine	0.25 per head.
Sheep and goats	0.25 per head.
Horses and all other animals.	3.00 per head.

[1] The user fee in this section will be charged for services provided to animals transiting the United States at the port of entry. The hourly user fee will be charged for services provided at the port where animals leave the United States.

(b) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for 9 CFR part 97, must be paid for each service, in addition to the user fee listed in this section.

§ 130.8 User fees for other services.

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for the following services:

Service	User fee
Inspection for approval of slaughter establishment:	
Initial approval	$236.75 for all inspections required during year.
Renewal	205.00 for all inspections required during year.
Pet birds:	
which have been out of United States more than 60 days	163.25 per lot.
which have been out of United States 60 days or less	68.50 per lot.
Germplasm:	
Being imported	
Semen	38.00 per permit.
Embryo	38.00 per permit.
Being exported	
Semen	33.50 per certificate.
Embryo (up to 5 donor pairs)	54.75 per certificate.
Embryo (each additional group of donor pairs, up to 5 pairs per group)	24.75 per group of donor pairs.
Pre-entry equine piroplasmosis screening:	58.50 per permit.
Processing VS form 16–3, "Application for Permit to Import Controlled Material/Import or Transport Organisms or Vectors" and any applicable VS form 16–7, "Additional Information for Cell Cultures and Their Products":	
Original application:	
For permit to import fetal bovine serum when facility inspection is required	207.25 per application.
For all other permits	26.50 per application.
Amended application	11.00 per amended application.
Application renewal	14.50 per application.
Fetal Bovine Serum sample verification:	660.75 per verification.
Import compliance assistance:	22.75 per release.
Release from export agricultural hold:	22.75 per release.
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96:	
Approval (Compliance Agreement)	252.50 for first year of 3-year approval.
Renewed approval	146.00 per year for second and third years of 3-year approval.

(b) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee listed in this section.

§ 130.9 User fees for miscellaneous import or entry services.

(a) The person for whom the service is provided and the person requesting

the service are jointly and severally liable for payment of user fees for any import or entry services listed below, of $50.00 per hour, or $12.50 per quarter hour, with a minimum fee of $16.00:

(1) Conducting inspections, including laboratory and facility inspections, required to obtain permits either to import animal products, organisms and vectors, or to maintain compliance with import permits;

(2) Obtaining samples required to be tested either to obtain import permits or to ensure compliance with import permits;

(3) Supervising the opening of in-bond shipments; and

(4) Other import or entry services not specified elsewhere in this part.

(b) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee listed in paragraph (a) of this section.

7. In redesignated § 130.20, a new paragraph (d) would be added to read as follows:

§ 130.20 User fees for endorsing export health certificates.

* * * * *

(d) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee listed in this section.

8. Redesignated § 130.21 would be amended as follows:

a. The section heading would be revised to read as set forth below.

b. In paragraph (a)(1), the words "and the animals in it" would be added after the words "isolation facility".

c. At the end of paragraph (a)(2), the word "and" would be removed.

d. At the end of paragraph (a)(3), the period would be removed and a semicolon would be added in its place.

e. New paragraphs (a)(4) and (a)(5) would be added to read as set forth below.

f. Paragraph (b) would be revised to read as set forth below.

g. A new paragraph (c) would be added to read as set forth below.

As amended, redesignated § 130.21 would read as follows:

§ 130.21 User fees for inspection and supervision services provided within the United States for export animals, birds, and animal products and byproducts.

(a) * * *

(4) Inspect means of conveyance used to export animals or birds; and

(5) Conduct inspections under authority of 9 CFR part 156.

(b) The user fees are:

(1) $50.00 per hour; and

(2) $12.50 per quarter-hour;

(3) with a minimum user fee of $16.00 for any service provided on an hourly basis.

(c) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee listed in this section.

9. Section 130.50 would be amended as follows:

a. Paragraph (a)(3) would be revised as set forth below.

b. At the end of paragraph (a)(4), the period would be removed and a semicolon added in its place.

c. New paragraphs (a)(5) through (a)(7) would be added to read as set forth below.

As amended, § 130.50 would read as follows:

§ 130.50 Payment of user fees.

(a) * * *

(3) User fees for supervision and inspection services specified in § 130.21 must be paid when billed, or, if covered by a compliance agreement signed in accordance with 9 CFR part 156, must be paid when specified in the agreement;

* * * * *

(5) User fees for live animals presented for importation at a port of entry must be paid either when presented or when billed;

(6) User fees for inspection and permit services listed in § 130.8 must accompany the request for service;

(7) User fees assessed at an hourly rate under § 130.9 must be paid when the service is provided or within the time specified in the bill.

* * * * *

PART 156—INSPECTION AND CERTIFICATION OF ANIMAL BYPRODUCTS

10. The authority citation for part 156 would be revised to read as follows:

Authority: 7 U.S.C. 1622 and 1624; 21 U.S.C. 136a; 7 CFR 3.17, 2.51, and 371.2(d).

§ 156.7 [Amended]

11. Section 156.7 would be amended as follows:

a. The heading would be revised to read:

§ 156.7 Fees and charges, including user fees under 9 CFR part 130.

b. Once in the first sentence, once in the second sentence, and twice in the third sentence, the phrase ", and user fees under 9 CFR part 130," would be added after "fees and charges".

Done in Washington, DC, this 16th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–17440 Filed 7–21–93; 8:45 am]

BILLING CODE 3410-34-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM–20–14]

University of Utah; Withdrawal of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing, at the petitioners request, a petition for rulemaking (PRM–20–14) (49 FR 3667, January 30, 1984) filed by Keith J. Schiager, Ph.D., on behalf of the University of Utah, Salt Lake City, Utah. In PRM–20–14, the petitioner requested that the Commission amend its regulations to provide additional options for the disposal of very low concentrations of short-lived radionuclides, specifically to alleviate a number of problems associated with disposal of experimental animal waste material and certain radionuclide components that many licensees apparently are experiencing under the current regulations.

ADDRESSES: A copy of the petitioner's letter, dated June 1, 1993, requesting the withdrawal of the petition is available for public inspection, or copying for a fee, at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Single copies of the petitioner's letter may be obtained free of charge by writing to the Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services,

Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7758 or Toll Free: 800–368–5642.

Dated at Rockville, Maryland this 16th day of July, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–17342 Filed 7–21–93; 8:45 am]

BILLING CODE 7590–01–M

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10 CFR Parts 170 and 171

RIN 3150–AE54

NRC Fee Policy; Request for Public Comment, Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment; extension of comment period.

SUMMARY: On April 19, 1993 (58 FR 21116), the NRC published a notice requesting comments on the need for changes to its fee policy and associated legislation in accordance with section 2903(c) of the Energy Policy Act. The notice also announced receipt of and requested comment on a petition for rulemaking submitted by the American Mining Congress (PRM–170–4). The comment period for this notice expired July 19, 1993. The National Organization of Test, Research, and Training Reactors (TRTR) has requested a thirty-day extension of the comment period. The request for extension is based on the need to review the Federal Register notice establishing the licensing, inspection, and annual fees that NRC licensees will be assessed for FY 1993. The FY 1993 final rule, which establishes the fees for FY 1993 and changes some prior agency policies, was published in the Federal Register on July 20, 1993. In view of the importance of the NRC fee policy review, the Commission, as requested, has extended the comment period for an additional thirty days.

DATES: The comment period has been extended and now expires August 18, 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 before this date.

ADDRESSES: Send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4301.

Dated at Rockville, Maryland, this 16th day of July 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–17462 Filed 7–21–93; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 14

RIN 2900–AE 76

Testimony of Department Personnel and Production of Department Records in Legal Proceedings

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to establish procedures governing the appearance of VA personnel, as defined in the proposed rules, as witnesses in order to testify or produce official documents in legal proceedings, in response to requests or demands for such documents or testimony. These procedures are necessary for reasons including to ensure more efficient use of VA resources in meeting the agency mission (VA attorneys and employees currently spend a considerable amount of time responding to requests for documents or testimony), to minimize the possibility of involving VA in controversial issues not related to its mission, to maintain the impartiality of VA among persons and entities involved in disputes in which the United States does not have an interest, to protect sensitive, confidential information and the deliberative processes of VA, and to enhance VA's ability to respond to such requests.

DATES: Comments must be received on or before August 23, 1993. Comments will be available for public inspection until August 31, 1993.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except) holidays until August 31, 1993.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Corzatt, Staff Attorney (024H2), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 633–7240.

SUPPLEMENTARY INFORMATION: Section 301 of title 5, United States Code, provides that the head of an Executive department may prescribe regulations for the custody, use and preservation of its records. VA currently does not have such regulations. The Supreme Court has upheld the ability of Federal agencies to establish procedures in section 301 regulations governing the production of records and testimony by personnel in legal proceedings in which the government is not a party. *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

The proposed rules establish VA policies and procedures applicable to the production of official Department records or testimony by VA personnel in legal proceedings as that term is defined in the proposed rules. Basically, legal proceedings addressed in the proposed rules are any administrative or judicial activities traditionally conducted within the executive or judicial branches of Federal, state, local, or foreign governmental entities in which the United States: (i) Is not a party; (ii) is not represented; (iii) does not have a direct and substantial interest; and (iv) is not providing representation to an individual or entity that is a party. Additionally, the proposed rules do not cover activities that are covered by a statute, such as 5 U.S.C. 6322, which places rulemaking responsibility with another Federal agency.

Similarly, the proposed rules do not cover activities that are not legal proceedings, such as Congressional requests for records or testimony, or requests for records under the Freedom of Information Act, 5 U.S.C. 552. The proposed rules do not infringe upon or displace responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States. Finally, the proposed rules do not remove the need to comply with any applicable confidentiality provisions, such as the Privacy Act, 5 U.S.C. 552a, before there is legal authority to release records or provide testimony pursuant to a request or demand covered by these rules. In fact, if the requirements of those confidentiality statutes or regulations are not met, records or testimony cannot be provided even where the requirements of these regulations are met.

Also, the proposed rules cover the broad spectrum of informal or formal requests or demands for records or testimony by individuals or entities in situations involving legal proceedings, either existing or reasonably anticipated. Thus, all methods for procuring records and testimony, from the subpoena to a simple telephone call from an attorney, fall within the rules. However, the proposed rules do not cover disclosures on VA's own initiative in the absence of a request or demand, such as commenting upon litigation.

The proposed rules cover requests or demands for records or testimony concerning information in the custody or control of VA or acquired by individuals as part of their official duties or because of their official status. Thus, the rules cover present and former employees and officers appointed by, or subject to the supervision of a VA official, as well as: (i) Individuals hired by contractual agreements with or on behalf of VA; (ii) individuals performing services under such agreements for VA; and (iii) individuals who serve in an advisory capacity to VA, whether formal or informal. With the exception of expert or opinion testimony, the proposed rules generally do not address the activities of VA personnel on their own time or in their private capacities. The proposed rules are not intended to deny VA personnel or veterans access to the courts.

The Department of Veterans Affairs has a large hospital and benefits delivery system serving millions of veterans and their dependents. Further, VA participates in a wide range of activities, such as medical research that benefits not only our veteran population, but also the general population. All of these activities generate records that contain information concerning individuals or issues of local or national significance. These documents and our personnel's expertise are being sought more often for use in legal proceedings in which the United States is neither involved nor has an interest. As a result, VA receives thousands of requests or demands for records and testimony annually. The number of requests and demands for records and testimony seems to be increasing.

Given the need for the entire Federal government, including VA, to use its resources more efficiently, VA has determined that it is necessary to establish procedures governing the appearance of VA personnel as witnesses in order to testify or produce official documents in legal proceedings, as well as the production of those documents.

The proposed regulations are intended to address VA's concern over the need to conserve official personnel resources for the performance of our agency's statutory duties while at the same time attempting to accommodate legitimate requests or demands for official records or testimony to the extent possible. Additionally, there is a need for uniformity within the VA system in our responses to these requests or demands for records or testimony in legal proceedings.

The rules are reasonable and consistent with law. The procedures established by the proposed rules provide necessary internal control for management of VA personnel on official duty and for VA records. Requiring review by VA's legal counsel is appropriate for matters related to legal proceedings. Processing the review through the Office of General Counsel and District Counsel offices allows consistent determinations and facilitates coordination with the Department of Justice and United States Attorneys' offices where appropriate. The factors that the determining attorney should consider constitute those factors that are reasonably related to:

(i) VA's allocation of resources to perform its statutory duties, such as the need to conserve the time of VA personnel for conducting their official duties;

(ii) The ability of the Federal government or VA to conduct its business, such as the need to avoid interfering with ongoing law enforcement activities or compromising national security interests;

(iii) Whether the provision of records or testimony could adversely affect a right or interest of a private individual or entity, such as compromising constitutional rights, revealing sensitive medical information, or revealing trade secrets or similarly confidential commercial or financial information;

(iv) Whether the provision of records or testimony could adversely affect the public interest generally, such as hampering VA or private health care research activities, or creating the impression that the government or VA supports or endorses a private party in litigation or a position taken by that party; and

(v) Areas of inquiry traditionally covered by competent attorneys advising their clients as to the appropriate responses to requests or demands for testimony or records in litigation in which the clients are sought solely as witnesses, such as the application of an evidentiary privilege or the burden of complying with the request or demand.

The proposed rule is "outcome-neutral," as nothing in the rule mandates a blanket refusal or rejection of all requests or demands for the production of records or testimony. The regulation does not authorize any VA personnel to refuse to comply with the law.

Although the rule contemplates situations where VA officials may, under certain circumstances, refuse to comply with a court order, such refusal would stem from the lack of compliance with these proposed rules, or a determination by counsel that a good challenge to, or immediate review of, the order is legally appropriate. VA procedures do not infringe upon the judiciary or create new privileges not previously recognized by law, but simply make uniform a process of responding to each request or demand for the production of records or testimony by VA personnel in private controversies. Because the proposed rule recognizes the authority of the courts as the final arbiter of disagreements over requests or demands for testimony or records, no infringement with the judicial branch exists. Finally, the proposed rule is sufficiently precise to avoid interference with the rights of VA personnel as private citizens or the rights of veterans and other private parties to invoke the powers of the courts.

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

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

This certification can be made because the rules affect the conduct of VA activities and actions of VA personnel. They will have no significant economic impact on small entities, i.e., small businesses, small private and

nonprofit organizations and small governmental jurisdictions.

There are no Catalog of Federal Domestic Assistance numbers for this program.

List of Subjects in 38 CFR Part 14

Government employees, Lawyers, Legal services, Veterans.

Approved: March 15, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

38 CFR part 14, Legal Services, General Counsel, is proposed to be amended as follows:

PART 14—LEGAL SERVICES, GENERAL COUNSEL

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

Authority: 5 U.S.C. 301, 38 U.S.C. 501(a), 5502, 5902–05, unless otherwise noted.

2. In part 14, §§ 14.800 through 14.810 and an undesignated center heading prior to § 14.800 are added to read as follows:

Testimony of Department Personnel and Production of Department Records in Legal Proceedings

Sec.

14.800 Purpose.
14.801 Applicability.
14.802 Definitions.
14.803 Policy.
14.804 Factors to consider.
14.805 Contents of a demand or request.
14.806 Scope of testimony or production.
14.807 Procedure when demand or request is made.
14.808 Expert or opinion testimony.
14.809 Demands or requests in legal proceedings for records protected by confidentiality statutes.
14.810 Fees.

Testimony of Department Personnel and Production of Department Records in Legal Proceedings

§ 14.800 Purpose.

Sections 14.800 through 14.810 establish policy, assign responsibilities and prescribe procedures with respect to:

(a) the production or disclosure of official information or records of the Department of Veterans Affairs (VA); and

(b) the testimony of present or former VA personnel relating to any official information acquired by any individual as part of that individual's performance of official duties, or by virtue of that individual's official status, in federal, state or other legal proceedings covered by these regulations.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301.)

§ 14.801 Applicability.

(a) Sections 14.800 through 14.810 apply to:

(1) Contractors and subcontractors which undertake a VA activity or maintain VA records when the contract covering their actions provides that these regulations apply, as well as the personnel of contractors and subcontractors.

(2) All components of the Department, including Canteen Service, the Office of Inspector General, and all staff offices, services and administrations, and their personnel.

(b) Sections 14.800 through 14.810 do not apply to:

(1) Testimony or records provided in accordance with Office of Personnel Management regulations implementing 5 U.S.C. 6322.

(2)(i) Legal proceedings in which the Department of Veterans Affairs or the United States is a party, is represented or has a direct and substantial interest; or

(ii) Legal proceedings in which an individual or entity is a party for whom the United States is providing representation.

(3) Legal proceedings in which VA personnel are to testify while in leave or off-duty status as to matters which are purely personal and that do not arise out of, or relate in any way to, the personnel's official duties or to the functions and activities of the VA or the United States.

(4) Official comments on matters in legal proceedings, where appropriate.

(5) Disclosures, in the absence of a request or demand, of information or records by VA components, particularly the Office of Inspector General, to federal, state, local and foreign law enforcement or regulatory agencies.

(6) Congressional demands or requests for testimony or documents.

(7) Requests for, and release of, records under the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a.

(8) Disclosures in child support and alimony proceedings under the authority of 42 U.S.C. 659 and regulations promulgated by the Office of Personnel Management implementing that section.

(c) Sections 14.800 through 14.810 are not intended to, and do not:

(1) Waive the sovereign immunity of the United States;

(2) Infringe upon or displace the responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States in appropriate cases;

(3) Remove the need for the Department to comply with any applicable legal confidentiality provisions, such as the Privacy Act, before having the legal authority to make any disclosure or providing any testimony under these regulations. (Sections 14.800 through 14.810 do not give VA disclosure authority under applicable confidentiality statutes; absent disclosure authority granted by those statutes, information and records subject to those laws may not be disclosed, or testimony given as to them, under the procedures established in these regulations); or

(4) Preclude treating any written request for agency records that is not in the nature of a request or demand related to legal proceedings as a request under the Freedom of Information or Privacy Acts.

(d) Sections 14.800 through 14.810 are intended only to provide guidance for the internal operation of the Department of Veterans Affairs and are not intended to create, do not create, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law against the United States or the Department of Veterans Affairs.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301.)

§ 14.802 Definitions.

(a) *Demand.* Order, subpoena, or other demand of a court of competent jurisdiction, or other specific authority or under color of law, for the production, disclosure, or release of VA information or records or for the appearance and testimony of VA personnel as witnesses.

(b) *Request.* Any informal request, by whatever method, from a party, a party's attorney, or any person acting on behalf of a party, for the production of VA records or information or for the testimony of VA personnel as witnesses, which has not been ordered by a court of competent jurisdiction or other specific authority or under color of law.

(c) *VA personnel.* All present and former officers and employees of the VA and any other individuals who are or have been appointed by, or subject to the supervision, jurisdiction, or control of the Secretary of Veterans Affairs or another official of the VA, including nonappropriated fund activity employees, and other individuals hired through contractual agreements by or on behalf of the VA, or performing services under such agreements for VA, such as consultants, contractors, subcontractors, their employees and personnel. This phrase also includes individuals who served or are serving on any advisory committee or in any advisory capacity, whether formal or informal.

(d) *Legal proceedings.* All pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, or other tribunals, foreign or domestic that are not specified in § 14.801(b). This phrase includes depositions and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving legal proceedings not specified in § 14.801(b).

(e) *Official VA information.* All information of any kind, however stored, that is in the custody and control of VA or was acquired by VA personnel as part of their official duties or because of their official status.

(f) *Testimony.* Testimony in any form, including personal appearances in court, depositions, recorded interviews, telephonic, televised or videotaped testimony or any response during discovery or similar proceedings, which response would involve more than the production of records.

(g) *VA records.* All documents which are records of the Department of Veterans Affairs for purposes of the Freedom of Information Act, 5 U.S.C. 552, regardless of storage media, including the term "record" as defined in 44 U.S.C. 3301, and implementing regulations.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)

§ 14.803 Policy.

(a) VA personnel may provide testimony or produce VA records in legal proceedings covered by §§ 14.800 through 14.810 only as authorized in accordance with these regulations. In determining whether to authorize testimony or the production of records, the determining official will consider the effect in this case, as well as in future cases generally, based on the factors set forth in § 14.804, which testifying or producing records not available for public disclosure will have on the ability of the agency or VA personnel to perform their official duties.

(b) The Department of Veterans Affairs does not seek to deny its employees access to the courts as citizens, or in the employees' private capacities on off-duty time.

(c) The Department of Veterans Affairs does not seek to deny the Nation's veterans access to the courts.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)

§ 14.804 Factors to consider.

In deciding whether to authorize the disclosure of VA records or information or the testimony of VA personnel, VA personnel responsible for making the decision should consider the following types of factors:

(a) The need to avoid spending the time and money of the United States for private purposes and to conserve the time of VA personnel for conducting their official duties concerning serving the Nation's veteran population;

(b) How the testimony or production of records would assist VA in performing its statutory duties;

(c) Whether the disclosure of the records or presentation of testimony is necessary to prevent the perpetration of fraud or other injustice in the matter in question;

(d) Whether the demand or request is unduly burdensome or otherwise inappropriate under the applicable court or administrative rules;

(e) Whether the testimony or production of records, including release *in camera*, is appropriate or necessary under the rules of procedure governing the case or matter in which the demand or request arose, or under the relevant substantive law concerning privilege;

(f) Whether the testimony or production of records would violate a statute, executive order, regulation or directive. (Where the production of a record or testimony as to the content of a record or about information contained in a record would violate a confidentiality statute's prohibition against disclosure, disclosure will not be made. Examples of such statutes are the Privacy Act, 5 U.S.C. 552a, and sections 5701, 5705 and 7332 of title 38, United States Code.);

(g) Whether the testimony or production of records, except when in camera and necessary to assert a claim of privilege, would reveal information properly classified pursuant to applicable statutes or Executive Orders;

(h) Whether the testimony would interfere with ongoing law enforcement proceedings, compromise constitutional rights, compromise national security interests, hamper VA or private health care research activities, reveal sensitive patient or beneficiary information, interfere with patient care, disclose trade secrets or similarly confidential commercial or financial information or otherwise be inappropriate under the circumstances.

(i) Whether such release or testimony reasonably could be expected to result in the appearance of VA or the Federal government favoring one litigant over another;

(j) Whether such release or testimony reasonably could be expected to result in the appearance of VA or the Federal government endorsing or supporting a position advocated by a party to the proceeding;

(k) The need to prevent the public's possible misconstruction of variances between personal opinions of VA personnel and VA or Federal policy.

(l) The need to minimize VA's possible involvement in issues unrelated to its mission;

(m) Whether the demand or request is within the authority of the party making it;

(n) Whether the demand or request is sufficiently specific to be answered;

(o) Other matters or concerns presented for consideration in making the decision.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)

§ 14.805 Contents of a demand or request.

The request or demand for testimony or production of documents shall set forth in, or be accompanied by, an affidavit, or if that is not feasible, in, or accompanied by, a written statement by the party seeking the testimony or records or by the party's attorney, a summary of the nature and relevance of the testimony or records sought in the legal proceedings containing sufficient information for the responsible VA official to determine whether VA personnel should be allowed to testify or records should be produced. Where the materials are considered insufficient to make the determination as described in § 14.807, the responsible VA official may ask the requester to provide additional information.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)

§ 14.806 Scope of testimony or production.

VA personnel shall not, in response to a request or demand for testimony or production of records in legal proceedings, comment or testify or produce records without the prior written approval of the responsible VA official designated in § 14.807(b). VA personnel may only testify concerning or comment upon official VA information, subjects or activities, or produce records, that were specified in writing, submitted to and properly approved by the responsible VA official.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301.)

§ 14.807 Procedure when demand or request is made.

(a) VA personnel upon whom a demand or request for testimony or the

production of records is made shall notify the head of his or her field station, or if in Central Office, the head of the component for which he or she works. VA personnel who are former employees or officials shall notify the head of the field station or Central Office component for which they worked immediately before leaving employment with VA. The field station or Central Office component shall notify the responsible VA official designated in § 14.807(b).

(b) In response to a demand or request for the production of records or the testimony of VA personnel, other than personnel in the Office of the Inspector General (OIG), as witnesses in legal proceedings covered by these regulations, the General Counsel, the District Counsel, an attorney in the Office of General Counsel designated by the General Counsel, or an attorney in the District Counsel office designated by the District Counsel is the responsible VA official authorized to determine whether VA personnel may be interviewed, contacted or used as witnesses, including used as expert witnesses, and whether VA records may be produced; and what, if any, conditions will be imposed upon such interview, contact, testimony or production of records. For personnel in the OIG, the Counselor to the Inspector General, or an attorney designated by the Counselor to the Inspector General, is the responsible VA official authorized to make the determinations provided in § 14.807, and that official will keep the General Counsel informed of such determinations for purposes of litigation or claims of privilege.

(c) In appropriate cases, the responsible VA official shall promptly notify the Department of Justice of the demand or request. After consultation and coordination with the Department of Justice, as required, and after any necessary consultation with the VA component which employs or employed the VA personnel whose testimony is sought or which is responsible for the maintenance of the records sought, the VA official shall determine in writing whether the individual is required to comply with the demand or request and shall notify the requester or the court or other authority of the determination reached where the determination is that VA will not comply fully with the request or demand. The responsible VA official shall give notice of the decision to other persons as circumstances may warrant. Oral approval may be granted, and a record of such approval made and retained in accordance with the procedures in § 14.807(f) concerning oral requests or demands.

(d) If, after VA personnel have received a request or demand in a legal proceeding and have notified the responsible VA official in accordance with this section, a response to the request or demand is required before instructions from the responsible official are received, the responsible official designated in paragraph (b) of this section shall furnish the requester or the court or other authority with a copy of §§ 14.800 through 14.810 and any other relevant documentation, inform the requester or the court or other authority that the request or demand is being reviewed, and seek a stay of the request or demand pending a final determination by the VA official concerned.

(e) If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the demand or request in response to action taken pursuant to § 14.807(d), or if such court or other authority orders that the demand or request be complied with notwithstanding the final decision of the responsible VA official, the VA personnel upon whom the demand or request was made shall notify the responsible VA official of such ruling or order. If the responsible VA official determines that no further legal review of or challenge to the ruling or order will be sought, the affected VA personnel shall comply with the demand, order or request. If directed by the responsible VA official after consultation with the appropriate United States Attorney's office, however, the affected VA personnel shall respectfully decline to comply with the demand, request or order. See *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

(f) Normally, written demands or requests allowing reasonable lead time for evaluation and processing are required. However, in emergency situations where response time is limited and a written demand or request is impractical, the following procedures should be followed:

(1) The responsible VA official has the authority to waive the requirement of a written demand or request and may expedite a response in the event of an emergency under conditions which could not be anticipated in the course of proper planning or which demonstrate a good faith attempt to comply with these regulations. Determinations on oral demands or requests should be reserved for instances where insistence on compliance with the requirements of a proper written request would result in the effective denial of the request and cause an injustice in the outcome of the legal proceeding for which the testimony or records are sought. No requester has a right to make an oral demand or request and receive a determination, however. Whether to permit such an exceptional procedure is a decision within the sole discretion of the responsible VA official.

(2) If the responsible VA official concludes that the demand or request, or any portion of it, should be granted (after considering the factors listed in § 14.804), the responsible VA official will then orally advise the requester of the determination in accordance with the procedures provided in § 14.807(c), including any limitations on such testimony or production of records, and seek a written confirmation of the oral demand or request. The responsible VA official will make a written record of the determination made concerning the oral demand or request, including the grant or denial, the circumstances requiring the procedure, and the conditions to which the requester agreed.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)

§ 14.808 Expert or opinion testimony.

(a) VA personnel shall not provide, with or without compensation, opinion or expert testimony in any legal proceedings concerning official VA information, subjects or activities, except on behalf of the United States or a party represented by the United States Department of Justice. Upon a showing by the requester or court or other appropriate authority that, in light of the factors listed in § 14.804, there are exceptional circumstances and that the anticipated testimony will not be adverse to the interests of the Department of Veterans Affairs or to the United States, the responsible VA official designated in paragraph 14.807(b) may, in writing, grant special authorization for VA personnel to appear and testify. If, despite the final determination of the responsible VA official, a court of competent jurisdiction or other appropriate authority, orders the expert or opinion testimony of VA personnel, the personnel shall notify the responsible VA official of such order. If the responsible VA official determines that no further legal review of or challenge to the order will be sought, the affected VA personnel shall comply with the order. If directed by the responsible VA official after consultation with the appropriate United States Attorney's office, however, the affected VA personnel shall respectfully decline to comply with the demand, request or order. See *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

(b)(1) If, while testifying in any legal proceeding, VA personnel are asked for expert or opinion testimony concerning official VA information, subjects or activities, which testimony has not been approved in advance in accordance with these regulations, the witness shall:

(i) Respectfully decline to answer on the grounds that such expert or opinion testimony is forbidden by these regulations;

(ii) Request an opportunity to consult with the responsible VA official mentioned in § 14.807(b) before giving such testimony;

(iii) Explain that, upon such consultation, approval for such testimony may be provided; and

(iv) Explain that providing such testimony absent such approval may expose the individual to criminal liability under 18 U.S.C. 201–209 and to disciplinary or other adverse personnel action.

(2) If the witness is then ordered by the body conducting the proceeding to provide expert or opinion testimony concerning official VA information, subjects or activities without the opportunity to consult with the responsible VA official, the witness respectfully shall refuse to do so. See *United States ex rel. Touhy* v. *Rogen*, 340 U.S. 462 (1951).

(c) Upon notification by the witness of a request for opinion or expert testimony concerning official VA information, subjects or activities during § 14.802(d) legal proceedings, the responsible VA official shall follow the procedures contained in this section to determine whether such testimony shall be approved.

(d) If VA personnel who are unaware of these regulations provide expert or opinion testimony concerning official VA information, subjects or activities in any legal proceeding, including one mentioned in § 14.802(d) in which the United States is not already represented, without consulting with the responsible VA official, the witness, as soon after testifying as possible, shall inform the responsible VA official of the fact that such testimony was given and provide a summary of the expert or opinion testimony given.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)

§ 14.809 Demands or requests in legal proceedings for records protected by confidentiality statutes.

In addition to complying with the requirements of §§ 14.800 through 14.810, requests or demands in legal proceedings for the production of records, or for testimony of VA employees concerning information, protected by the Privacy Act, 5 U.S.C. 552a, or other confidentiality statutes, such as 38 U.S.C. 5701, 5705 and 7332, must satisfy the requirements for disclosure imposed by those statutes, and implementing regulations, such as 38 CFR 1.511, before the records may be provided or testimony given. Accordingly, the responsible VA official may first determine whether there is legal authority to provide the testimony or records sought under applicable confidentiality statutes before applying §§ 14.800 through 14.810. Where an applicable confidentiality statute mandates disclosure, §§ 14.800 through 14.810 will not apply.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)

§ 14.810 Fees.

(a) The testimony of VA personnel as witnesses, particularly as expert witnesses, and the production of VA records in legal proceedings subject to §§ 14.800 through 14.810 are services which convey special benefits to the individuals or entities seeking such testimony or production of records above and beyond those accruing to the general public. These services are not regularly received by or available without charge to the public at large. Consequently, these are the sort of services for which the VA may establish a charge for providing under 31 U.S.C. 9701. The responsible VA official will determine all fees associated with §§ 14.800 through 14.810, and shall timely notify the requester of the fees, particularly those which are to be paid in advance.

(b)(1) When a request is granted under § 14.808 to permit VA personnel to testify in whole or in part as to expert, opinion or policy matters, the requester shall pay to the Government a fee calculated to reimburse the cost of providing the witness. The fee shall include:

(i) Costs of the time expended by VA personnel to process and respond to the demand or request;

(ii) Costs of attorney time expended in reviewing the demand or request and any information located in connection with the demand or request;

(iii) Expenses generated by materials and equipment used to search for, produce, and copy the responsive information;

(iv) The cost of the time expended by the witness to prepare to testify; and

(v) Costs of travel by the witness and attendance at trial.

(2) All costs for documents necessary for such expert testimony shall be calculated as provided in VA regulations implementing the fee provisions of the Freedom of Information Act, 5 U.S.C. 552.

(c) When an individual testifies in legal proceedings covered by these regulations in any capacity other than as an expert witness, the requester shall pay to the witness the fee and expenses prescribed for attendance by the applicable rule of court. If no such fee is prescribed, the applicable Federal rule, such as a local Federal district court rule, will apply. No additional fee will be prescribed for the time spent while testifying or in attendance to do so.

(d) When a requester wishes to interview VA personnel as part of legal proceedings covered by these regulations, and such interview has been approved in accordance with these regulations, the requester shall pay a fee calculated upon the total hourly pay of the individual interviewed.

(e) When VA produces records in legal proceedings pursuant to §§ 14.800 through 14.810, the fees to be charged and paid prior to production of the records shall be the fees charged by VA under its regulations implementing the fee provisions of the Freedom of Information Act, 5 U.S.C. 552.

(f) Fees shall be paid as follows:

(1) Fees for copies of documents, blueprints, electronic tapes, or other VA records will be paid to the VA office or station providing the records, and covered to the General Fund of the Department of the Treasury.

(2) Witness fees for testimony shall be paid to the witness, who shall endorse the check "pay to the United States," and surrender it to his or her supervisor. It shall thereafter be deposited in the General Fund.

(3) The private party requesting a VA witness shall forward in advance necessary round-trip tickets and all requisite travel and per diem funds.

(g) A waiver of any fees in connection with the testimony of an expert witness may be granted by the responsible VA official at the official's discretion provided that the waiver is in the interest of the United States. Fee waivers shall not be routinely granted, nor shall they be granted under circumstances which might create the appearance that the VA or the United States favors one party or a position advocated by a party to the legal proceeding.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C 301.)

[FR Doc. 93–17454 Filed 7–21–93; 8:45 am]

BILLING CODE 8320–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 186

[FAP 3H5665/P564; FRL-4630-5]

RIN 2070-AC18

Temporary Feed Additive Tolerance for Pentyl 2-Chloro-4-Fluoro-5-(3,4,5,6-Tetrahydrophthalimido) Phenoxyacetate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a temporary feed additive tolerance for residues of the herbicide pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido)phenoxyacetate in or on the animal feed soybean hulls at 0.02 part per million (ppm). This regulation was requested by Valent U.S.A. Corp. and would establish the maximum permissible level for residues of the herbicide in or on this animal feed. This regulation would expire on March 1, 1995.

DATES: Written comments and/or objections, identified by the document control number, [FAP 3H5665/P564], must be received on or before August 23, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, Crystal Mall Bldg. #2, 1921 Jefferson Davis Highway Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM 23), Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7830.

SUPPLEMENTARY INFORMATION: On February 18, 1993, Valent U.S.A. Corp., 1333 N. California Blvd., Suite 600, Walnut Creek, CA 95496, submitted pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 348, a food/feed additive petition (FAP) 3H5665, which proposed to amend 40 CFR part 186 by establishing a temporary feed additive regulation to permit residues of the herbicide pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido) phenoxyacetate in or on the animal feed soybean hulls at 0.02 part per million (ppm).

On the basis of the information furnished by Valent U.S.A. Corp., an experimental use permit (EUP) has been issued for the pesticide under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 983). This permit authorizes the use of 45.95 pounds per year of the herbicide on soybeans for 2 years in the States of Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Ohio, South Dakota, Tennessee, and Wisconsin. The use of the herbicide on soybeans is authorized on the condition that all treated soybean crops are destroyed or used for research purposes only. If this feed additive regulation is established, the crop destruction condition will be removed.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of this tolerance.

1. A 90-day feeding study in rats fed at 0, 6.6, 67, 664, and 1,359 milligrams/kilogram/day (mg/kg/day) (males) and 0, 7.4, 73.8, 726, and 1,574 (females) with the no-observed-effect level (NOEL) of 664 mg/kg/day (males) based on increased relative liver weights and 7.4 mg/kg/day (females) based on increased cholinesterase activity.

2. Teratology. Developmental toxicity studies performed on rabbits and rats at doses up to 1,500 mg/kg/day. No developmental toxicity was present at the highest dose tested in any of the four studies performed.

3. A dietary two-generation reproduction study in rats at dosages of 0, 200, 10,000, or 20,000 parts per million (ppm) in males, females prior to breeding, females during gestation, and females during lactation. The respective milligrams/kilogram/day (mg/kg/day) was 16, 878, and 1,715 mg/kg/day (males), and 18, 829, and 1,889 mg/kg/day (females—prior to breeding); 14, 746, and 1,551 mg/kg/day (females—during gestation); 32, 1,670, 3,226 (females—during lactation) for two generations. The systemic NOEL was 200 ppm based on increased absolute and relative liver and kidney weights. Reproductive NOEL was 200 ppm based on increased pup death on day 0.

4. A micronucleus study was performed to test structural chromosomal aberration on male and female ICR mice. No significant differences in the frequency of micronucleated cells were noted in the bone marrow cells of the treated animals.

5. An *in vitro* unscheduled DNA synthesis assay was performed on rats to examine other genotoxic effects. At concentrations up to 300 ug/mL, unscheduled DNA synthesis was not elicited in primary cultures of rat hepatocytes.

The pesticide is considered capable of achieving its intended physical or technical effect.

The nature of the residue is adequately understood for the purpose of establishing this temporary feed additive tolerance. Adequate methodology is available for enforcing of the proposed temporary tolerance on soybean hulls (gas chromatography with a thermionic specifice detector). Due to the extremely low residues on the feed item (i.e., *ca.* 0.01 ppm), detectable residues are not expected in meat, milk, poultry, and eggs. Therefore, tolerances are not needed for meat, milk, poultry, and eggs.

Based upon the information cited above, the Agency has determined that use of the pesticide in accordance with the proposed feed additive regulation will be safe. It is proposed, therefore, that the feed additive regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Documents relied upon by EPA in issuing this proposal are available to the public in the Office of Pesticide Programs docket at the Public Response and Program Resources Branch, at the address given above.

Comments must bear a notation indicating the document control number, [FAP 3H5665/P564]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 186

Administrative practice and procedure, Agricultural commodities, Feed additives, Pesticides and pests, Recording and recordkeeping requirements.

Dated: July 8, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 186 be amended as follows:

PART 186—[AMENDED]

1. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

2. By adding new § 186.4725 to read as follows:

§ 186.4725 Pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido)phenoxyacetate.

(a) A feed additive regulation is established permitting residues of the herbicide pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido)phenoxyacetate in or on the following feed resulting from application of the herbicide to soybeans in accordance with an experimental program. The conditions set forth in this section shall be met.

Feed	Parts per million	Expiration date
Soybean hulls	0.02	March 1, 1995

(b) Residues in the feed not in excess of the established tolerance resulting from the use described in paragraph (a) of this section remaining after expiration of the experimental program will not be considered to be actionable if the herbicide is applied during the term of and in accordance with the provisions of the experimental use program and feed additive regulation.

(c) The company concerned shall immediately notify the Environmental Protection Agency of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

[FR Doc. 93-17427 Filed 7-21-93; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 400

Refugee Resettlement Program: Refugee Cash Assistance and Refugee Medical Assistance

AGENCY: Office of Refugee Resettlement, Administration for Children and Families (ACF), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department anticipates that adjustments in the eligibility period for refugee cash assistance (RCA) and refugee medical assistance (RMA) will continue to be necessary in future fiscal years to accommodate changing appropriation levels and changing refugee flows. Therefore, the Department proposes to amend current regulations to establish a procedure by which a final notice would be published in the **Federal Register** in lieu of publishing a regulation each time a change in the RCA/RMA eligibility period is necessitated by the amount of funds appropriated.

DATES: Comments must be received by August 18, 1993.

ADDRESSES: Comments should be addressed to Toyo A. Biddle, Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., 6th Floor, Washington, DC 20447.

Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately one month after publication, at the above address on Monday through Friday of each week from 9:30 a.m. to 4 p.m., except Federal holidays. Although we will not be able to acknowledge or respond to comments individually, in preparing the final rule, we will respond to comments in the preamble to the final rule.

FOR FURTHER INFORMATION CONTACT: Toyo A. Biddle, (202) 401-9253.

SUPPLEMENTARY INFORMATION:

Background

Current regulations at 45 CFR 400.203(b) and 400.204(b) provide for Federal refugee funding, subject to the availability of funds (45 CFR 400.202), for the State-administered special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) as set forth in 45 CFR part 400 subparts E and G. RCA, which provides monthly cash assistance payments to refugees, and RMA, which provides payment of hospital and medical bills, were established to assist needy refugees who do not meet the categorical eligibility requirements for the programs of Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI) for the aged, blind, and disabled, and Medicaid.

Prior to 1982, RCA and RMA were available during an eligible refugee's first 36 months in the U.S. An interim final rule, published March 12, 1982 (47 FR 10841), reduced the period to 18 months, and a final regulation, published August 24, 1988 (53 FR 32222), further reduced the eligibility period to 12 months. Due to limited funds appropriated for these programs in FY 1992, a final rule was published on January 10, 1992 (57 FR 1114), further reducing the RCA/RMA eligibility period to 8 months in FY 1992. On September 17, 1992 (57 FR 42896), a final rule was published

maintaining the eligibility period at 8 months for FY 1993. Finally, due to the limited amount of appropriated funds available for the remainder of the fiscal year, a final rule was published on March 1, 1993 (58 FR 11793), reducing the RCA/RMA eligibility period for the remainder of FY 1993 to 5 months. Subsequently, on March 31, 1993, based on the Department's intent to seek supplemental funding during FY 1993 to enable the RCA/RMA eligibility period to be maintained at 8 months for the remainder of FY 1993, the regulation establishing a 5-month RCA/RMA eligibility period was withdrawn (58 FR 16777). A final rule was published simultaneously to reduce the RCA/RMA eligibility period from 8 months to 3 months, effective June 1, 1993, in the event that the Department is not successful in obtaining supplemental funding. Subsequently, a rule delaying the effective date of the 3-month regulation to August 1, 1993, was published on May 25, 1993 (58 FR 29981), based on the availability of additional funds for the RCA/RMA program due to a lower level of FY 1993 funding needed for the matching grant program than was first estimated and the fact that more recent RCA/RMA data indicated a lower per capita cost than originally estimated.

Description of the Proposed Regulation

This proposed rule would remove from 45 CFR part 400 all references to a specific duration of eligibility for RCA and RMA and would establish a methodology by which the Office of Refugee Resettlement would determine each year the duration of eligibility for RCA and RMA, based on available appropriated funds for the year. The Director of ORR would make a determination of the eligibility period each year as soon as possible after funds are appropriated for the refugee program, and also at subsequent points during the fiscal year, as needed, based on updated information on refugee flows and State reports on receipt of assistance and expenditures. The eligibility period in effect at the close of FY 1993 will continue to remain in effect until an appropriation for FY 1994 is known and the Director determines that the eligibility period needs to be changed based on the methodology described in this regulation to accommodate the level of appropriated funds. Currently, cash and medical assistance are provided under the line item for transitional and medical services (TAMS), which also provides for State administrative costs, the unaccompanied minors program, and the voluntary agency matching grant program. In making a determination, the Director would first subtract from the amount available for TAMS under the appropriation, the anticipated costs of the unaccompanied minors program, the matching grant program, and any other program component, other than the RCA/RMA program and State administration, that is included in the future in the TAMS line item. The Director would then determine the duration of RCA/RMA eligibility to be provided and the estimated State administrative costs based on the balance of appropriated funds available. If the Director determines, based on the methodology, that the period of RCA/RMA eligibility needs to be changed from the eligibility period in effect at the time, ORR would publish a final notice in the **Federal Register**, announcing the new period of RCA/RMA eligibility and the effective date for implementing the new eligibility period. States would be given a minimum of 30 days' notice before the effective date, or a longer period of notice, if circumstances permit.

Proposed Methodology for Determining RCA/RMA Eligibility Period

The methodology described below applies only to the determination of the RCA/RMA eligibility period and State administrative costs. The methodology would be applied to various RCA/RMA time-eligibility periods in order to determine the time-eligibility period which would provide the most number of months within the funds appropriated for the fiscal year. The Federal Government is prohibited from obligating more funds than are appropriated.

The proposed method to be used to determine the RCA/RMA eligibility period would include the following steps:

1. The time-eligible population for the projected fiscal year would be estimated on the basis of the refugee admissions ceiling established by the President for that fiscal year and the anticipated arrival of other persons eligible for refugee assistance, to the extent that data on these persons are available. The anticipated pattern of refugee flow for the projected fiscal year would be estimated based on the best historical and current refugee flow information that will most accurately forecast the refugee flow for the projected fiscal year. These arrival figures would then be used to determine the time-eligible population for a given duration of RCA/RMA benefits.

2. The average annual number of RAC and RMA recipients would be determined by multiplying the estimated time-eligible population established in step 1 by the estimated RCA and RMA participation rates. The RMA participation rate will take into account both RCA recipients, who are also eligible for RMA, and RMA-only recipients. The appropriate participation rates for various RCA/RMA time-eligibility periods are derived from recipient data from quarterly performance reports submitted by States in previous fiscal years.

3. The average annual per recipient cost for RCA and RMA would be estimated separately, based on estimated per recipient costs for the most recent fiscal year and inflated for the projected fiscal year using projected increases in per capita AFDC cash assistance costs for RCA and per capita AFDC Medicaid costs for RMA.

4. The expected average annual number of RCA recipients would be multiplied by the expected RCA per recipient cost to derive estimated RCA costs. The expected average annual number of RMA recipients would be multiplied by the expected RMA per recipients cost to derive estimated RMA costs.

5. State administrative costs for the projected fiscal year would be based on anticipated changes in program participation (numbers of recipients) and inflated by the Consumer Price Index (CPI) for all times as estimated by the Office of Management and Budget (OMB). Increases or decreases in program participation from the previous fiscal year would result in corresponding increases or decreases in projected State administrative costs.

6. The total estimated costs for the projected fiscal year would equal the combined estimated costs for RCA, RMA, and State administration as calculated in steps 1 through 5.

ORR would notify States through a notice published in the **Federal Register** if the RCA/RMA eligibility period determined for the fiscal year is different from the RCA/RMA eligibility period in effect at that time.

The following example, using hypothetical numbers, illustrates how the methodology would work:

1. Suppose that the refugee admissions ceiling for FY 1994 is established at 1,000 and, based on available data, it is determined that an additional 200 persons eligible for refugee assistance are expected to arrive resulting in a total expected arrival population of 1,200. Suppose that the same number, 1,200, arrived in the previous fiscal year (FY 1993). Based on an examination of the refugee flow from the previous year, suppose it is determined that the monthly flow in the

projected fiscal year will be the same as in the previous fiscal year, with the monthly arrivals for both years as follows:

	Arrivals	FY 1994 8-month time-eligible population
MAR93	107	
APR93	87	
MAY93	87	
JUN93	92	
JUL93	93	
AUG93	110	
SEP93	158	
	734	
OCT93	65	799
NOV93	92	784
DEC93	124	821
JAN94	90	824
FEB94	95	827
MAR94	107	841
APR94	87	818
MAY94	87	747
JUN94	92	774
JUL94	93	775
AUG94	110	761
SEP94	158	829
Total	1,200	9,600
Average time-eligible		800

Assuming that the RCA/RMA time-eligibility period is 8 months, the time-eligible population in October would be the arrivals in October, plus refugees who arrived in the previous 7 months (March-September). The time-eligible population in October would be 799 refugees. The time-eligible population for each month in the fiscal year would be determined in the same manner as for October and then averaged across all months, for an average of 800 in this example.

2. Based on an examination of RCA and RMA participation rates in previous fiscal years, suppose it is estimated that for an 8-month eligibility period, 35% of the time-eligible population will receive RCA benefits and 50% will receive RMA benefits. (The RMA participation rate includes refugees receiving both RCA and RMA and refugees receiving RMA only.) The figure of 800 determined in Step 1 is then multiplied by the RCA participation rate of 35% for a total of 280 RCA recipients and by the RMA participation rate of 50% for a total of 400 RMA recipients. These figures reflect the average annual number of RCA and RMA recipients.

3. If in the previous year, the average annual RCA cost per recipient was $1,000 and the average annual RMA cost per recipient was $1,500, we would expect the average RCA cost per recipient to be $1,020 for the projected year (assuming a 2% increase in per capita AFDC costs), while the average RMA cost per recipient would be expected to be $1,680 (assuming a 12% increase in per capita AFDC Medicaid costs).

4. Total RCA costs would equal the number of recipients (280) multiplied by the per recipient cost ($1,020), equaling $285,600. Total RMA costs would equal the number of recipients (400) multiplied by the per recipient cost ($1,680), equaling $672,000.

5. Assuming no change in the number of RCA/RMA recipients, we would assume that State administrative costs will be the same as last year, adjusted for inflation. Suppose that last year the administrative costs were $250,000. Also suppose that OMB's CPI rate is 4%. Therefore, we would expect administrative costs to equal $250,000 times 1.04, totalling $260,000.

6. Total costs would equal the sum of $285,600 for RCA, $672,000 for RMA, and $260,000 for administrative costs, equaling $1,217,600.

Suppose the appropriation level for TAMS is $1,955,000, the anticipated costs of the unaccompanied minors program are $290,000, and the costs of the matching grant program are expected to be $390,000. Therefore, appropriated funds available for RCA, RMA, and State administrative costs would equal $1,275,000, after the costs of the unaccompanied minors program and the matching grant program are deducted from the amount available for TAMS under the appropriation. Suppose, using the methodology described above, the cost of a 9-month RCA/RMA eligibility period was estimated to be $1,290,000, thus exceeding the level of available appropriated funds for RCA, RMA, and State administrative costs. Based on these estimates, the Director would determine that an 8-month time-eligibility period would provide the most number of months of benefits without incurring a shortfall in funds for the fiscal year.

Consistent with the preceding actions, 45 CFR 400.2, 400.60(b), 400.100(b), and subpart J are being amended.

Regulatory Procedures

Regulatory Impact Analysis

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual affect on the national economy of $100 million or more, or certain other specified effects. The Department has determined that these rules are not major rules within the Executive Order because they will not have an annual effect on the economy of $100 million or more; nor will they result in a major increase in costs or prices for consumers, any industries, any governmental agencies, or any geographic region; and, they will not have an adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign/based enterprises in domestic or import markets.

This proposed rule would establish a more efficient and timely procedure for notifying States whenever changes in the eligibility period for refugee cash assistance (RCA) and refugee medical assistance (RMA) are necessary to contain refugee cash and medical assistance costs within the operating fiscal year appropriation level.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these rules is on State governments and individuals. Therefore, we certify that these rules will not have a significant impact on a substantial number of small entities because they affect benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This rule does not contain collection-of-information requirements.

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act, 8 U.S.C. 1522(a)(9), authorizes the Secretary of HHS to issue regulations needed to carry out the program.

(Catalogue of Federal Domestic Programs: 93.566, Refugee and Entrant Assistance—State-Administered Programs)

List of Subjects in 45 CFR Part 400

Grant programs—Social programs, Health care, Public assistance programs, Refugees, Reporting and recordkeeping requirements.

Dated: June 9, 1993.

Laurence J. Love,

Acting Assistant Secretary for Children and Families.

Approved: July 1, 1993.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For reasons set forth in the preamble, 45 CFR part 400 is proposed to be amended as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

1. The authority citation for part 400 continues to read as follows:

Authority: Sec. 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

§ 400.2 [Amended]

2. Section 400.2 is amended by amending the definition of "Refugee cash assistance" by removing the words "and who have resided in the United States for less than a 12-month period (except during Federal FY 1993, less than an 8-month period) from their initial entry into the country" after the word "SSI", by amending the definition of "Refugee medical assistance" by removing the words "and who have resided in the United States for less than a 12-month period (except during Federal FY 1993, less than an 8-month period) from their initial entry into the country" after the words "Medicaid program", and by amending the definition of "Time-eligibility" by removing the "(a)" after §§ 400.203 and 400.204.

§ 400.60 [Amended]

3. Section 400.60(b) is amended by removing the words "the 12-month period (except during Federal FY 1993, 8-month period) beginning with the first month the refugee entered the United States" after the word "during" and adding in their place the words "a period to be determined by the Director in accordance with § 400.211".

§ 400.100 [Amended]

4. Section 400.100(b) is amended by removing the words "the 12-month period (except during Federal FY 1993, 8-month period) beginning with the first month the refugee entered the United States" after the word "during" and adding in their place the words "a period of time to be determined by the Director in accordance with § 400.211".

§ 400.203 [Amended]

5. Section 400.203(b) is amended by removing the words "the 12-month period (except during Federal FY 1993, 8-month period) beginning with the first month the refugee entered the United States" after the word "during" and adding in their place the words "a period of time to be determined by the Director in accordance with § 400.211".

§ 400.204 [Amended]

6. Section 400.204(b) is amended by removing the words "the 12-month period (except during Federal FY 1993, 8-month period) beginning with the first month the refugee entered the United States" after the word "during" and adding in their place the words "a period of time to be determined by the Director in accordance with § 400.211".

§ 400.209 [Amended]

7. Section 400.209(b) is amended by removing the words "12 months (except during Federal FY 1993, 8 months)" after the word "than" and adding in their place the words "a period of time to be determined by the Director in accordance with § 400.211".

8. Subpart J is amended by adding a new § 400.211, that reads as follows:

§ 400.211 Methodology to be used to determine time-eligibility of refugees.

(a) The time-eligibility period for refugee cash assistance and refugee medical assistance will be determined by the Director each year, based on appropriated funds available for the fiscal year. The Director will make a determination of the eligibility period each year as soon as possible after funds are appropriated for the refugee program, and also at subsequent points during the fiscal year, as needed, based on updated information on refugee flows and State reports on receipt of assistance and expenditures. The method to be used to determine the RCA/RMA eligibility period will include the following steps and will be applied to various RCA/RMA time-eligibility periods in order to determine the time-eligibility period which will provide the most number of months without incurring a shortfall in funds for the fiscal year.

(1) The time-eligible population for the projected fiscal year will be estimated on the basis of the refugee admissions ceiling established by the President for that fiscal year and the anticipated arrival of other persons eligible for refugee assistance, to the extent that data on these persons are available. The anticipated pattern of refugee flow for the projected fiscal year will be estimated based on the best available historical and current refugee flow information that will most accurately forecast the refugee flow for the projected fiscal year. These arrival figures will then be used to determine the time-eligible population for a given duration of RCA/RMA benefits.

(2) The average annual number of RCA and RMA recipients will be determined by multiplying the estimated time-eligible population established in paragraph (a)(1) of this section by the estimated RCA and RMA participation rates. The RMA participation rate will take into account both RCA recipients, who are also eligible for RMA, and RMA-only recipients. Recipient data from quarterly performance reports submitted by States in previous fiscal years will be used to determine the appropriate participation rates for various RCA/RMA time-eligibility periods.

(3) The average annual per recipient cost for RCA and RMA will be estimated separately, based on estimated per recipient costs for the most recent fiscal year and inflated for the projected fiscal year using projected increases in per capita AFDC cash assistance costs for RCA and per capita AFDC Medicaid costs for RMA.

(4) The expected average annual number of RCA recipients will be multiplied by the expected RCA per recipient cost to derive estimated RCA costs. The expected average annual number of RMA recipients will be multiplied by the expected RMA per recipient cost to derive estimated RMA costs.

(5) State administrative costs for the projected fiscal year will be based on changes in program participation (numbers of recipients) and inflated by the Consumer Price Index (CPI) for all items as estimated by the Office of Management and Budget (OMB). Increases or decreases in program participation in the previous fiscal year will result in corresponding increases or decreases in projected State administrative costs.

(6) The total estimated costs for the projected fiscal year will equal the combined estimated costs for RCA, RMA, and State administration as calculated in paragraphs (a)(1) through (5) of this section.

(b) If, as the Director determines, the period of eligibility needs to be changed from the eligibility period in effect at the time, the Director will publish a final notice in the **Federal Register**, announcing the new period of eligibility for refugee cash assistance and refugee medical assistance and the effective date for implementing the new eligibility period. States will be given a minimum of 30 days' notice before the effective date, or, if circumstances permit, a longer period of notice.

[FR Doc. 93–17353 Filed 7–19–93; 3:02 pm]

BILLING CODE 4184–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 93–207; DA 93–817]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission invites comments on its proposal, initiated by a request filed by Fouce Amusement Enterprises, Inc. ("Fouce"), to amend the Commission's Rules to change the designation of the Los Angeles-San Bernardino-Corona-Fontana, California television market to include the community of Riverside, California. This action is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before August 18, 1993, and reply comments are due on or before September 2, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-207, adopted July 2, 1993, and released July 15, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Synopsis of the Notice of Proposed Rule Making

1. The Commission, in response to a Petition for Rulemaking filed by Fouce Amusement Enterprises, Inc., licensee KRCA(TV), Riverside, California, proposed to amend § 76.51 of the Rules to change the designation of the Los Angeles-San Bernardino-Corona-Fontana, California television market to include the community of Riverside, California.

2. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. Therefore, comment is requested on this proposal to amend § 76.51 of the Commission's Rules by adding Riverside to the Los Angeles-San Bernardino-Corona-Fontana, California market designation.

Initial Regulatory Flexibility Analysis

3. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. A few television licensees and permittees will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96-354, 94 stat. 1164, 5 U.S.C. section 601 et seq. (1981).

Ex Parte

4. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

5. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 18, 1993, and reply comments on or before September 2, 1993. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comment, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

6. Accordingly, this action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by § 0.283 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93-17339 Filed 7-21-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 76

[MM Docket No. 93-212; DA 93-824]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission invites comments on its proposal, initiated by a request filed by Group H Broadcasting Corporation ("Group H"), to amend the Commission's Rules to change the designation of the Raleigh-Durham, North Carolina television market to include the community of Goldsboro, North Carolina. This action is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before August 23, 1993, and reply comments are due on or before September 7, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-212, adopted July 8, 1993, and released July 15, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Washington, DC 20037.

Synopsis of the Notice of Proposed Rule Making

1. The Commission, in response to a Petition for Rulemaking filed by Group H Broadcasting Corporation, licensee of WYED(TV), Goldsboro, North Carolina, proposed to amend § 76.51 of the Rules to change the designation of the Raleigh-Durham, North Carolina television market to include the community of Goldsboro, North Carolina.

2. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. Therefore, comment is requested on this proposal to amend § 76.51 of the Commission's Rules by adding

Goldsboro, North Carolina to the Raleigh-Durham, North Carolina market designation.

Initial Regulatory Flexibility Analysis

3. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. A few television licensees and permittees will be affected by the proposed rule amendment. The Secretary shall send a copy of the Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (1981).

Ex Parte

4. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

5. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 23, 1993, and reply comments on or before September 7, 1993. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comment, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20054. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

6. Accordingly, this action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by § 0.283 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 669

[Docket No. 930773–3173; I.D. 062893B]

RIN–0648–AE53

Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

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

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 2 to the Fishery Management Plan for the Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP). Amendment 2 and this proposed rule would incorporate the major species of the deep-water reef fish fishery and the marine aquarium finfish fishery into the reef fish management unit; retitle the FMP to encompass the revised management unit; restrict the collection of marine aquarium fishes to hand-held dip nets and slurp guns; prohibit the harvest/possession/sale of certain species used in the marine aquarium trade; remove a requirement that the two escape panels required for each fish trap be located on opposite sides of the trap; prohibit the harvest or possession of jewfish; close two additional red hind spawning aggregation areas from December through February; and close a spawning aggregation area for mutton snapper from March through June of each year. This proposed rule is intended to protect and conserve the highly exploited reef fish resources of Puerto Rico and the U.S. Virgin Islands.

DATES: Written comments must be received on or before September 2, 1993.

ADDRESSES: Comments on the proposed rule should be sent to William R. Turner, Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburgh, FL 33702.

Requests for copies of Amendment 2, which contains a draft regulatory impact review/initial regulatory flexibility analysis/final supplemental environmental impact statement, should be sent to the Caribbean Fishery Management Council, 268 Ave Muñoz Rivera, Suite 1108, San Juan, PR 00918–2577.

FOR FURTHER INFORMATION CONTACT: Miquel A. Rolon, 809–753–6910 or William R. Turner, 813–893–3161.

SUPPLEMENTARY INFORMATION: The shallow-water reef fish fishery is managed under the FMP prepared by the Caribbean Fishery Management Council (Council), and its implementing regulations at 50 CFR part 669, under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 2 addresses continuing and growing concerns by the Council over scarce resources, the need to protect important species when they aggregate for spawning, and the need to extend protection to other reef-associated species not presently in the management unit.

The basic objectives of the FMP would be unchanged by Amendment 2. However, Amendment 2 extends these objectives to deep water reef fishes and marine aquarium fishes so that the added species will be maintained at levels that sustain recruitment adequate to replenish the populations. Amendment 2 requests the local governments of Puerto Rico and the U.S. Virgin Islands to institute permitting and mandatory reporting requirements for fishing in both state and Federal waters so that data on catch/effort relationships of species in the management unit may be obtained. These data would be used to assess stocks, monitor population trends, and to restore and maintain stocks at optimum levels. Permits also would provide a sampling universe in the event that some type of limited access program is considered for the future. Amendment 2 also recommends establishing coral reef reserves and prohibiting the introduction of exotic species.

Expansion of the Management Unit

Of some 350 species of shallow-water reef fish in the Caribbean, about 180 are landed throughout the region and collectively comprise the most important fishery in the islands. The management unit currently includes the 64 most commonly landed species that dominate the catch from the shoreline to the edge of the insular platform. At greater depths beyond the edge of the platform, another fishery occurs—the deep-water reef fish fishery.

Initially, the Council anticipated developing a separate FMP for deep-

water reef fish species; however, the Council decided that it would be more practicable and economical to establish a single management unit for all reef fish. Distribution of some of the deep-water reef fishes overlaps shallow-water reef fish distributions, although the deep-water species are more abundant as adults in deeper waters. Restrictive measures are not envisioned initially for deep-water species due to lack of data on the status of their populations; however, including them in the management unit permits regulatory action if necessary.

A large number of juvenile reef fishes and other small reef-associated species are taken by the marine aquarium industry. A decline in abundance has been noted for some of the more desirable species in certain localities. The ecological effects of their removal are unknown, and some of the most widely used collecting methods employ chemicals that damage the reef habitat and inflict mortality upon associated fishes and invertebrates. Expanding the management unit to include marine aquarium species would obviate the need for a separate FMP and provide a mechanism to initially manage this select group of fishes under the existing drug and chemical harvest prohibition of the reef fish regulations. Harvest of certain species could be regulated or prohibited as necessary.

Including additional species in the reef fish fishery requires changing the title of the FMP, expanding the management unit, and updating the FMP to describe the fisheries incorporated. A discussion of the significance of the reef fish habitat to reef fish species and the effects of changes in that habitat on the fisheries was included in Amendment 1 to the FMP. Marine aquarium invertebrate species are included in the coral fishery management plan, currently being developed, which contains further discussion of the significance of the coral reef habitat and the effects of changes in that habitat.

Allowable Gear in the Marine Aquarium Fishery

Under Amendment 2, only hand-held dip nets and slurp guns could be used to harvest marine aquarium fishes. Other gears currently or traditionally used for collecting marine aquarium fishes have been shown to damage either the resource, its habitat, or both. Perhaps the most prevalent method of collection is by the use of chemical substances, the most common of which is quinaldine. Although the long- and short-term effects on reefs and associated organisms of using quinaldine to stun fish are inconclusive, many dealers are reluctant to purchase fish taken by this method because mortality rates appear higher than with those collected by other methods. The use of other chemical agents, such as bleach, formalin, and gasoline for collecting marine aquarium fishes, has been reported from various areas. Amendment 2 and this proposed rule would prohibit all of them because of their toxic effects on marine organisms, including corals. The use of chemical substances and explosives is currently prohibited in the shallow-water reef fish fishery.

Cast nets (drop nets), barrier nets (gill nets), and specialized small mesh fish traps are other gears traditionally used to harvest marine aquarium fishes. These gears all have a potential for damaging reefs or reef resources. Small mesh fish traps are already prohibited under existing minimum mesh-size regulations.

To distinguish between fish in the aquarium trade and food fish, the proposed rule would define a marine aquarium fish as any fish in the reef fish fishery that is smaller than 5.5 inches (14.0 cm), total length. This length approximates the largest size of fish believed to be harvested customarily for the marine aquarium trade. Establishing a larger size limit for marine aquarium fish would adversely affect the harvest of reef fish as food fish.

Limitations on Certain Species of Marine Aquarium Fish

The status of many species of marine aquarium fishes has not been determined, but some are uncommon while others are heavily exploited without restriction. All marine aquarium fishes would benefit from the gear restrictions contained in Amendment 2.

Because of the intensifying and uncontrolled harvest of marine aquarium fishes in Puerto Rico, and based on experiences elsewhere, there is a need to regulate this fishery. By adding marine aquarium fishes to the FMP, the harvest and possession of the young of species that presently are in a rebuilding mode could be prohibited until those resources have recovered. This group currently includes red hind and mutton snapper.

Species that are locally rare are potentially vulnerable to harvest for the aquarium trade because the scarcity and the higher value associated with rare species often result in greater effort expended for their harvest. Fish that may be considered rare or uncommon in the management area are the seahorses and the swissguard basslet. Since the latter are collected mainly by chemicals, such as quinaldine, and harvest by chemicals would be prohibited, no additional protection for swissguard basslet would be required.

Some species are considered unsuited for the aquarium trade because they do not survive well in captivity. A number of butterflyfishes do not feed well in captivity and consequently experience high mortality. Permitting harvest of these species for the aquarium trade would constitute inefficient and wasteful use of these resources.

Accordingly, restrictions on the harvest/sale of the following species are proposed: Seahorses; red hind; mutton snapper; foureye butterflyfish; banded butterflyfish; and longsnout butterflyfish. Since there is no known use of seahorses and butterflyfishes as food fish, this rule proposes a total prohibition on their harvest or possession. Since red hind and mutton snapper, as adults, are commonly harvested as food fish, this rule proposes that their use in the marine aquarium trade by prohibited, that is, they may not be sold, traded, purchased, or bartered alive.

Protecting Jewfish

A pronounced decline in the abundance of jewfish has been noted throughout the management area and may extend throughout the Caribbean Basin. Similar declines in the Gulf of Mexico and off the southern Atlantic states led to a total prohibition on jewfish harvest in those areas. The Council believes that jewfish should be protected throughout its range. The species appears to be scarce wherever it occurs and has unique biological characteristics that make it highly susceptible to overfishing. The U.S. Virgin Islands Government has listed jewfish as a protected species and prohibits its take in Territorial waters. Accordingly, Amendment 2 contains a prohibition on all harvest of jewfish in the EEZ.

Red Hind Spawning Areas

Following collapse of the Nassau grouper resource, red hind became an important species in the fishery; however, the Council's Stock Assessment Group concluded that statistics show a decrease in the number of young fish in the population. Whenever possible, the Council relies upon closing aggregation sites during spawning seasons to enhance reproductive capacity. Most species that aggregate during the spawning season are highly vulnerable to capture at that time. Allowing mature individuals the opportunity to spawn is important to

reverse declines in abundance. Even some fishermen have requested closure of spawning aggregation areas for red hind. A spawning aggregation area off St. Thomas has been closed during the spawning season (December-February) since December 1989. Amendment 2 would close two additional red hind spawning areas.

Mutton Snapper Spawning Area

A mutton snapper spawning aggregation area has been identified in the EEZ off the southwest coast of St. Croix. The U.S. Virgin Islands, Division of Fish and Wildlife, has recommended that the area be closed to all fishing from March through June of each year to protect the species. Accordingly, such a provision is included in Amendment 2. The aggregation area is located between 2.1 and 3.2 nautical miles southwest of Long Point in 10 to 27 fathoms (18.3 to 49.4 m) of water. Commercial landings indicate that mutton snapper have been fished to the extent that production from the aggregation is declining and average individual weights have decreased.

Mutton snapper appear to be especially vulnerable to harvest when aggregated for spawning. This has prompted the curtailment of fishing activity during the spawning season in waters under the jurisdiction of the South Atlantic Fishery Management Council and similar action soon will be contemplated by the Gulf of Mexico Fishery Management Council. To allow spawning populations to be overexploited during periods of unusual vulnerability is not a biologically sound practice. Accordingly, Amendment 2 would close the identified mutton snapper spawning area.

Fish Trap Specifications

The current regulations require that bare-wire fish traps with hexagonal mesh openings have a minimum mesh size of 1.5 inches (3.8 cm) in the smallest dimension, and that fish traps with other than hexagonal mesh openings, regardless of the material, have a minimum mesh size of 2.0 inches (5.1 cm) in the smallest dimension. Through September 13, 1993, fish traps with rectangular mesh openings may have a minimum mesh size of 1.5 inches (3.8 cm). Amendment 2 confirms the Council's previous decision to end, on September 14, 1993, this exemption from the 2.0 (5.1 cm) minimum mesh requirement for fish traps with rectangular mesh openings.

Fishermen reported that locating the escape panels on opposite sides of a trap, as presently required, can cause premature release of the catch from the weight of fish on the panel opposite the bridle during trap retrieval. Locating the escape openings on adjacent sides of a trap eliminates this problem. Amendment 2 would eliminate the requirement that the degradable escape panels be located on opposite sides of a trap.

Some fishermen have contended that the requirement to use jute twine of ⅛-inch (.3-cm) or less in diameter as the degradable fastenings for the panels on the escape openings is overly burdensome because of the amount of time required to retie the fastenings each time a trap is hauled. Amendment 2 would have allowed, as an alternative to jute twine of ⅛-inch (.3-cm) or less in diameter, the use of 18-gauge ungalvanized wire fasteners on traps without zinc anodes. Based on a preliminary review of Amendment 2, the Secretary of Commerce (Secretary) disapproved this provision of Amendment 2 because it was determined to be inconsistent with national standard 1 requiring fishery management plans and amendments to prevent overfishing and with national standard 2 requiring measures to be based on the best available scientific information. The use of such wire fasteners has not been scientifically tested to determine if their degradation time would prevent overfishing.

Additional information on the measures in this proposed rule and on the preliminarily disapproved measure is contained in Amendment 2, the availability of which was announced in the **Federal Register** on June 30, 1993 (58 FR 34982).

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that the measures in Amendment 2 that this proposed rule would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. As discussed above, the Secretary has disapproved the provision in Amendment 2 that would authorize the use of 18-gauge ungalvanized wire as fasteners of escape panels on fish traps because of insufficient scientific justification. Accordingly, such authorized use is not contained in this proposed rule. The Secretary, in making final determinations, will take into account the data, views, and comments received during the comment period.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedure of that order.

The Assistant Administrator for Fisheries, NOAA, has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not 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 a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review (RIR), which concludes this rule would have national net economic benefits, summarized as follows. Expanding the management unit to include deep-water reef and marine aquarium fishes would increase administrative costs of the FMP but would be cost-effective when compared to the costs of developing separate FMPs for the same species. For the measures that regulate gear use, the aggregate outcome would be positive because increased biological yields would eventually translate into positive economic changes. The prohibition on harvest of jewfish would have long-term economic benefits because the abundance of jewfish is currently so low the resource produces extremely small values. The prohibition on harvest of certain aquarium fishes would have long-term economic benefits because the prohibited species are either not well suited to the aquarium trade or have greater value either as food fish or by maintaining the diversity of the marine ecosystem. Spawning area closures would have beneficial impacts via maintenance of economically viable levels of biomass for harvest on a continuing basis. Realization of the projected benefits would depend heavily on adequate compliance with the rules and on the cooperation of Puerto Rico and the U.S. Virgin Islands. This cooperation would need to include the adoption of compatible regulations, assistance with education and law enforcement, and implementation of suitable permit and data collection systems. The benefits gained by the rule would be of a temporary nature because the fishery operates under an open access management regime. Under this

style of management, increased benefits inevitably lead to increased effort and the benefits are eventually eroded. This occurs because of the increased costs implied by an expanding amount of effort expended in the taking of a maximum biological yield that is essentially fixed in the long term. A copy of the RIR is available (see **ADDRESSES**).

The Council prepared an initial regulatory flexibility analysis (RFA) as part of the RIR, which concludes that this proposed rule, if adopted, would have significant effects on small entities. Almost all the 1,500 to 2,000 small business entities dependent upon the fishery resources governed by the FMP would be impacted by the actions contemplated by Amendment 2. Further, it was concluded that the aggregate impact on gross revenues would exceed 5 percent. A copy of the initial RFA is available (see **ADDRESSES**).

The Council prepared a draft supplemental environmental impact statement for Amendment 2. A notice of availability was published on December 11, 1992 (57 FR 58805). A final supplemental environmental impact statement was prepared by the Council for Amendment 2 and will be filed for public review with the Environmental Protection Agency on or before August 20, 1993, to begin a 30-day public review period.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Puerto Rico and the U.S. Virgin Islands. This determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

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

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 669

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: July 16, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 669 is proposed to be amended as follows:

PART 669—REEF FISH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

1. The authority citation for part 669 continues to read as follows:

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

2. The title for part 669 is revised to read as set forth above.

3. In § 669.2, the definition for "*Fish in the shallow-water reef fish fishery*" is removed and a definition for "*Fish in the reef fish fishery*" is added in its place to read as follows:

§ 669.2 Definitions.

* * * * *

Fish in the reef fish fishery means any of the following species:

Morays—Muraenidae

Chain moray, *Echidna catenata*
Green moray, *Gymnothorax funebris*
Goldentail moray, *Gymnothorax miliaris*

Snake eels—Ophichthidae

Goldspotted eel, *Myrichthys ocellatus*

Lizardfishes—Synodontidae

Sand diver, *Synodus intermedius*

Frogfishes—Antennariidae

Frogfish, *Antennarius* spp.

Batfishes—Ogcocephalidae

Batfish, *Ogcocepahalus* spp.

Squirrelfishes—Holocentridae

Squirrelfish, *Holocentrus adscensionis*
Longspine squirrelfish, *Holocentrus rufus*
Blackbar soldierfish, *Myripristis jacobus*
Cardinal soldierfish, *Plectrypops retrospinis*

Trumpetfishes—Aulostomidae

Trumpetfish, *Aulostomus maculatus*

Pipefishes—Syngnathidae

Seahorses, *Hippocampus* spp.
Pipefishes, *Syngnathus* spp.

Flying gurnards—Dactylopteridae

Flying gurnard, *Dactylopterus volitans*

Scorpionfishes—Scorpaenidae

Sea basses—Serranidae

Rock hind, *Epinephelus adscensionis*
Graysby, *Epinephelus cruentatus*
Yellowedge grouper, *Epinephelus flavolimbatus*
Coney, *Epinephelus fulvus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Nassau grouper, *Epinephelus striatus*
Butter hamlet, *Hypoplectrus unicolor*
Swissguard basslet, *Liopropoma rubre*
Yellowfin grouper, *Mycteroperca venenosa*
Tiger grouper, *Mycteroperca tigris*
Creole-fish, *Paranthias furcifer*
Greater soapfish, *Rypticus saponaceus*
Orangeback bass, *Serranus annularis*
Lantern bass, *Serranus baldwini*
Tobaccofish, *Serranus tabacarius*
Harlequin bass, *Serranus tigrinus*
Chalk bass, *Serranus tortugarum*

Basslets—Grammatidae

Royal gramma, *Gramma loreto*

Bigeyes—Priacanthidae

Bigeye, *Priacanthus arenatus*
Glasseye snapper, *Priacanthus cruentatus*

Cardinalfishes—Apogonidae

Flamefish, *Apogon maculatus*
Conchfish, *Astrapogen stellatus*

Tilefishes—Malacanthidae

Blackline tilefish, *Caulolatilus cyanops*
Sand tilefish, *Malacanthus plumieri*

Jacks—Carangidae

Yellow jack, *Caranx bartholomaei*
Blue runner, *Caranx crysos*
Horse-eye jack, *Caranx latus*
Black jack, *Caranx lugubris*
Bar jack, *Caranx ruber*
Greater amberjack, *Seriola dumerili*
Almaco jack, *Seriola rivoliana*

Snappers—Lutjanidae

Black snapper, *Apsilus dentatus*
Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Blackfin snapper, *Lutjanus buccanella*
Gray snapper, *Lutjanus griseus*
Dog snapper, *Lutjanus jocu*
Mahogany snapper, *Lutjanus mahogani*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Wenchman, *Pristipomoides aquilonaris*
Vermilion snapper, *Rhomboplites aurorubens*

Grunts—Haemulidae

Porkfish, *Anisotremus virginicus*
Margate, *Haemulon album*
Tomtate, *Haemulon aurolineatum*
French grunt, *Haemulon flavolineatum*
White grunt, *Haemulon plumieri*
Bluestriped grunt, *Haemulon sciurus*

Porgies—Sparidae

Sea bream, *Archosargus rhomboidalis*
Jolthead porgy, *Calamus bajonado*
Sheepshead porgy, *Calamus penna*
Pluma, *Calamus pennatula*

Drums—Sciaenidae

High-hat, *Equetus acuminatus*
Jackknife-fish, *Equetus lanceolatus*
Spotted drum, *Equetus punctatus*

Goatfishes—Mullidae

Yellow goatfish, *Mulloidichthys martinicus*
Spotted goatfish, *Pseudupeneus maculatus*

Spadefishes—Ephippidae

Atlantic spadefish, *Chaetodipterus faber*

Butterflyfishes—Chaetodontidae

Longsnout butterflyfish, *Chaetodon aculeatus*
Foureye butterflyfish, *Chaetodon capistratus*
Spotfin butterflyfish, *Chaetodon ocellatus*
Banded butterflyfish, *Chaetodon striatus*

Angelfishes—Pomacanthidae

Cherubfish, *Centropyge argi*

Queen angelfish, *Holacanthus ciliaris*
Rock beauty, *Holacanthus tricolor*
Gray angelfish, *Pomacanthus arcuatus*
French angelfish, *Pomacanthus paru*

Damselfishes—Pomacentridae

Sergeant major, *Abudefduf saxatilis*
Blue chromis, *Chromis cyanea*
Sunshinefish, *Chromis insolata*
Yellowtail damselfish, *Microspathodon chrysurus*
Dusky damselfish, *Pomacentrus fuscus*
Beaugregory, *Pomacentrus leucostictus*
Bicolor damselfish, *Pomacentrus partitus*
Threespot damselfish, *Pomacentrus planifrons*

Hawkfishes—Cirrhitidae

Redspotted hawkfish, *Amblycirrhitus pinos*

Wrasses—Labridae

Spanish hogfish, *Bodianus rufus*
Creole wrasse, *Clepticus parrae*
Yellowcheek wrasse, *Halichoeres cyanocephalus*
Yellowhead wrasse, *Halichoeres garnoti*
Clown wrasse, *Halichoeres maculipinna*
Puddingwife, *Halichoeres radiatus*
Pearly razorfish, *Hemipteronotus novacula*
Green razorfish, *Hemipteronotus splendens*
Hogfish, *Lachnolaimus maximus*
Bluehead wrasse, *Thalassoma bifasciatum*

Parrotfishes—Scaridae

Midnight parrotfish, *Scarus coelestinus*
Blue parottfish, *Scarus coeruleus*
Striped parrotfish, *Scarus croicensis*
Rainbow parrotfish, *Scarus guacamaia*
Princess parrotfish, *Scarus taeniopterus*
Queen parrotfish, *Scarus vetula*
Redband parrotfish, *Sparisoma aurofrenatum*
Redtail parrotfish, *Sparisoma chrysopterum*
Redfin parrotfish, *Sparisoma rubripinne*
Stoplight parrotfish, *Sparisoma viride*

Jawfishes—Opistognathidae

Yellowhead jawfish, *Opistognathus aurifrons*
Dusky jawfish, *Opistognathus whitehursti*

Combtooth blennies—Blenniidae

Redlip blenny, *Ophioblennius atlanticus*

Gobies—Gobiidae

Neon goby, *Gobiosoma oceanops*
Rusty goby, *Priolepis hipoliti*

Surgeonfishes—Acanthuridae

Ocean surgeonfish, *Acanthurus bahianus*
Doctorfish, *Acanthurus chirurgus*
Blue tang, *Acanthurus coeruleus*

Lefteye flounders—Bothidae

Peacock flounder, *Bothus lunatus*

Soles—Soleidae

Caribbean tonguefish, *Symphurus arawak*

Leatherjackets—Balistidae

Scrawled filefish, *Aluterus scriptus*
Queen triggerfish, *Balistes vetula*
Whitespotted filefish, *Cantherhines macrocerus*
Ocean triggerfish, *Canthidermis sufflamen*
Black durgon, *Melichthys niger*
Sargassum triggerfish, *Xanthichthys rigens*

Boxfishes—Ostraciidae

Spotted trunkfish, *Lactophrys bicaudalis*
Honeycomb cowfish, *Lactophrys polygonia*
Scrawled cowfish, *Lactophrys quadricornis*
Trunkfish, *Lactophrys trigonus*
Smooth trunkfish, *Lactophrys triqueter*

Puffers—Tetraodontidae

Sharpnose puffer, *Canthigaster rostrata*
Porcupinefish, *Diodon hystrix*

* * * * *

4. Section 669.7 is revised to read as follows:

§ 669.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish with a fish trap in the EEZ without a vessel identification number and color code, as specified in § 669.6(a).

(b) Falsify or fail to display and maintain vessel and gear identification, as specified in § 669.6(c), (d), and (e).

(c) Fish in an area during a seasonal closure, as specified in § 669.21.

(d) Harvest or possess a Nassau grouper, jewfish, seahorse, or foureye, banded, or longsnout butterflyfish in or from the EEZ, or fail to release such fish immediately with a minimum of harm; as specified in § 669.22(a) and (b).

(e) Harvest in the EEZ a marine aquarium fish by means other than a hand-held dip net or a hand-held slurp gun, as specified in § 669.22(c).

(f) Possess a yellowtail snapper in or from the EEZ that is smaller than the minimum size limit or is without its head and fins intact; or fail to release immediately with a minimum of harm an undersized yellowtail snapper caught in the EEZ; as specified in § 669.22(d).

(g) Fish in the EEZ with explosives or possess on board a vessel in the reef fish fishery any dynamite or similar explosive substance, as specified in § 669.23(a)(1).

(h) Fish in the EEZ with poisons, drugs, other chemicals, or a powerhead, as specified in § 669.23(a)(2) and (a)(3).

(i) Use or possess in the EEZ a fish trap that does not conform to the requirements for mesh sizes and escape panels, as specified in § 669.23(b)(1) and (b)(2).

(j) Tend, open, pull, molest, or have in possession another person's fish trap in the EEZ, except as specified in § 669.23(b)(3).

(k) Sell, purchase, trade, or barter alive, or attempt to sell, purchase, trade, or barter alive, a red hind or mutton snapper, as specified in § 669.24.

(l) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

(m) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, sale, purchase, trade, barter, possession, or transfer of a reef fish.

5. Subpart B of part 669 is revised to read as follows:

Subpart B—Management Measures

Sec.
669.20 Fishing year.
669.21 Seasonal area closures.
669.22 Harvest limitations.
669.23 Gear restrictions.
669.24 Limitations on sale.
669.25 Specifically authorized activities.

Subpart B—Management Measures

§ 669.20 Fishing year.

The fishing year for the reef fish fishery begins on January 1 and ends on December 31.

§ 669.21 Seasonal area closures.

(a) *Red hind spawning aggregation areas.* From December 1 through February 28, each year, fishing is prohibited in the following three areas. Each area is bounded by rhumb lines connecting the points in the order listed.

(1) *South of St. Thomas:*

Point	Latitude	Longitude
A	18°13.2'N.	65°06.0'W.
B	18°13.2'N.	64°59.0'W.
C	18°11.8'N.	64°59.0'W.
D	18°10.7'N.	65°06.0'W.
A	18°13.2'N.	65°06.0'W.

(2) *West of Puerto Rico:*

Point	Latitude	Longitude
A	18°11.0'N.	67°25.5'W.
B	18°11.0'N.	67°20.4'W.
C	18°08.0'N.	67°20.4'W.
D	18°08.0'N.	67°25.5'W.
A	18°11.0'N.	67°25.5'W.

(3) *East of St. Croix:*

Point	Latitude	Longitude
A	17°50.2'N.	64°27.9'W.
B	17°50.1'N.	64°26.1'W.
C	17°49.2'N.	64°25.8'W.
D	17°48.6'N.	64°25.8'W.
E	17°48.1'N.	64°26.1'W.
F	17°47.5'N.	64°26.9'W.
A	17°50.2'N.	64°27.9'W.

(b) *Mutton snapper spawning aggregation area.* From March 1 through June 30, each year, fishing is prohibited in the following area bounded by rhumb lines connecting the points in the order listed:

Point	Latitude	Longitude
A	17°37.9'N.	64°52.6'W.
B	17°38.2'N.	64°52.1'W.
C	17°38.3'N.	64°51.8'W.
D	17°38.1'N.	64°51.4'W.
A	17°37.9'N.	64°52.6'W.

§ 669.22 Harvest limitations.

(a) *Nassau grouper and jewfish.* Nassau grouper and jewfish may not be harvested or possessed in or from the EEZ. A Nassau grouper or jewfish caught in the EEZ must be released immediately with a minimum of harm.

(b) *Seahorses and foureye, banded, and longsnout butterflyfish.* Seahorses and foureye, banded, and longsnout butterflyfish may not be harvested or possessed in or from the EEZ. Such fish caught in the EEZ must be released immediately with a minimum of harm.

(c) *Marine aquarium fish.* A marine aquarium fish may be harvested in the EEZ only by a hand-held dip net or by a hand-held slurp gun. For the purposes of § 669.7(e) and this paragraph (c), a hand-held slurp gun is a device that rapidly draws seawater containing fish into a self-contained chamber, and a marine aquarium fish is a fish in the reef fish fishery that is smaller than 5.5 inches (14.0 cm), total length.

(d) *Yellowtail snapper*—(1) *Minimum size limit.* The minimum size limit for the possession of yellowtail snapper in or from the EEZ is 12 inches (30.5 cm) total length. An undersized yellowtail snapper caught in the EEZ must be released immediately with a minimum of harm.

(2) *Head and fins intact.* A yellowtail snapper possessed in the EEZ must have its head and fins intact and a yellowtail snapper taken from the EEZ must have its head and fins intact through offloading at a dock, berth, beach, seawall, or ramp. Such yellowtail snapper may be eviscerated but must otherwise be maintained in a whole condition.

§ 669.23 Gear restrictions.

(a) *Explosives, poisons, and powerheads.* (1) Explosives may not be used in the EEZ to fish for fish in the reef fish fishery. A vessel in the reef fish fishery may not possess on board any dynamite or similar explosive substances.

(2) Poisons, drugs, or other chemicals may not be used in the EEZ to fish for fish in the reef fish fishery.

(3) A powerhead may not be used in the EEZ to fish for fish in the reef fish fishery. Possession of a powerhead and a mutilated fish in the reef fish fishery aboard a vessel in the EEZ or aboard a vessel after having fished in the EEZ constitutes *prima facie* evidence that such reef fish was taken with a powerhead in the EEZ.

(b) *Fish traps*—(1) *Mesh size.* A bare-wire fish trap used or possessed in the EEZ that has hexagonal mesh openings of bare wire must have a minimum mesh size of 1.5 inches (3.8 cm), in the smallest dimension measured between centers of strands. A bare-wire fish trap used or possessed in the EEZ that has other than hexagonal mesh openings of bare wire must have a minimum mesh size of 2.0 inches (5.1 cm), in the smallest dimension measured between centers of strands. A fish trap of other than bare wire, such as coated wire or plastic, used or possessed in the EEZ must have a minimum mesh size of 2.0 inches (5.1 cm), in the smallest dimension of the opening (rather than between centers of strands).

(2) *Escape panels.* A panel must be located on each of two sides of the trap, excluding the top, bottom, and side containing the trap entrance. The opening covered by a panel must measure not less than 8 inches (20.3 cm) by 8 inches (20.3 cm). The mesh size of a panel may not be smaller than the mesh size of the trap. A panel must be attached to the trap with untreated jute twine with a diameter not exceeding ⅛ inch (.3 cm). An access door may serve as one of the panels, provided it is on an appropriate side, it is hinged only at its bottom, its only other fastening is at the top of the door so that the door will fall open when such other fastening degrades, and such other fastening is untreated jute twine with a diameter not exceeding ⅛ inch (.3 cm). Jute twine used to secure a panel may not be wrapped or overlapped.

(3) *Tending traps.* A fish trap in the EEZ may be tended or pulled only by a person (other than an authorized officer) aboard the fish trap owner's vessel(s), or aboard another vessel if such vessel has on board written consent of the fish trap owner, or if the fish trap owner is aboard and has documentation verifying his identification number and color code. An owner's written consent must specify the time period such consent is effective and the trap owner's identification number and color code. (See § 669.6 regarding identification numbers and color codes.)

§ 669.24 Limitations on sale.

Red hind or mutton snapper in or from the EEZ may not be sold, purchased, traded, or bartered alive, or attempted to be sold, purchased, traded, or bartered alive, that is, used in the marine aquarium trade.

§ 669.25 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities which are otherwise prohibited by these regulations.

§§ 669.1, 669.4, and 669.6 [Amended]

6. In addition to the amendments set forth above, in 50 CFR part 669, the words "shallow-water" are removed where they appear in the following places: § 669.1 (a) and (b); § 669.4; and § 669.6 (a), (e)(1) introductory text, (e)(2) (two places), and (e)(3).

[FR Doc. 93–17360 Filed 7–19–93; 9:42 am]
BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 139
Thursday, July 22, 1993

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

Forms Under Review by Office of Management and Budget

July 16, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;

(2) Title of the information collection;

(3) Form number(s), if applicable;

(4) How often the information is requested;

(5) Who will be required or asked to report;

(6) An estimate of the number of responses;

(7) An estimate of the total number of hours needed to provide the information;

(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250. (202) 690–2118.

Revision

Agricultural Stabilization and Conservation Service

7 CFR 1427.101–109—Upland Cotton First Handler and Domestic User/ Exporter Agreement and Payment Program, CCC–1044,1045, 1045(Amend 1), 1045–1 Recordkeeping; On occasion; Weekly Farms; Small businesses or organizations; 29,850 responses; 92,833 hours.

Janice Zygmont, (202) 720–6734.

Larry K. Roberson,

Deputy Department Clearance Officer.

[FR Doc. 93–17369 Filed 7–21–93; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Timber Salvage Sales, Black Hills National Forest, Lawrence County, SD and Crook County, WY

AGENCY: Forest Service, USDA.

ACTION: Notification that decisions related to harvesting downed and damaged trees from a natural blowdown area on the Spearfish and Bearlodge Ranger Districts are exempt from appeals under provisions of 36 CFR part 217.

SUMMARY: Pursuant to 36 CFR 217.4(a)(11), the Regional Forester for the Rocky Mountain Region has determined there is good cause to exempt from administrative appeal timber sales designed to remove downed and damaged trees from a natural blowdown area located on the Black Hills National Forest.

DATES: Effective July 22, 1993.

ADDRESSES: Send any written comments to Roberta Moltzen, Forest Supervisor, Black Hills National Forest, RR 2, Box 200, Custer, SD 57730, (605) 673–2251.

FOR FURTHER INFORMATION CONTACT: John P. Halligan, Appeals and Litigation Coordinator, Rocky Mountain Region, USDA Forest Service, 740 Simms, P.O. Box 25127, Lakewood, CO 80225, (303) 275–5148.

SUPPLEMENTARY INFORMATION: A storm with high winds up to 110 miles per hour occurred on June 29, 1993, on portions of the Black Hills National Forest. This storm caused several hundred acres of trees to blow down or have the tops broken off. Large losses of timber volume will occur if no action is taken. Fuel loadings have also increased as a result of downed timber. This increases the risk of catastrophic fires and the difficulty of fire control.

With full consideration given to environmental values and Forest Plan standards and guidelines; specific management objectives for the area are to:

1. Harvest the downed timber within 90 days to reduce incidence of blue stain fungus, which lowers the grade quality of the wood fiber, and to reduce rot which degrades the wood fiber,

2. Reduce the potential for Ips beetles attacking the remaining timber,

3. Reduce the heavy fuel loading,

3. Maintain wood fiber production capability,

4. Increase accessibility for wildlife, livestock, and dispersed recreationalists in areas now impeded by downed timber, and

5. Enhance visual quality of the storm area by removing downed and broken topped trees not needed for wildlife habitat.

Environmental analysis of proposed actions is currently under way. Pursuant to 40 CFR 1501.7, scoping in progress. Scoping is being conducted by the Spearfish District Ranger to determine the issues to be addressed in the environmental analysis.

The Spearfish and Bearlodge Ranger Districts are expected to complete the environmental analysis and documentation in July 1993. Decisions are expected at that time. The environmental documents will be available for public review at the Spearfish Ranger District Office, 2014 North Main, Spearfish, SD 57783, and the Bearlodge Ranger District Office, West Highway 14, Sundance WY 82729.

There are a number of management areas in the project area which emphasize wood fiber production, perpetuation of aspen and birch and riparian area management. The Black Hills Land and Resource Management Plan defines the objectives for these management areas.

The interdisciplinary team is planning to salvage harvest the merchantable downed and damaged trees in a gross area of approximately 8,000 acres. Timber harvesting is expected on approximately 1,500 acres outside of active timber sale units. Little or no road construction or reconstruction is planned.

The interdisciplinary team has reviewed the area and concluded that a large portion of the Baldy, Lone Grave, Beartown Hill, Rattlesnake, Kirley, and Stanton Draw areas has been heavily damaged by the blowdown. The amount of losses are currently being estimated.

If salvage harvesting is not completed before October 1, 1993, there will be corresponding losses of timber volume and value and wood fiber production. To accomplish this, environmental

analysis and timber sale preparation must be completed during the summer of 1993 so that the resulting timber sales can be sold and harvested prior to October 1993. Therefore, I am exempting those and attendant actions, from appeal under provisions of 36 CFR part 217 if, through environmental analysis, it is found these actions are feasible.

The timber salvage sales, and attendant actions to which this exemption applies will be identified in any documentation as part of the Blowdown Project.

Dated: July 12, 1993.

Elizabeth Estill,

Regional Forester.

[FR Doc. 93-17402 Filed 7-21-93; 8:45 am]

BILLING CODE 3410-11-M

Exemption of 685 Salvage Timber Sale Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a timber salvage and rehabilitation project designed to recover blown-down timber is exempt from appeal as per provisions of 36 CFR part 217.

SUMMARY: During the summer of 1992, severe wind storms in the Sheep Mountain area of the North Fork Ranger District, Clearwater National Forest, produced areas of wind-thrown timber. The North Fork District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area.

The District Ranger has determined, through a Decision Notice and environmental analysis in the supporting project file, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration.

EFFECTIVE DATE: Effective on July 22, 1993.

FOR FURTHER INFORMATION CONTACT: Art Bourassa; District Ranger; North Fork Ranger District; Clearwater National Forest; P.O. Box 2139; Orofino, ID 83544; Telephone (208) 476-3775.

SUPPLEMENTARY INFORMATION: Severe wind storms during the summer of 1992 damaged approximately 253 acres of timber in the Sheep Mountain area. In 1992, the North Fork District Ranger proposed the salvage harvest of the wind-thrown timber. The wind-thrown timber is located in Management Area E-1, which is allocated to timber management (Clearwater Forest Plan, September 1987). This proposal was designed to meet the following needs, (a) reduce the potential for epidemic insect infestation, (b) reduce the threat of wildfire due to excessive fuel loading and reduce barriers to big-game travel, (c) rehabilitate timber stands through regeneration, and (d) salvage merchantable timber products and contribute to a continuous supply of timber by recovering sawtimber before it deteriorates in value.

An interdisciplinary team was convened and scoping began. Scoping and resource specialists findings revealed no extraordinary circumstances. From this information, two alternatives were developed and analyzed; no treatment (no action) and a salvage/rehabilitation alternative (proposed action). The selected alternative will salvage approximately 1.2 MMBF of timber from approximately 253 acres. All salvage areas are accessible from existing roads; no road construction or reconstruction will occur.

This sale and accompanying work is designed to accomplish the objectives as quickly as possible to minimize the risk of an insect epidemic, reduce the potential for wildfire and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this regulation, the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of Forest Resources from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the information presented in the 685 Salvage Timber Sale Project File, Environmental Assessment and Decision Notice, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: July 15, 1993.

Jack A. Blackwell,

Acting Deputy Regional Forester, Northern Region.

[FR Doc. 93-17377 Filed 7-21-93; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Upper Sunday Salvage Timber Sales From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a timber salvage project to recover insect-killed, dead and down, and high-risk timber is exempt from appeal under the provisions of 36 CFR part 217.

SUMMARY: A mountain pine beetle epidemic in the Upper Sunday Creek drainage on the Fortiné Ranger District, Kootenai National Forest, has killed approximately 70 to 100 percent of the lodgepole pine within the analysis area. In 1993, the Fortine District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area. The District Ranger has determined, through an environmental analysis documented in the Decision Memo and project file for the Upper Sunday Salvage Timber Sales, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration of sawtimber, minimize fire danger by removing accumulations of merchantable dead lodgepole pine timber, and reduce the spruce bark beetle infestation that could damage adjacent standing green spruce.

EFFECTIVE DATE: Effective on July 22, 1993.

FOR FURTHER INFORMATION CONTACT: Jane P. Kollmeyer; Fortine District Ranger; Kootenai National Forest; P.O. Box 116; Fortine, MT 59918. Telephone: (406) 882-4451.

SUPPLEMENTARY INFORMATION: A mountain pine beetle epidemic occurred in the Upper Sunday Creek drainage on the Fortine Ranger District, Kootenai National Forest, during the last several years. The project area is located within Management Areas 12 and 15 as designated by the Kootenai Forest Plan (September 1987) as suitable timberland with timber management goals.

In January of 1993, the Fortine District Ranger proposed a timber harvest within the Upper Sunday Creek drainage. This proposal is designed to meet the following needs:

(1) Reduce the risk of catastrophic wildfire in stands killed by the beetle infestation by reducing fuel loading;

(2) Reduce spruce bark beetle levels by harvesting down spruce trees;

(3) Reduce open-road density levels by timing of timber sales projects;

(4) Clear road surfaces and ditches of dead lodgepole pine to enable road maintenance, reduce erosion potential

and allow access for fire suppression; and

(5) Contribute to a continuing supply of timber for industry by salvaging dead lodgepole pine before it deteriorates in value.

An interdisciplinary team was convened, and public scoping began in March 1993. Two alternatives were analyzed, no treatment (no action) and a salvage and rehabilitation proposal (proposed action). The selected alternative would salvage approximately 800 MBF from 400 acres. The Silvicultural prescription includes 400 acres intermediate sanitation salvage (a stocked stand would remain). The proposal would be implemented with four small salvage sales ranging in size from 40 to 400 MBF. All sales would use existing roads.

The salvage timber sale project is designed to accomplish the objectives as quickly as possible to reduce the potential for catastrophic wildfire, and to recover merchantable sawtimber before it deteriorates and removal becomes economically infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena when the Regional Forester determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the environmental analysis documented in the Decision Memo for the Upper Sunday Salvage Timber Sales, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project would not be subject to review under 36 CFR part 217.

Dated: July 15, 1993.

Jack A. Blackwell,

Acting Deputy Regional Forester, Northern Region.

[FR Doc. 93–17376 Filed 7–21–93; 8:45 am]

BILLING CODE 3410–11–M

Babbitt Helicopter, Jammer, and Boundary Insect Salvage Timber Sales, Tahoe National Forest; Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of Exemption from Appeal, Babbitt Helicopter, Jammer, and Boundary Insect Salvage Timber Sale Decisions, Sierraville Ranger District, Tahoe National Forest.

SUMMARY: The Forest Service is exempting from appeal the Babbitt Helicopter, Jammer, and Boundary Insect Salvage Timber Sale Decisions on the Sierraville Ranger District. These environmental documents are being prepared in response to the severe timber mortality caused by drought and related insect infestation on the east side of the Sierraville Ranger District. The Babbitt Helicopter analysis area is within the Smithneck Creek watershed, approximately seven miles southeast of Loyalton, California. The Jammer analysis area is within the Sardine watershed, approximately 12 miles southeast of Loyalton; and the Boundary analysis area is within the Independence and Sagehen Creek watersheds, approximately 10 miles southeast of Sierraville, California.

There are higher than normal levels of tree mortality occurring on the east side of the Tahoe National Forest as a result of six consecutive years of below normal precipitation. In the Babbitt Helicopter Insect Salvage analysis, the Forest is proposing helicopter harvest of up to 2.0 million board feet (MMBF) and tractor harvest of up to 1.0 MMBF, on 880 acres. Jammer Insect Salvage would entail tractor harvest of up to 1.0 MMBF from 475 acres, and Boundary Insect Salvage involves tractor harvest of up to 1.0 MMBF from 425 acres. No new road construction is planned, although up to 3.5 miles of road reconstruction would be required in Babbitt Helicopter Insect Salvage, and up to 1.5 miles of road reconstruction would be required in the Jammer Insect Salvage. All three of these proposals are fully consistent with direction in the Forest's approved Land and Resources Management Plan (LRMP). Important analysis features include the Babbitt Peak Research Natural Area and the Little Truckee River, which is eligible for Recreational status within the Wild and Scenic Rivers system.

The drought has had the greatest effect on over-stocked young sawtimber stands and older mature trees, reducing their vigor, weakening their natural defense mechanisms, and predisposing them to attack by the bark beetles. The greatest mortality, occurring among white fir, ranges from 25% to 40% of current stocking. This white fir is located within the Mixed Conifer and Eastside Pine types, at elevations of 6200–7200 feet. The rapid deterioration rate of white fir requires that it be removed as soon as possible if the timber is to be utilized, its value is to be recovered, and the fire hazard is to be reduced. Prompt removal is critical, particularly in the Babbitt Helicopter analysis area, where helicopter salvage is proposed. This is because helicopter harvest is expensive, and salvage is also costly as compared with green timber sales, due to the relatively low volumes per acre harvested. Delays could make the proposed helicopter sale uneconomical and reduce the value of the tractor sales.

Regional entomologists have visited these areas and have stated that because of the lingering effects of the drought, overstocking, and the large acreage involved, no economical or practical means exist to control the insect epidemic. Though salvage harvesting will not control the insect epidemic, it would recover valuable timber that would otherwise deteriorate and create a severe fire hazard. Excessive numbers of dead trees produce heavy fuel concentrations, which make wildfire control extremely difficult.

It is extremely important to remove dead and dying timber prior to its deterioration and subsequent value loss. Timber sales themselves, or the deposits associated with them, can provide for fuel treatment that might not otherwise be funded. Prompt harvest of dead and dying timber provides not only the highest return to the government, but also the opportunity to collect funds to rehabilitate resource values affected by extensive tree mortality. Prompt harvest of dead and dying timber also stimulates the economies of rural communities impacted by reduced timber harvests.

The decisions of the Babbitt Helicopter, Jammer, and Boundary analysis areas are scheduled for late July or early August. Implementation of these projects will occur in late August or September of 1993, when the timber will be offered for sale. Harvest is expected to begin immediately after award of these sales. Delays due to appeals (which can range from 100 days to six months, with an additional 15–20 days for discretionary review of the Chief of the Forest Service) could cause these projects not to be implemented this field season; access could also be difficult for winter operations. Because of the small size of the timber involved and its rapid deterioration rate, delays of these salvage operations until 1994 could cause value losses of as much as $400,000.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal, decisions relating to the harvest and restoration of lands covered by the Babbitt Helicopter, Jammer, and Boundary Insect Salvage Timber Sale proposals on the Sierraville Range District, Tahoe National Forest. The three environmental documents being prepared will address the effects of the proposed actions on the environment.

will document public involvement, and will address the issues raised by the public.

EFFECTIVE DATE: This decision is effective July 22, 1993.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Forest Management Staff Director, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2684; or to John H. Skinner, Forest Supervisor, Tahoe National Forest, 631 Coyote Street, P.O. Box 6003, Nevada City, CA 95959, (916) 265–4531

SUPPLEMENTARY INFORMATION: Environmental analyses for these proposals will be documented in the Babbitt Helicopter Insect Salvage Environmental Assessment, the Jammer Insect Salvage Decision Memo, and Boundary Insect Salvage Decision Memo. The Sierraville District Range has conducted scoping to determine the issues and concerns to be addressed. Letters were mailed to 40 agencies, permittees, environmental organizations, the timber industry, local landowners, and other parties known to be interested. No replies to these letters have been received. Project files, related maps, and copies of the public involvement letters are available for public review at the Sierraville Range Station, Highway 89, P.O. Box 95, Sierraville, CA 96126.

The catastrophic damage presently occurring within these three analysis areas involves approximately 1,780 acres, with an associated timber volume of 4–5 million board feet. The value to the Forest Service of the Salvage volume is estimated at $670,000–825,000. This figure does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply, and construction industries. Sierra County will share 25% of the selling value for any of the timber that is salvaged in a commercial timber sale. Rehabilitation and restoration measures necessary for watershed protection, erosion prevention, and fuels reduction will be implemented.

None of these proposals is expected to adversely affect any known pairs of California spotted owls, nor do these proposals entail harvest in any spotted Owl Habitat Areas. Most harvest areas lie within the Eastside Pine type, which was heavily logged at the turn of the century and now consists of young, overstocked timber stands. Less than 70 acres of over mature forest lie within these three analysis areas.

None of these proposals is expected to adversely affect snag-dependent wildlife species. All three proposals will require retention of snags in sufficient number and of sufficient size to meet wildlife needs. Monitoring indicates that recent salvage operations on this forest have retained 2.5 times the average snag densities called for in the forest's approved LRMP. Proposed salvage operations are sufficiently separated by distance, topography, and vegetative screening from the Little Truckee River, to ensure that its character will be preserved along with its eligibility for Recreational status within the Wild and Scenic Rivers system. No harvesting will occur in the Babbitt Peak Research Natural Area. None of the three analysis areas includes any portion of any Wilderness areas or roadless areas. Management requirements for Streamside Management Zones, meadows, soil productivity, and fuels will be consistent with direction in the forest's approved LRMP. Final field design of all three proposals will avoid any areas which may be sensitive in terms of their heritage resources, wildlife habitat, or botanical resources.

Dated: July 15, 1993.

Dale N. Bosworth,

Deputy Regional Forester.

[FR Doc. 93–17375 Filed 7–21–93; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Lower Caney Bayou Watershed, Arkansas

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for Lower Caney Bayou Watershed project (Chicot County, Arkansas).

FOR FURTHER INFORMATION CONTACT: Ronnie D. Murphy, State Conservationist, Soil Conservation Service, Room 5404, Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201. Telephone: (501) 324–5445.

SUPPLEMENTARY INFORMATION: A determination has been made by Ronnie D. Murphy that the proposed works of improvement for the Lower Caney Bayou Watershed Project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Ronnie D. Murphy, state conservationist, at the above address and telephone number. No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: July 13, 1993.

Ronnie D. Murphy,

State Conservationist.

[FR Doc. 93–17389 Filed 7–21–93; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Ohio 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 factfinding meeting of the Ohio Advisory Committee to the Commission will be held on Thursday, August 19, 1993, from 9 a.m. until 4:30 p.m. and on Friday, August 20, 1993, from 9 a.m. until 1 p.m., at the Holiday Inn Lakeside City Center, 1111 Lakeside Avenue, Cleveland, Ohio. The purpose of the meeting is to gather information on hate crime activity in Ohio.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Lynwood L. Battle, 513–983–2843, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). 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, July 14, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–17409 Filed 7–21–93; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Ohio Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the Commission on Civil Rights, that a factfinding meeting of the Ohio Advisory Committee to the Commission will be held on Thursday, August 12, 1993, from 9:00 a.m. until 4:30 p.m., and on Friday, August 13, 1993, from 9:00 a.m. until 1:00 p.m., at the Hyatt Regency, 151 West Fifth Street, Cincinnati, Ohio. The purpose of the meeting is to gather information on hate crime activity in Ohio.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Lynwood L. Battle, 513–983–2843, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). 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, July 14, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–17410 Filed 7–21–93; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1993 National Census Test III (Spanish Forms Availability Test).

Form Number(s): DE–1B, DE–1C, DE–1C(S), DE–1D, DE–17.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 4,815 hours.

Number of Respondents: 29,000.

Avg Hours Per Response: 10 minutes.

Needs and Uses: As part of a program of research and development to assist in formulating policy and design options for the Year 2000 Census of Population and Housing, the Census Bureau plans to conduct the fifth in a series of National Census Tests. This test, the 1993 National Census Test III (Spanish Forms Availability Test), will measure the effect of mailing Spanish forms to targeted areas with high concentrations of persons who speak Spanish and either do not speak English very well or do not speak English at all. In previous censuses, the Census Bureau has made Spanish questionnaires available to respondents who call and request one but has never included Spanish questionnaires with the initial mail–out. Our goal is to determine if initially mailing a Spanish language questionnaire to respondents in targeted areas of the country will improve response rates, and thus whether its use might be considered in the 2000 census.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 19, 1993

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–17460 Filed 7–21–93; 8:45 am]

BILLING CODE 3510–07–F

Foreign-Trade Zones Board

[Docket 31–93]

Foreign-Trade Zone 120—Cowlitz County, WA; Application for Subzone, Sharp Microelectronics Technology, Inc., Plant (Liquid Crystal Displays), Camas, WA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Cowlitz Economic Development Council, grantee of FTZ 120 (in cooperation with the Port of Portland and the Port of Kalama), requesting special-purpose subzone status for the liquid crystal display (passive matrix) manufacturing plant of Sharp Microelectronics Technology, Inc. (SMT), (subsidiary of Sharp Corporation of Japan) in Camas (Clark County), Washington, adjacent to the Portland, Oregon, Customs port of entry. The application has been submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 9, 1993.

SMT's facility (120 acres) is located at 5700 NW Pacific Rim Boulevard, Camas, Washington, 10 miles northeast of Portland, Oregon. The facility is used to manufacture and repair passive matrix liquid crystal displays (LCDs). The application requests authority for existing and planned LCD manufacturing capacity (total: 160,000 sq. ft.; 300 employees).

Foreign components currently account for 60 percent of the value of the displays. Specific items sourced from abroad include liquid crystal display glass, large-scale flexible integrated circuits, printed wiring boards, plastic or metal display bezels, backlight assemblies (containing a chassis, a cold cathode fluorescent tube, reflector material and associated parts), jumpers, solder, flux, protective sheets, tape, plastic trays, and inner packaging.

Zone procedures would exempt SMT from Customs duty payments on foreign components used in production for export. On domestic sales, the company would be able to choose the duty rate that applies to the finished product. LCDs such as those produced at the Camas plant have been classified as duty-free, but recent Customs rulings indicate that certain LCDs may be subject to duty rates ranging from 3.7 to 9 percent. The duty rates on foreign components range from duty-free to 9 percent. SMT currently is able to import certain unassembled LCD kits duty-free, under the Customs entireties provision. The kits are comprised of the main LCD components, all sourced abroad: LCD glass, jumpers, integrated circuits and printed wiring boards. The application indicates that zone procedures will improve the plant's international competitiveness and will encourage domestic sourcing by allowing SMT to continue to qualify for the same finished product duty rate as is currently available under the Customs entireties provision, but with the flexibility to source key components domestically.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 20, 1993. Rebuttal comments in response to material submitted during the foregoing

period may be submitted during the subsequent 15-day period (to October 5, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, One World Trade Center, Suite 242, 121 S.W. Salmon St., Portland, Oregon 97204.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 14, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–17458 Filed 7–21–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[C–469–004]

Stainless Steel Wire Rod From Spain; 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 stainless steel wire rod from Spain, initiated on March 8, 1993.

EFFECTIVE DATE: July 22, 1993.

FOR FURTHER INFORMATION CONTACT: Anna T. Milone or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4406 or 482–2786.

SUPPLEMENTARY INFORMATION: On January 29, 1993, A1 Tech Specialty Steel Corporation, Armco Stainless & Alloy Products, Carpenter Technology Corporations, Republic Engineered Steels, and Talley Metals Technology, Inc., requested that the Department conduct an administrative review of the countervailing duty order on stainless steel wire rod from Spain (48 FR 52, January 3, 1983) for the period January 1, 1992 through December 31, 1992. These companies are domestic producers of the subject merchandise and are interested parties pursuant to §355.2(i) of the Departments regulations. Of the aforementioned companies, A1 Tech Specialty Corporation, Armco Stainless & Alloy Products, and Carpenter Technology Corporations, were petitioners in the original investigation. No other interested party requested the review.

On March 8, 1993, the Department initiated the administrative review for that period (58 FR 12931). On June 7, 1993, the aforementioned companies withdrew their request for an administrative review. Since the request for withdrawal was timely in accordance with 19 CFR 355.22(a)(3), the Department is terminating this review.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: July 14, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–17457 Filed 7–21–93; 8:45 am]

BILLING CODE 3510–DS–P

Minority Business Development Agency

MEGA Center Applications: Los Angeles Metropolitan Statistical Area With Selected Services Throughout the States of Alaska, Arizona, California, Hawaii, Nevada, Oregon and Washington; Correction

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Correction.

SUMMARY: In notice Docket Number 930664–3164 beginning on page 38115 in the issue of Thursday, July 15, 1993, make the following correction:

On page 38116 in the first column, first paragraph, the award period for the Los Angeles MEGA Center was given from November 1, 1993 to January 1, 1995. This should be changed to read from November 1, 1993 to January 31, 1995.

Dated: July 15, 1993.

Loretta Young,

Acting Deputy Director, Minority Business Development Agency.

[FR Doc. 93–17398 Filed 7–21–93; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Marine Mammals

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

ACTION: Issuance of Scientific Research Permit No. 866 (P537).

On May 13, 1993, notice was published in the **Federal Register** (58 FR 28395) that an application had been filed by Mr. Fred A. Sharpe, Behavioral Ecology Research Group, Department of Biological Sciences, Simon Fraser University, Burnaby, B.C. Canada V5A 1S6 to conduct observational/photo-identification/side scan sonar studies on up to 1000 humpback whales (*Megaptera novaeangliae*) in Alaskan waters over a 4-year period, and to conduct opportunistic photo-identification of up to 100 killer whales (*Orcinus orca*) annually during the proposed humpback whale research.

Notice is hereby given that on July 15, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222), NMFS issued the requested Permit for the above activities subject to Special Conditions set forth therein.

Issuance of this Permit, as required by the ESA, was based on a finding that such Permit:

(1) Was applied for in good faith;

(2) Will not operate to the disadvantage of the endangered species which is the subject of this Permit; and

(3) Is consistent with the purposes and policies set forth in section 2 of the ESA.

The Permit and other related documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, 1335 East West Highway, room 7330, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, NMFS, Federal Annex, 9109 Mendenhall Mall Rd., suite 6, Juneau, AK 99802 (907/586–7221).

Dated: July 15, 1993.

Herbert Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–17384 Filed 7–21–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

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

ACTION: Issuance of permit modification (P517).

SUMMARY: Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing

the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 789 issued to Dr. Kathryn A. Ono, Assistant Research Marine Biologist, Biology Board of Studies and Institute of Marine Sciences, University of California, Santa Cruz, CA 95064, to conduct scientific research on Steller sea lions (*Eumetopias jubatus*) and California sea lions (*Zalophus californianus*) has been modified to allow tagging and handling of an additional 40 California sea lions of which 2 may be accidentally killed.

ADDRESSES: The Permit is available for review, by appointment, in the Permit Division, Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4015).

Dated: July 15, 1993.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–17385 Filed 7–21–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35).

Title and OMB Control Number: DoD FAR Supplement, part 215, Contracting by Negotiation, and the Clauses at 252.215; OMB Control No. 0704–0232.

Type of Request: Revision.

Number of Respondents: 199,400.

Responses per Respondent: Approximately 1.

Annual Responses: 199,515.

Average Burden per Response: Approximately 5 hours.

Annual Burden Hours: 910,500.

Needs and Uses: The information collected by part 215 of the DoD FAR Supplement provides data necessary for the negotiation of contracts and in the performance of estimating system surveys.

Affected Public: Businesses of other for-profit, Non-profit institutions, and Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 19, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–17408 Filed 7–21–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Performance Review Boards Membership

AGENCY: Office of the Secretary of the Army (Manpower and Reserve Affairs), DoD.

ACTION: Notice.

SUMMARY: Notice if given of the names of members of the Performance Review Boards for the Department of the Army.

EFFECTIVE DATE: August 1, 1993.

ADDRESSES: U.S. Army Senior Executive Service, Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), ATTN: SAME–CPP(SES), 111 Army Pentagon, Washington, DC 20310–0111.

FOR FURTHER INFORMATION CONTACT: Jeanne Raymos, (703) 695–2975.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S. Code, requires each agency to establish, one or more Senior Executive Service Performance Review Boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

The members of the Performance Review Board, Office, Secretary of the Army are:

1. Thomas Druzgal, Deputy Auditor General, Army Audit Agency.
2. Evert W. Oerding, Director, Logistical & Financial Audits Army Audit Agency.
3. Steven Dola, Deputy Assistant Secretary of the Army (Management and Budget), Office of the Assistant Secretary of the Army (Civil Works).
4. Robert N. Stearns, Deputy Assistant Secretary of the Army (Project Management), Office of the Assistant Secretary of the Army (Civil Works).
5. Milton H. Hamilton, Administrative Assistant to the Secretary of the Army, Office, Secretary of the Army.
6. Peter Stein, Deputy Administrative Assistant to the Secretary of the Army, Office, Secretary of the Army.
7. James E. DeWire, Deputy for Programs and Installation Assistance, Office of the Assistant Secretary of the Army Installations, Logistics and Environment).
8. Eric A. Orsini, Deputy Assistant Secretary of the Army (Logistics), Office of the Assistant Secretary of the Army (Installations, Logistics and Environment).
9. Anthony H. Gamboa, Deputy General Counsel (Acquisition), Office of the General Counsel.
10. Darrell L. Peck, Deputy General Counsel (Military & Civil Affairs), Office of the General Counsel.
11. Brigadier General David E. White, Director, Plans and Programs Directorate, Director of Information Systems for Command, Control, Communications and Computers.
12. Earl J. Holliman, Army Spectrum Manager, Director of Information Systems for Command, Control, Communications and Computers.
13. William K. Takakoshi, Special Assistant to the Under Secretary, Office of the Under Secretary of the Army.
14. Charles H. Church, Director for Advanced Concepts and Technology Assessment, Office of the Assistant Secretary of the Army (Research, Development and Acquisition).
15. Joseph R. Varady, Director for Procurement Policy, Office of the Assistant Secretary of the Army (Research, Development and Acquisition).
16. Erin J. Hausman, Assistant Deputy Assistant Secretary of the Army for Army Budget, Office of the Assistant Secretary of the Army (Financial Management).
17. Robert W. Young, Deputy for Cost Analysis, Office of the Assistant Secretary of the Army (Financial Management).
18. John W. Matthews, Deputy Assistant Secretary of the Army (DA Review Boards & EEO Compliance & Complaints Review), Office of the Assistant Secretary of the Army (Manpower & Reserve Affairs).

19. Michael W. Owen, Acting Assistant Secretary of the Army (Installations, Logistics & Environment), Office of the Assistant Secretary of the Army (Installations, Logistics & Environment).

20. William D. Clark, Acting Assistant Secretary of the Army (Manpower & Reserve Affairs), Office of the Assistant Secretary of the Army (Manpower & Reserve Affairs).

21. Walter W. Hollis, Deputy Under Secretary of the Army (Operations Research), Office of the Under Secretary of the Army.

The members of the Performance Review Board for the Chief of Staff, Army are:

1. Zane M. Phillips, Principal Assistant Responsible for Contracting, U.S. Army Space & Strategic Defense Command.

2. Edward L. Wilkinson, Director, Kinetic Energy Weapons Directorate, U.S. Army Space & Strategic Defense Command.

3. William P. Neal, Executive Director, Strategic Logistics Agency, Office, Deputy Chief of Staff for Logistics.

4. A. David Mills, Assistant Director for Maintenance Management, Office, Deputy Chief of Staff for Logistics.

5. Brigadier General James M. Wright, Director, Plans and Operations Office, Deputy Chief of Staff for Logistics.

6. Charles W. Weatherholt, Deputy Director of Civilian Personnel Office, Deputy Chief of Staff for Personnel.

7. Joseph E. Galbraith, Director, Civilian Personnel Management U.S. Total Army Personnel Command, Office, Deputy Chief of Staff for Personnel.

8. Major General Wallace Arnold, Assistant Deputy Chief of Staff for Personnel, Office, Deputy Chief of Staff for Personnel. (9)

9. Brigadier General George A. Landis, Commander, Personnel Information Systems, U.S. Total Army Personnel Command, Office, Deputy Chief of Staff for Personnel.

10. Major General Steven L. Arnold, Assistant Deputy Chief of Staff for Operations and Plans, Office, Deputy Chief of Staff for Operations and Plans.

11. John A. Riente, Technical Advisor to the Deputy Chief of Staff for Operations and Plans, Office, Deputy Chief of Staff for Operations and Plans.

12. Major General John C. Ellerson, Director, Strategy, Plans and Policy, Office, Deputy Chief of Staff for Operations and Plans.

13. Brigadier General Trent Thomas, Assistant Deputy Chief of Staff for Intelligence, Office, Deputy Chief of Staff for Intelligence.

14. James D. Davis, Assistant Deputy Chief of Staff for Intelligence, Office, Deputy Chief of Staff for Intelligence.

15. Janet C. Menig, Deputy Director of Management (Installation Management and Resourcing), Office of the Chief of Staff.

16. Margaret E. Myers, Deputy to the Commander/Technical Director, Operational Evaluation Center, U.S. Army Operational Test & Evaluation Command.

The members of the Performance Review Board for Army Acquisition Executive are:

1. Dale Adams, Program Executive Officer, Armaments.

2. George G. Williams, Program Executive Officer, Tactical Missiles.

3. Major General DeWitt T. Irby, Program Executive Officer Aviation.

4. Major General Peter M. McVey, Program Executive Officer Armored Systems Modernization.

5. Major General William S. Chen, Program Executive Officer Missile Defense.

6. Maurice R. Donnelly, Assistant Deputy for Plans and Programs, Assistant Secretary of the Army (Research, Development and Acquisition).

7. Mr. Joseph R. Varady, Director for Procurement Policy Assistant Secretary of the Army (Research, Development and Acquisition).

8. Brigadier General (P) William H. Campbell, Program Executive Officer, Command & Control Systems.

9. Charles S. Austin, Program Executive Officer, Standard Army Management Information System.

10. Neal W. Atkinson, Deputy Program Executive Officer Communication Systems.

The members of the Performance Review Board for the Consolidated Commands are:

1. Mervin A. Frantz, Jr., Assistant Deputy Chief of Staff for Resource Management, Headquarters, U.S. Army Training and Doctrine Command.

2. Toni B. Wainwright, Assistant Deputy Chief of Staff for Base Operations Support, Headquarters, U.S. Army Training and Doctrine Command.

3. Major General John Herrling, Chief of Staff, Headquarters, U.S. Army Training and Doctrine Command.

4. Major General Walter Bryde, Deputy Chief of Staff for Base Operations Support, Headquarters, U.S. Army Training and Doctrine Command.

5. Michael L. Gentry, Technical Director, U.S. Army Information Systems Engineering Command, U.S. Army Information Systems Command.

6. Leonard J. Mabius, Technical Director, Headquarters, U.S. Army Information Systems Command.

7. Brigadier General John M. Watkins, Jr., Deputy Commander for U.S. Army Information Systems Command, U.S. Army Information Systems Command.

8. Brigadier General George A. Landis, Commanding General, Personnel Information Systems Command, U.S. Army Information Systems Command.

9. Brigadier General John G. Zierdt, Jr., Director of Logistics, J4, Headquarters, Forces Command.

BILLING CODE 6717-01-M

10. William S. Fraim, Civilian Personnel Director, Headquarters, Forces Command.

11. William M. Wilkinson, Deputy Comptroller, Headquarters, Forces Command.

12. Thomas D. Collinsworth, Director, Transportation Engineering Agency, Military Traffic Management Command.

13. Mary Lou McHugh, Deputy Chief of Staff for Operations (Senior Transportation Advisor), Headquarters, Military Traffic Management Command.

14. William R. Lucas, Deputy to the Commander, Headquarters, Military Traffic Management Command.

15. Larry C. Hanson, Assistant Deputy Chief of Staff for Resource Management, Headquarters, U.S. Army, Europe, and Seventh Army.

16. Archie D. Grimmett, Assistant Deputy Chief of Staff for Personnel (Civilian Personnel), Headquarters, U.S. Army, Europe, and Seventh Army.

17. Walter W. Hollis, Deputy Under Secretary of the Army (Operations Research), Office of the Under Secretary of the Army.

18. Edgar B. Vandiver III, Director, Concepts Analysis Agency, Office of the Chief of Staff, Army.

19. Major General Samuel A. Leffler, Commander, U.S. Army Information Systems Command.

The members of the Performance Review Board for the Surgeon General are:

1. Major General Ronald H. Blanck, Commander, Walter Reed Army Medical Center.

2. Brigadier General Nancy R. Adams, Director of Personnel, Chief, Army Nurse Corps, and Assistant Surgeon General, Office of the Surgeon General.

3. Bhupendra P. Doctor, Ph.D., Director, Division of Biochemistry, Walter Reed Institute of Research.

4. Robert R. Engle, Ph.D., Deputy Director, Division of Experimental Therapeutics, Walter Reed Army Institute of Research.

5. Melvin H. Heiffer, Ph.D., Chief, Department of Pharmacology, Walter Reed Army Institute of Research.

6. Nelson S. Irey, M.D., Chairman, Department of Environmental and Drug Induced Pathology, Armed Forces Institute of Pathology.

7. Fathollah K. Mostofi, M.D., Chairman, Department of Genito-urinary Pathology, Armed Forces Institute of Pathology.

8. Florabel G. Mullick, M.D., Associate Director, Center for Advanced Pathology, Armed Forces Institute of Pathology.

9. Timothy J. O'Leary, M.D., Chairman, Department of Cellular Pathology, Armed Forces Institute of Pathology.

10. Donald E. Sweet, M.D., Chairman, Department of Orthopedic Pathology, Armed Forces Institute of Pathology.

The members of the Performance Review Board for the Corps of Engineers are:

1. Major General John F. Sobke, Deputy Commander, Headquarters, U.S. Army Corps of Engineers, Headquarters, U.S. Army Corps of Engineers.

2. Mr. Charles N. Dunnam, Deputy Chief, Construction Division (Engineering & Construction), Headquarters, U.S. Army Corps of Engineers.

3. Brigadier General Albert J. Genetti, Jr., Commander, Ohio River Division, U.S. Army Corps of Engineers.

4. Brigadier General Milton Hunter, Commander, South Pacific Division, U.S. Army Corps of Engineers.

5. Mr. John P. Elmore, Chief, Construction Operations & Readiness Division, Headquarters, U.S. Army Corps of Engineers.

6. Mr. James R. Hanchey, Chief Lower Mississippi Valley Division, U.S. Army Corps of Engineers.

7. Mr. Arthur D. Denys, Chief, Engineering, Southwestern Division, U.S. Army Corps of Engineers.

8. Mr. Jimmy Bates, Chief, Planning Division, Headquarters, U.S. Army Corps of Engineers.

9. Mr. Walter E. Boge, Director, Topographic Engineering Center, U.S. Army Corps of Engineers.

10. Mr. C. Cary Jones, Chief, Environmental Restoration Division, Headquarters, U.S. Army Corps of Engineers.

11. Mr. John Wallace, Director, Resource Management, Headquarters, U.S. Army Corps of Engineers.

12. Mr. Kisuk Cheung, Chief, Engineering Pacific Ocean Division, U.S. Army Corps of Engineers.

13. Mr. Louis Pinata, Director, Construction Operations, North Atlantic Division, U.S. Army Corps of Engineers.

14. Dr. John Harrison, Director, Environmental Laboratory, U.S. Army Engineer Waterways Experiment Station.

15. Mr. Richard Armstrong, Chief, Engineering, Headquarters, U.S. Army Corps of Engineers.

The members of the Performance Review Board for Army Materiel Command are:

1. Major General Dewitt T. Irby Jr., Program Executive Officer-Aviation.

2. Major General Thomas L. Prather, Deputy Chief of Staff for Research and Development, U.S. Army Materiel Command.

3. Brigadier General J.W. Boddie, Jr., Deputy CG for Procurement and Readiness, U.S. Army Armament, Munitions and Chemical Command, AMC.

4. Brigadier General Harvey E. Brown, Deputy Commanding General for Armament, U.S. Army Armament, Munitions and Chemical Command, AMC.

5. Brigadier General William R. Holmes, Deputy Chief of Staff for Ammunition, U.S. Army Materiel Command.

6. Brigadier General Richard W. Wharton, Jr., Commander, White Sands Missile Range, U.S. Army Test and Evaluation Command, AMC.

7. Mr. Grady Bannister, Technical Director, U.S. Army Electronic Proving Ground, U.S. Army Test and Evaluation Command, AMC.

8. Dr. Rudolph G. Buser, Director Night Vision and Electronic Sensors, U.S. Army Communications-Electronics Command, AMC.

9. Dr. Richard Chait, Principal Deputy for Technology, U.S. Army Materiel Command.

10. Mr. Jerry L. Chapin, Deputy PEO. Armored Systems Modernization.

11. Dr. Charles H. Church, Director, Advanced Concepts and Technology Assessments, HQDA.

12. Mr. Walter W. Clifford, Chief, Air Warfare Division, U.S. Army Materiel Systems Analysis Activity, AMC.

13. Dr. Larry O. Daniel, Director, System Engineering and Production, RD&E Center, U.S. Army Missile Command, AMC.

14. Dr. Wolf Elber, Directorate Executive, Vehicle Structures, U.S. Army Research Laboratory, AMC.

15. Ms. Louann Elledge, Dir, Systems Integration & Mgt Activity, AMC.

16. Mr. Victor J. Ferlise, Deputy to the Commander, U.S. Army Communications-Electronics Command, AMC.

17. Mr. Frank E. Fiorilli, Comptroller, U.S. Army Communications-Electronics Command, AMC.

18. Mr. James L. Flynn, III, Director, Integrated Materiel Management Center, U.S. Army Missile Command, AMC.

19. Dr. John T. Frasier, Dir, BRL, U.S. Army Laboratory Command, AMC.

20. Mr. David V. Gaggin, Director, Command/Control & Systems Integration, U.S. Army Communications-Electronics Command, AMC.

21. Mr. Feliciano Giordano, Assoc Tech Director, RD&E Center, U.S. Army Communications-Electronics Command, AMC.

22. Mr. Darold Griffin, Principal Deputy for Acquisition, U.S. Army Materiel Command.

23. Dr. Joseph W. Holmes, Director, Missile and Space Intelligence Center, Defense Intelligence Agency.

24. Mr. Thomas L. House, Technical Director, U.S. Army Aviation Systems Command, AMC.

25. Mr. George L. Jones, Deputy Chief of Staff for Personnel, U.S. Army Materiel Command.

26. Mr. Henry B. Jones, Director, Acquisition Center, U.S. Army Tank-Automotive Command, AMC.

27. Dr. Robin L. Keesee, Director, Human Research Engineering, U.S. Army Research Laboratory, AMC.

28. Mr. James C. Kelton, Technical Director, Combat Systems Test Activity, U.S. Army Test and Evaluation Command, AMC.

29. Mr. Arthur Keltz, Principal Deputy for Logistics, U.S. Army Materiel Command.

30. Dr. Clarence W. Kitchens, Jr., Chief, Terminal Ballistics Division, BRL, U.S. Army Laboratory Command, AMC.

31. Dr. Robert W. Lewis, Technical Director, Natick RD&E Center, U.S. Army Troop-Support Command, AMC.

32. Mr. Victor Lindner, Associate Technical Director, Systems Development and Engineering, ARDEC, U.S. Army Armament, Munitions, and Chemical Command, AMC.

33. Mr. Colin F. MacDonnell, Dir, C3I Logistics & Readiness Center, U.S. Army Communications-Electronics Command, AMC.

34. Mr. Robert B. Macfarlane, Deputy Command Counsel, U.S. Army Materiel Command.

35. Mr. William H. Mermagen, Sr., Directorate Executive, Advanced Computational and Information Sciences Directorate, ARL, AMC.

36. Dr. James W. Mink, Director, Electronics Division, U.S. Army Research Office, AMC.

37. Dr. Kenneth J. Oscar, Dir, RD&E, U.S. Army Tank-Automotive Command, AMC.

38. Mr. Michael A. Parker, Technical Director, Chemical, CRDEC, U.S. Army Armament Munitions and Chemical Command, AMC.

39. Dr. Bennie H. Pinckley, Dep Program Executive Officer, Air Defense.

40. Mr. Raymond G. Pollard, III, Technical Director, U.S. Army Test and Evaluation Command, AMC.

41. Ms. Renata Price, Assoc Tech Dir, ARDEC, U.S. Army Armament, Munitions, and Chemical Command, AMC.

42. Mr. Joseph J. Pucilowski, Jr., Director, CECOM Center for C3 Systems, U.S. Army Communications-Electronics Command, AMC.

43. Mr. Jerry L. Reed, Dir, Operations, U.S. Army Research Laboratory, AMC.

44. Mr. Alfred D. Reeder, Director, Acquisition Center, U.S. Army Missile Command, AMC.

45. Mr. Daniel J. Rubery, Logistics Director, U.S. Army Aviation Systems Command, AMC.

46. Mr. Michael Sandusky, Deputy Chief of Staff for Program Analysis and Evaluation, U.S. Army Materiel Command.

47. Dr. Robert E. Singleton, Director, Engineering & Environmental Sciences Division, U.S. Army Research Office.

48. Mr. Robert L. Swint, Acting Dep for Sys & Log, U.S. Army Tank-Automative Command, AMC.

49. Mr. Joseph J. Vervier, Director, Research Directorate, CRDEC, U.S. Army Armament, Munitions and Chemical Command, AMC.

50. Mr. Robert Weidenmuller, Assistant Deputy Chief of Staff for Resource Management, U.S. Army Materiel Command, AMC.

51. Mr. Wayne Wheelock, Tech Dir, RD&E Ctr, U.S. Army Tank-Automotive Command, AMC.

[FR Doc. 93-17390 Filed 7-21-93; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 23, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401-3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement;

(2) Title;

(3) Frequency of collection;

(4) The affected public;

(5) Reporting burden; and/or

(6) Recordkeeping burden; and

(7) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: July 16, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Performance Report for the Ronald E. McNair Postbaccalaureate Achievement Program.

Frequency: Annually.

Affected Public: Non-profit institutions.

Reporting Burden: Responses: 68; Burden Hours: 340.

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0.

Abstract: Grantees that have participated in the Ronald E. McNair Postbaccalaureate Achievement Program are to submit these reports to the Department. The Department uses the information to evaluate project accomplishments, compliance, prior experiences and collect impact data for budget submissions and congressional hearings.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Quarterly Cumulative Caseload Report.

Frequency: Quarterly.

Affected Public: State or local governments.

Reporting Burden: Responses: 324; Burden Hours: 324.

Recordkeeping Burden: Recordkeepers: 81; Burden Hours: 81.

Abstract: This report, submitted by State Vocational Rehabilitation agencies, collects data on caseload flows which includes persons served, rehabilitated and accepted for VR services. The Department will use the information for program management and budgeting purposes.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Case Service Report.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden: Responses: 81; Burden Hours: 3,464.

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0.

Abstract: State Vocational Rehabilitative (VR) agencies report client and program data. The Department uses the information to assess the accomplishments of program goals and objectives, and to prepare the annual report to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Report of Program Setting Where Early Intervention Services are Provided to Infants and Toddlers with Disabilities and Their Families.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden: Responses: 58; Burden Hours: 928.

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0.

Abstract: This package provides instructions and forms for States to report the program setting where infants and toddlers with disabilities receive services. These data serve as the basis for monitoring, implementing Federal programs and reporting to Congress

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Resolution of Applicant/Client Appeals.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden: Responses: 81; Burden Hours: 81.

Recordkeeping Burden: Recordkeepers: 81; Burden Hours: 81.

Abstract: This form will be used to meet specific data requirements, collecting information on the number and types of Vocational Rehabilitation agency applicant/client appeals handled, the types of complaints/issues, and the resolution of those appeals. The Department will use the information to monitor program management and compliance.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Annual Client Assistant Program (CAP) Report.

Frequency: Annually.

Affected Public: State or local governments; non-profit institutions.

Reporting Burden: Responses: 57; Burden Hours: 228.

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0.

Abstract: Client Assistant Program agencies use this form to report to the Department on their progress in administering the program. The Department uses the information to evaluate the program and make recommendations to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Annual Report on Post-Employment Services and Annual Reviews.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden: Responses: 81; Burden Hours: 81.

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0.

Abstract: State Vocational Rehabilitative (VR) agencies submit this report to the Department on the post-employment status of handicapped individuals. The Department uses the information collected to monitor post-closure activities of the VR clientele.

[FR Doc. 93-17357 Filed 7-21-93; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.129U]

Parent Information and Training Programs; Notice Extending the Closing Date for Transmittal of Applications for New Awards for Fiscal Year (FY) 1993

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: The deadline date for transmittal of applications is extended from July 16, 1993, to August 5, 1993.

On May 12, 1993, the Department of Education published in the **Federal Register** (58 FR 28001) a notice inviting applications under the Parent Information and Training Programs.

While the notice specifically referenced section 803(c) of the Rehabilitation Act of 1973, as amended, as the statutory authority governing this program, not all of the statutory requirements were specifically highlighted. By this notice, the Department wants to ensure that all applicants are aware of the requirement in section 803(c)(4)(C). This section requires that each private nonprofit organization serve individuals with a full range of disabilities, and the parents, family members, guardians, advocates, or authorized representatives of the individuals.

The purpose of this notice is to extend the deadline date for transmittal of applications. This will enable applicants to submit or amend their proposals.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: October 4, 1993.

FOR APPLICATIONS: To request an application, telephone (202) 205-9343. Deaf and hearing impaired individuals may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Beverly Brightly, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3322, Switzer Building, Washington, D.C. 20202-2649. Telephone: (202) 205-9561.

PROGRAM AUTHORITY: 29 U.S.C. 774.

Dated: July 16, 1993.

Judith E. Heumann,

Assistant Secretary, Office of Special Education, and Rehabilitative Services.

[FR Doc. 93-17359 Filed 7-21-93; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Inertial Confinement Fusion Advisory Committee/Defense Programs; Partially Closed Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) notice is hereby given of the following meeting:

Name: Inertial Confinement Fusion Advisory Committee/Defense Programs

Date and Time: Agenda is subject to revision

Wednesday, August 25, 1993, 9 a.m.-10:05 a.m.—Open

Wednesday, August 25, 1993, 10 a.m.-12:30 p.m.—Closed

Wednesday, August 25, 1993, 1:30 p.m.-6 p.m.—Open

Thursday, August 26, 1993, 9 a.m.-12:25 p.m.—Open

Thursday, August 26, 1993, 1:25 p.m.-2:55 p.m.—Closed

Thursday, August 26, 1993, 3:10 p.m.-6 p.m.—Open

Friday, August 27, 1993, 8:55 a.m.-11 a.m.—Closed

Friday, August 27, 1993, 11:15 a.m.-12:30 p.m.—Open

Place: Naval Research Laboratory, Washington, DC, Building 222, Auditorium (See below for restricted access procedures)

Contact: Marshall M. Sluyter, Designated Federal Officer, Office of Inertial Confinement Fusion (DP-28), Office of Defense Programs, Washington, DC 20585, Telephone: (301) 903-3345

Persons wishing to attend the meeting must contract Robert Robenseifner at (301) 903-8635, to arrange for visitor passes to the meeting room at the Naval Research Laboratory. Visits are restricted to U.S. citizens.

Purpose of the Committee: To provide advice and guidance to the Assistant Secretary for Defense Programs on both technical and management aspects of the Inertial Confinement Fusion program.

Purpose of the Meeting: To identify the appropriate program strategy for the Krypton fluoride laser fusion driver activities, as well as the relative importance of the Krypton fluoride laser fusion activity in relation to other activities of the Inertial Confinement Fusion Program.

Tentative Agenda: Subject to Revision

August 25, 1993

9 a.m. Introductory Remarks and Summary of Events Since Previous Advisory Committee Meeting

9:30 a.m. The Sandia Light Ion Technical Contract

10:20 a.m. Closed Meeting

1:30 p.m. The Naval Research Laboratory Krypton Fluoride Program

August 26, 1993

9 a.m. The Naval Research Laboratory Krypton Fluoride Program

10:25 a.m. The Los Alamos National Lab. Krypton Fluoride Program

1:25 p.m. Closed Meeting

3:10 p.m. Comments on the Krypton Fluoride Laser Fusion Program

4:40 p.m. Opportunity for Public Comment and Committee Discussion Period (oral presentations limited to 10 minutes)

August 27, 1993

8:55 a.m. Closed Meeting

11:15 a.m. Committee Discussion and Summary Wrap-Up

Open to the Public: On August 25, 1993, from 9 a.m. to 10:05 a.m., and from 1:30 p.m. to 6 p.m.; on August 26, 1993, from 9 a.m. to 12:25 p.m., and from 3:10 p.m. to 6 p.m.; and on August 27, 1993, from 11:15 a.m. until adjournment the meeting is open to the public. The Chairman of the Committee is empowered to guide the meeting in a manner that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact Robert Robenseifner at the phone number given above. Requests must be received before 3 p.m. (eastern daylight time) Friday, August 20, 1993. Reasonable provisions will be made to include the presentation during the public comment period. Oral presenters are asked to provide 25 copies of their statements at the time of their presentations.

Written statements pertaining to agenda items may also be submitted prior to the meeting. Written statements must be received by the Designated Federal Officer at the address shown above before 3 p.m. (eastern daylight time) Friday, August 20, 1993, to assure they are considered by the Committee during the meeting.

Closed Meeting: Pursuant to section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (title 5, United States Code, App. 2), section 7234(b), title 42, United States Code, and section 552b(c)(1), title 5, United States Code, the portions of the meeting from 10:20 a.m. to 12:30 p.m. on August 25, 1993, from 1:25 p.m. to 2:55 p.m. on August 26, 1993, and from 8:55 a.m. to 11 a.m. on August 27, 1993, will be closed to the public in the interest of national security.

Minutes: Minutes of the open portions of the meeting will be available for public view and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, room 1E–190, U.S. Department of Energy, 100 Independence Avenue, SW., Washington, DC, 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on July 16, 1993.

Marcia L. Morris,

Deputy Advisory Committee, Management Officer.

[FR Doc. 93–17453 Filed 7–21–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[Docket No. FE C&E 93–22—Certification Notice—122]

Filing Certification of Compliance; Coal Capability of New Electric Powerplant; Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Tenaska Washington Partners II, L.P. (Tenaska) has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the Federal Register that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Tenaska

Operator: Tenaska

Location: Tacoma, Washington

Plant Configuration: Combined cycle cogeneration

Capacity: 248 megawatts

Fuel: Natural gas

Purchasing Utilities: Bonneville Power Administration

Expected In-Service Date: 3rd Quarter, 1996

Issued in Washington, DC, July 19, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–17451 Filed 7–21–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4680–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 23, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: 404 State Permit Applications and 404 State Program Annual Report (EPA ICR No. 220.05; OMB Control No. 2040–0015).

Abstract: This ICR is an extension of an existing collection for the information collection activities associated with State 404 Permit Applications and State Program Annual Reports. Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) permitting authority may, in certain instances, be transferred to a State upon approval by the EPA. In accordance with 40 CFR part 233, States requesting a transfer of permitting authority must provide EPA with information before, and subsequent to, EPA approval. The EPA will use this information to satisfy specific requirements set forth by section 404 of the Clean Water Act.

This ICR, once approved, will continue to require State governments requesting a transfer of permitting

authority to complete an application to the EPA consisting of legal documents, correspondence from State Officials, Memoranda of Agreement with the Secretary of the Army and the EPA Regional Administrator, a complete program description, and appropriate State Statutes and regulations. Following the transfer of authority, States must provide EPA with: (1) Pre-notification by permit holders or reporting pursuant to a general permit; (2) an annual report providing statistics and describing the status of the State permit program; and (3) sufficient information for Federal review of individual applications where Federal review is not waived.

Presently one State has received permitting authority, with an estimated four additional States requesting transfer of authority over the next three years.

Burden Statement: Public reporting burden for this collection of information is estimated to average 16.6 hours per response including time for reviewing regulations, gathering and compiling the data needed, and completing and reviewing the information.

Respondents: State governments and permit holders, as appropriate.

Estimated Number of Respondents: 1,635.

Estimated Number of Responses Per Respondent: 1.

Frequency of Collection: On occasion of application by State for transfer of permit authority or notification of intent to discharge by a general permit holder; annual submission of State program report.

Estimated Total Annual Burden on Respondents: 27,190 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to:

Sandy Farmer, U.S.Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: July 14, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93-17337 Filed 7-21-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4681-9]

Policy Regarding the Sale of 1995 and Subsequent Model Year California Vehicles; Public Workshop

AGENCY: Environmental Protection Agency.

ACTION: Notice of public workshop and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is currently developing policy regarding the sale of 1995 and subsequent model year motor vehicles certified only to California standards. To aid the Agency in this process, a public workshop will be held to discuss the issues relevant to the sale of these California vehicles. The Agency is also inviting written comment on these issues. All interested parties are invited to attend the public workshop and provide input on all relevant issues.

DATES: The workshop will be held on Wednesday, August 11, 1993, beginning at 10 a.m. in Washington, DC. Persons interested in making presentations at the workshop are requested to notify the Agency contact below at least two weeks prior to the workshop so that a final agenda can be prepared. Written comments may be submitted to Public Docket No. A-93-30 until thirty days after the workshop.

ADDRESSES: The workshop will be held at L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington DC, 20024. Phone Number: 202-484-1000. Written comments may be submitted to Public Docket No. A-93-30 at the following address: U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket is available for public inspection from 8:30 a.m. until 12 noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mitchell Greenberg, Manufacturers Programs Branch, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Telephone (202) 233-9269.

SUPPLEMENTARY INFORMATION:

I. Background

Prior to New York's adoption of California motor vehicle emission standards, EPA's policy regarding the sale of California vehicles had been that these vehicles could not be sold outside of the State of California, unless the ultimate purchaser principally used, titled, or registered the vehicle in California.

The State of New York adopted California motor vehicle emission standards for light duty vehicles and light duty trucks beginning with the 1993 model year. State regulations implementing those standards took effect for engine families that began production on or after November 22, 1992. Due to the significant interstate sales between motor vehicle dealers located in New York and dealers located in its border states, concerns developed about potential economic burdens that dealers in New York and in contiguous states may face. To alleviate these concerns, EPA modified its existing policy regarding the sale of California vehicles. Under the modified policy, light duty vehicles and light duty trucks certified to California standards could be sold in California, New York (the only state to adopt California standards pursuant to section 177 for model years 1993 and 1994) and states contiguous to those two states.[1] EPA described this modified policy as it applies to the New York area and its legal basis in an April 28, 1993 letter sent to the Commissioner of New York's Department of Motor Vehicles (a copy of which has been placed in Public Docket No. A-93-30). In a June 10, 1993 response to a General Motors inquiry (also placed in Public Docket No. A-93-30), EPA described this policy in more detail. This modified policy, however, is effective for only the 1993 and 1994 model years. Additionally, several other states have adopted or are planning to adopt California standards which will also affect the 1995 and subsequent model years.

II. Information Requested

EPA is interested in obtaining all relevant information on the sale of new motor vehicles certified to California emission standards to assist us in evaluating the original (prior to 1993) and the current 1993/1994 model year policy. We are interested in discussion regarding the possibility of the continuation of the 1993/1994 policy into later model years or whether other options are more reasonable. Relevant information includes the impact of various policy options on the public, motor vehicle dealers and manufacturers, as well as air quality. EPA also requests comments regarding its legal authority to permit the sale of vehicles certified to California standards in states other than California or those

[1] New York did not adopt California medium duty vehicle (MDV) standards, therefore California MDVs may be sold only in California and its contiguous states.

that adopt the California standards pursuant to section 177.

Parties submitting written comments may assert a business confidentiality claim covering all or part of the information provided. A claim of business confidentiality regarding any information submitted should be made in a manner consistent with 40 CFR 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures set forth in 40 CFR part 2, subpart B. If no claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the submitting party.

III. Workshop Structure

EPA will arrange the workshop agenda to accommodate those persons who want to make presentations and who notify the Agency contact listed above at least two weeks prior to the workshop. Persons who have not previously contacted the Agency but who wish to make oral presentations on the day of the workshop may do so to the extent time permits. Written comments may also be submitted to Public Docket No. A-93-30 for 30 days after the workshop.

Dated: July 15, 1993.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93-17421 Filed 7-21-93; 8:45 am]

BILLING CODE 6560-50-P

[OPP-66180; FRL-4634-3]

Arsenic Acid; Receipt of Request to Cancel; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice, issued pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), announces EPA's receipt of a request from Drexel Chemical Company to cancel the registration of its Drexel Arsenic Acid Cotton Desiccant. EPA grants this voluntary cancellation effective July 22, 1993.

DATES: The cancellation order shall become effective July 22, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: Ann Sibold, Special Review and Reregistration Division (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, 3rd floor, 2800 Crystal Drive, Arlington, VA, (703) 308-8033.

SUPPLEMENTARY INFORMATION: This Notice announces the receipt of a request for cancellation of Drexel Arsenic Acid Cotton Desiccant.

I. Request for Voluntary Cancellation

Arsenic acid is used as a desiccant on cotton in certain areas of Texas and Oklahoma to facilitate harvest by mechanical cotton strippers. EPA initiated a Rebuttable Presumption against Reregistration ((RPAR), now called a Special Review) on this chemical and other inorganic arsenicals on October 18, 1978 (43 FR 48267). That Notice was based on a determination that use of the inorganic arsenicals met or exceeded the risk criteria for carcinogenicity, teratogenicity, and mutagenicity under 40 CFR 162.11 (now 40 CFR 154.7). EPA issued a Notice of Preliminary Determination to Cancel Registration (PD 2/3) on October 7, 1991 (56 FR 50576), for arsenic acid registered for use as a desiccant on cotton. After negotiations with EPA, the two registrants who were actively producing Arsenic Acid desiccant for use on cotton, Elf Atochem North America and Voluntary Purchasing Groups, Inc. (VPG) requested cancellation of these registrations. On May 6, 1993 (58 FR 26975), EPA granted these requests, issued a cancellation order, and provided for sale and use of existing stocks of Atochem and VPG arsenic acid desiccant.

Subsequently, EPA found that Drexel Chemical Company, who was not producing arsenic acid at the time negotiations were initiated with the other registrants, still had an active registration of arsenic acid. In 1985 and again in 1986, Drexel did not respond to two separate Data Call-Ins (DCIs) issued under section 3(c)2(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for arsenic acid, and requested voluntary suspension of its registration of arsenic acid. Accordingly, in letters dated December 9, 1985, and December 12, 1986, EPA suspended the registration, as required by FIFRA section 3(c)2(b), for failure to respond to these two DCIs. On December 18, 1986, EPA issued a "stop-sale" order, which ordered the company not to use, distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, receive and (having so received) deliver or offer to deliver, or remove the suspended pesticide.

After being contacted recently by EPA, Drexel requested the cancellation of its product Drexel Arsenic Acid Cotton Desiccant, registration number 19713-103, in a letter dated May 21, 1993. Drexel also requested a waiver of the public comment period.

II. EPA's Decisions on the Request for Voluntary Cancellation, the Cancellation Order, and Provision for Existing Stocks

EPA hereby grants Drexel's request that the registration of the product Drexel Arsenic Acid Cotton Desiccant, registration number 19713-103, which contains the active ingredient arsenic acid, be voluntarily canceled. Concurrently, EPA is issuing this Cancellation Order for Drexel's arsenic acid cotton desiccant.

Under section 6(f)(1) of FIFRA, a registrant may request at any time that EPA cancel any of its pesticide registrations. EPA must publish in the **Federal Register** a notice of receipt of the request and allow public comment before granting the request unless either the registrant requests a waiver of the comment period or the Administrator determines that the continued use of the pesticide would pose an unreasonable adverse effect on the environment. By letter dated May 21, 1993, Drexel requested a waiver of the comment period. For this reason, this Cancellation order shall become effective on July 22, 1993.

Accordingly, as of July 22, 1993, no person may distribute, sell, or use Drexel Arsenic Acid Desiccant.

III. Availability of the Public Docket

Copies of documents referred to in this Notice are available in the Public Docket, located in CM #2, Rm. 1128, 1921 Jefferson Davis Highway, Arlington, VA. Hours are from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Dated: July 14, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93-17425 Filed 7-21-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

July 14, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription

Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0236.

Title: Section 74.703, Interference.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirements.

Estimated Annual Burden: 10 responses; 2 hours average burden per response; 20 hours total annual burden.

Needs and Uses: Section 74.703(f) requires licensees of low power TV or TV translator stations causing interference to other stations to submit a report to the FCC detailing the nature of interference, source of interfering signals, and remedial steps to eliminate the interference. This report is to be submitted after operation of the station has resumed. The data is used by FCC staff to determine that the licensee has eliminated all interference caused by operation of their station.

OMB Number: 3060–0248.

Title: Section 74.751, Modification of transmission system.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping and on occasion reporting requirement.

Estimated Annual Burden: 25 responses, 0.5 hours average burden per response, 13 hours total annual burden per response; recordkeepers, 0.5 hours average burden per recordkeeper, 13 hours total annual burden per recordkeeper = 26 hours total annual burden.

Needs and Uses: Section 74.751(c) requires licensees of low power TV or TV translator stations to send written notification to the FCC of equipment changes which may be made at licensee's discretion without the use of a formal application. Section 74.751(d) requires that licensees of low power TV or TV translator stations place in the station records a certification that the installation of new or replacement transmitting equipment complies in all respects with the technical requirements of this section and the station authorization. The notifications and certifications of equipment changes are used by FCC staff to assure that the equipment changes made are in full compliance with the technical requirements of this section and the station authorizations and will not cause interference to other authorized stations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–17340 Filed 7–21–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–997–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice of a major disaster for the State of Illinois, (FEMA–997–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: July 14, 1993.

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 Illinois dated July 9, 1993, 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 9, 1993:

Boone, Lake, McHenry, Stephenson, and Winnebago for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–17428 Filed 7–21–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–997–DR]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–997–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 9, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from severe storms, Mississippi River flooding, and other riverine flooding on June 7, 1993, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Walter Pierson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster:

Adams, Calhoun, Carroll, Hancock, Henderson, Henry, Jersey, Jo Daviess, Mercer, Pike, Rock Island, and Whiteside Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 93–17429 Filed 7–21–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA-996-DR]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA-996-DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 9, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Iowa, resulting from severe storms and flooding on April 13, 1993, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Richard A. Buck of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster:

The counties of Clayton, Clinton, Des Moines, Dickinson, Humboldt, Jackson, Johnson, Louisa, Muscatine, Scott, and Wapello for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 93-17430 Filed 7-21-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-995-DR]

Missouri, Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA-995-DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 9, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Missouri, resulting from severe storms and flooding on June 28, 1993, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Warren M. Pugh, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Missouri to have been affected adversely by this declared major disaster:

Lewis, Lincoln, Marion, Pike, and St. Charles Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 93-17431 Filed 7-21-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-991-DR]

Oklahoma; 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 Oklahoma, (FEMA-991-DR), dated May 12, 1993, and related determinations.

EFFECTIVE DATE: July 15, 1993.

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 Oklahoma dated May 12, 1993, is hereby amended to include Public Assistance in 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 May 12, 1993:

Oklahoma County for Public Assistance. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-17432 Filed 7-21-93; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Epirotiki Lines, Inc. and Hellenic Company Overseas Cruise Vessels S.A., 551 Fifth Avenue, New York, NY 10176
Vessel: WORLD RENAISSANCE.

Dated: July 19, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–17412 Filed 7–21–93; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Report on Revised System of Records Under the Privacy Act of 1974

AGENCY: General Services Administration.

ACTION: Notification of revised system of records.

SUMMARY: The purpose of this document is to give notice, under the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent by the General Services Administration (GSA) to revise a system of records maintained by GSA. The system of records, Incident Reporting, Investigation, Contingency Planning/Analysis and Security Case Files, PBS–3, will be revised to comply with 42 U.S.C. 13041, to show that GSA will conduct criminal history background checks of individuals involved with the provision of child care services by Federal agencies to children under the age of 18. A revised system report was filed with the Speaker of the House, the President of the Senate, and the Office of Management and Budget.

DATES: Any interested party may submit written comments about this revision. Comments must be received on or before August 23, 1993. The system will become effective without further notice on the 30th day following publication of this notice unless comments are received that would result in a contrary decision.

ADDRESSES: Address comments to the General Services Administration (CAIR) Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Cunningham, GSA Privacy Act Officer, telephone (202) 501–2691.

Background

The system of records, Incident Reporting, Investigation, Contingency Planning/Analysis, and Security Case Files, PBS–3, is being revised to show that GSA will conduct criminal history background checks of individuals involved with the provision of child care services by Federal agencies to children under the age of 18.

GSA/PBS–3

SYSTEM NAME: Incident Reporting, Investigation, Contingency Planning/Analysis, and Security Case Files.

SYSTEM LOCATION: This system of records is located in the General Services Administration in the Office of Physical Security and Law Enforcement and the regional offices of the Federal Protective Service Divisions at the listed addresses following this notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: a. Persons who were the source of (1) initial complaint and (2) an allegation that a crime took place.

b. Witnesses having information or evidence about any aspect of an investigation;

c. Persons who are, or who may become, suspects in an investigation of criminal activity;

d. Subjects of investigations on noncriminal matters;

e. Employees of GSA contractors performing contract services in buildings and areas under GSA jurisdiction;

f. Individuals involved with the provision to children under the age of 18 of child care services in facilities operated by the Federal Government;

g. Current and former applicants for the position of Federal Protective Officer;

h. Individuals associated with terrorists or terrorist groups and activities and names of regional and nationwide terrorist organizations; and

i. Sources of information and evidence vital to the outcome of administrative procedures and civil and criminal cases.

Note: The identity of these individuals and the subject matter they contribute are confidential.

CATEGORIES OF RECORDS IN THE SYSTEM: Records include:

a. Preliminary and other reports of criminal investigations from the opening of a case until it is closed. These records are instituted and maintained at varying points in the process. The processes of criminal justice and civil or administrative remedies require their partial or total disclosure.

b. Security files. These records contain information such as name, date and place of birth, address, Social Security Number, education, occupation, experience, and investigatory material.

c. Contingency Planning/Analysis files. These records contain information such as name and other identifying information and investigatory material on an individual associated with terrorists or terrorist groups and activities.

They also contain information about regional and nationwide terrorist organizations and their effects on security of GSA-owned or -controlled facilities.

d. Intelligence briefs; tactical, operational and strategic information reports; regional and nationwide contingency analyses; contingency action plans; and patterns and trends of potential or actual terrorist groups, or other activities that could disrupt the orderly operation of GSA-owned or -controlled facilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: Executive Order 10450, April 27, 1953, as amended; Executive Order 12065, June 28, 1978; 31 U.S.C. 1535; and 40 U.S.C. 318(a) through 318d; 42 U.S.C. 13041.

PURPOSE: To assemble in one system information on (1) preliminary and other criminal investigation reports that are used to enforce criminal law and rules and regulations for punitive action; to prevent, control, or reduce crime and apprehend criminals; and for correction, probation and pardon, and parole and parole activities; (2) security files that are used as a basis for suitability decisions for GSA contract personnel and for individuals involved with the provision to children under the age of 18 of child care services in facilities operated by the Federal government or for the Federal government by contractors; and (3) contingency action plans that provide patterns and trends of potential or actual terrorist group activities or other activities that could disrupt orderly operation of GSA-owned or -controlled facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE: a. To disclose information to a Federal, State, local, or foreign agency responsible for investigating,

prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where the agencies become aware of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to a Member of Congress or a congressional staff member in response to an inquiry from that congressional office made at the request of that individual.

c. To disclose information to a Federal, State, or local agency keeping civil, criminal, enforcement, or other information to get information relevant in making a decision on hiring or retaining an employee; issuing a security clearance; letting a contract; or issuing a license, grant, or other benefit.

d. To disclose information to a requesting Federal agency in connection with hiring or retaining an employee; issuing a security clearance; reporting an employee investigation; clarifying a job; letting a contract; or issuing a license, grant, or other benefit by the requesting agency where the information is relevant and necessary for a decision.

e. To disclose information to an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; exclusive representative or other official engaged in investigating or settling a grievance, complaint, or appeal filed by an employee.

f. To disclose information to the Office of Personnel Management under the agency's responsibility for evaluating Federal personnel management.

g. To disclose information to various bureaus and divisions of Department of Justice that have primary jurisdiction over subject matters and locations which the Office of Physical Security and Law Enforcement shares.

h. To disclose information to subdivisions of the Department of Justice that have responsibility for prosecuting criminal cases and pursuing civil cases arising from authorized activities of the Office of Physical Security and Law Enforcement.

i. To disclose information to law enforcement agencies which have lawfully participated in an investigation jointly conducted with the Office of Physical Security and Law Enforcement.

j. To disclose information to the Department of Justice when the agency, and agency employee, or the United States is party to or has interest in litigation, and using the records is relevant and necessary and compatible with the purpose of collecting the information.

k. To disclose information to a court or adjudicative body when the agency, any agency employee, or United States is party to or has interest in litigation, and using the records is relevant and necessary and compatible with the purpose of collecting the information.

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

STORAGE: Paper records in file folders, card files and cabinets; magnetic tapes and cards in cabinets and storage libraries; and computer records within a computer and attached equipment.

RETRIEVABILITY: Filed by name, file number, case number, incident and location, and type of incident.

SAFEGUARDS: Records stored in lockable containers with built-in 3 position dial type combination safe locks and in secured rooms. Magnetic tapes which store unclassified records protected by password system.

RETENTION AND DISPOSAL: Disposal of records is described in the HB, GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER AND ADDRESS: Assistant Commissioner, Office of Physical Security and Law Enforcement (PS), Public Building Service, General Services Administration, 18th and F Streets, NW., Washington, DC 20405.

NOTIFICATION PROCEDURE: Inquiries from individuals should be addressed to the system manager.

RECORD ACCESS PROCEDURES: Requests from individuals should be addressed to the system manager. Individuals must furnish their full name, Social Security number, address, and telephone number. For identification requirements, refer to the agency regulations outlined in 41 CFR part 105–64 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES: General Services Administration rules for contesting the contents and appealing initial decisions are issued in 41 CFR part 105–64.

RECORD SOURCE CATEGORIES: Investigations, informants, witnesses, official records, investigative leads, statements, depositions, business records, or any other information source available to the Office of Physical Security and Law Enforcement.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT: Under 5 U.S.C. 552a(j), the criminal investigation case files and contingency planning/analysis files in this system of records are exempt from all provisions of the Privacy Act of 1974 with the exception of subsection (b); (c) (1) and (2); (e)(4) (A) through (F); (e) (6), (7), (9), (10), (11), and (i) of the act. Under 5 U.S.C. 552a(k), the general investigation and security files in this system of records are exempt from subsections (c)(3); (d); (e)(i); (e)(4) (G), (H), and (I); and (f) of the Privacy Act of 1974.

Dated: July 9, 1993.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 93–17396 Filed 7–21–93; 8:45 am]

BILLING CODE 6820–34

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC–347]

Announcement of a Grant to Albert Einstein College of Medicine

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for a sole source grant to Albert Einstein College of Medicine (AECM) to refine and use a mycobacteriophage-based diagnostic system to detect the presence of *Mycobacterium tuberculosis* (TB) in clinical specimens and to define the drug susceptibility patterns of these clinical isolates. Approximately $150,000 is available in FY 1993 to support this project. It is expected that the award will begin on or about August 1, 1993, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may vary and are subject to change. A continuation award within the project period will be made on the basis of satisfactory progress and the availability of funds.

The purpose of this grant is to provide resources to AECM to refine and adapt the recently developed mycobacteriophage technology to the isolation and identification of *M. tuberculosis* in clinical specimens and to the characterization of drug-susceptibility patterns.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

AUTHORITY: This grant is authorized under the Public Health Service Act, section 317(k)(2) (42 U.S.C. 247b(k)(2)).

ELIGIBLE APPLICANT: Assistance will be provided only to the AECM for conducting this project. No other applications are solicited. The Program Announcement and application kit have been sent to the AECM.

The AECM is the most appropriate organization to conduct the work under this grant because:

1. The mycobacteriophage-based diagnostic system exploits the photon generating enzyme of *Photinus pyralis* (firefly); the system was developed at AECM. The further refinements of this technology to adapt it for use in the management of clinical specimens can only be done at AECM.

2. The scientist who developed the original assay is available to continue his work and is familiar with the basic concept, reactions, and goals. In addition, there are several investigators on the staff of AECM, who are world recognized for their work in molecular biology and disease definition, available to consult on the project.

3. The project requires access to samples from recent outbreaks of Multi-drug Resistant Tuberculosis (MDR–TB), which can most readily be obtained in New York City where several outbreaks of MDR–TB have occurred.

EXECUTIVE ORDER 12372 REVIEW: The Intergovernmental Review Requirements of Executive Order 12372, as established by DHHS regulations in 45 CFR part 100, are not applicable to this program.

PUBLIC HEALTH SYSTEM REPORTING REQUIREMENTS: This program is not subject to the Public Health System Reporting Requirements.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: The Catalog of Federal Domestic Assistance number is 93.283.

WHERE TO OBTAIN ADDITIONAL INFORMATION: If you are interested in obtaining additional information regarding this program, please refer to Announcement Number 347 and contact Leah Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mail Stop E–18, Atlanta, GA 30305, (404) 842–6803, for business management technical information.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the **SUMMARY** may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone: (202) 783–3238.

Dated: July 15, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–17378 Filed 7–21–93; 8:45 am]

BILLING CODE 4160–18–P

[Announcement Number 322]

Surveillance of the Complications of Hemophilia; Availability of Funds for Fiscal Year 1993

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement program to conduct active surveillance for hemophilia A and B (henceforth referred to as hemophilia) and their complications. The ICD code definition of hemophilia A is congenital factor VIII disorder and hemophilia B is congenital factor IX disorder. Applicants must target individuals with hemophilia who receive their care both within and outside hemophilia treatment centers and comprehensive care centers. Targeted individuals should include: Persons who do not access traditional hemophilia treatment services and may receive inadequate care (and are possibly over-represented by persons who are economically disadvantaged), persons who live in rural areas or inner cities; or, persons who are members of one of four federally-recognized minority groups: (1) Black, African-American or Caribbean; (2) Hispanic; Central American, South American, Mexican American, Dominican, Cubán, or Puerto Rican; (3) Asian/Pacific Islander, or (4) Native American.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000 a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Diabetes and Chronic Disabling Conditions. (For ordering a copy of Healthy People 2000, see the section *Where to Obtain Additional Information.*)

Authority

This program is authorized under sections 301(a) and 317(k)(3) of the Public Health Service Act, as amended (42 U.S.C. 241(a) and 247b(k)(3)). Applicable program regulations are found in 42 CFR Part 51b—Project Grants for Preventive Health Services.

Eligible Applicants

Assistance will be provided only to the official public health agencies of states or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally-recognized Indian tribal governments.

Because of the low prevalence of hemophilia, competition is limited to the official public health agencies of states because the project requires experience in conducting active surveillance programs and experience in collaborations with organizations having the ability to reach a wide variety of demographically distinct populations, including the traditionally underserved populations.

Availability of Funds

Approximately $1,500,000 is available in FY 1993 to fund approximately 3 to 6 awards. It is expected that the average award will be $365,000 ranging from $250,000 to $400,000. It is expected that the awards will begin on or about September 30, 1993 and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory programmatic progress and the availability of funds.

Purpose

The purpose of the hemophilia cooperative agreement program is to assist recipients in characterizing the epidemiology of hemophilia and its complications, and determining its impact among three populations: (a) Those who access traditional hemophilia treatment and comprehensive care services, (b) those who are not receiving care or are undiagnosed, and (c) those who receive their care elsewhere. The latter (c) may receive inadequate care and are possibly over-represented by persons who are economically disadvantaged, who live in rural areas or inner cities, or who belong to one of four minority groups. Inadequate care would include: Less than prompt treatment, from improperly trained personnel, and poor access to comprehensive care which includes dental, psychosocial, and orthopedic services with patient training and counselling. The data collected through this surveillance program can assist

hemophilia treatment providers and states in developing, implementing, and evaluating education and prevention programs designed to reduce the morbidity, mortality, and costs of hemophilia and its complications.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A. below, and CDC shall be responsible for conducting activities under B. below.

A. Recipient Activities

All recipients must conduct activities in collaboration and coordination with the Centers for Disease Control and Prevention (CDC).

Required Activities for All Recipients

1. Meet with representatives from CDC and other recipients initially, and periodically thereafter, to (1) identify optimal surveillance methods, (2) develop standardized surveillance protocols, data collection instruments, interview questionnaires, progress report forms, and (3) amend previous surveillance protocols with new activities or procedures. All activities will be conducted in appropriate language for the specific target populations.

2. Use standard surveillance protocols as a basis to design, implement, and evaluate statewide surveillance programs for adult, adolescent, and pediatric cases of hemophilia and its complications, and if funded, studies of the psychosocial and economic impact of hemophilia.

3. Train surveillance workers in methods of active surveillance, use of standard data abstraction instruments, techniques of reviewing medical records and interviewing patients, and other methods of surveillance as appropriate and provided for in standard hemophilia surveillance protocols.

4. Develop appropriate management and evaluation systems that ensure surveillance employees conduct active surveillance, and use data collection and interview instruments according to standard hemophilia surveillance protocols.

5. Maintain secure databases of all reported cases of hemophilia and its complications.

6. Develop and maintain strict policies on protecting the confidentiality of persons with hemophilia, and ensure the security of databases and other records through controlled access to areas with confidential information, database password protection, locking file cabinets, and other security features.

7. Using a standardized format, prepare and submit progress reports on a semiannual basis that address the achievement of specific and time-phased hemophilia surveillance program goals and objectives.

8. Provide site-specific surveillance feedback in the form of monthly or quarterly reports within their state or region.

9. From data collected, analyze, present, and publish state or regional hemophilia surveillance outcomes.

10. Assist state or regional programs in the use of data to develop or improve hemophilia care programs.

Surveillance of Hemophilia: Specific Required Activities

1. Establish liaison with potential reporting sources within and outside of the traditional hemophilia treatment system. These potential reporting sources include, but are not limited to, state or regional hemophilia chapters or associations, hospitals, emergency care centers, hematology clinics, private physicians, organizations that provide home-infusion therapy, distributors of home-infusion factor concentrates, and others.

2. In accordance with standard protocols, implement active hemophilia surveillance among reporting sources outside of the traditional hemophilia care system, and in the collaborative network of hemophilia treatment centers to determine the statewide prevalence of hemophilia.

3. In accordance with standard protocols, redirect current surveillance activities as indicated through critical review of data and evaluation of yield from various surveillance activities. Initiate additional methods of surveillance for hemophilia as appropriate.

4. Augment surveillance through the use of at least one alternate database (e.g., death certificates, state hospital-discharge summaries, state reimbursement programs), and document methods, results, and if appropriate, the redirection of surveillance activities in the semiannual progress report.

5. Through death certificate review and active surveillance, collect data on deaths attributed to hemophilia to calculate state or regional hemophilia-specific mortality rates. Collect epidemiologic data that could be used to determine the sensitivity of death certificates in documenting deaths attributed to hemophilia.

Surveillance of Hemophilia-Related Complications: Specific Required Activities

1. Through medical record review or other methods proposed by the applicant, describe the source, frequency, and type of preventive and medical care among persons with hemophilia, and determine the prevalence of the following hemophilia-related complications:

Joint disease
Liver disease
Inhibitors
Immunosuppression

2. Sampling methods, if used, will be developed in collaboration with CDC to insure sufficient representation of persons of different race/ethnicity, age, HIV status, severity of hemophilia, and source of care.

3. Conduct longitudinal follow-up of persons with hemophilia-related joint disease to relate the source, frequency, and type of preventive and medical care to health outcome (e.g., severity of joint disease, degree of disability). In addition to joint disease, applicants are encouraged to propose and conduct longitudinal follow-up of persons with other hemophilia-related complications.

B. CDC Activities

1. Provide consultation, and scientific and technical assistance in planning, implementing, and evaluating hemophilia surveillance activities. This assistance includes the development of standard surveillance protocols, data abstraction instruments, interview questionnaires, consent and progress report forms, and database software. All activities will be conducted in appropriate language for the specific target populations.

2. Plan, coordinate, and facilitate initial and periodic meetings with recipients to exchange operational experiences, and to provide consultation and assistance in the modification of standard surveillance protocols as needed.

3. Provide programmatic coordination of surveillance initiatives among the recipients.

4. Assist the analysis and reporting of aggregate surveillance data collected from funded initiatives; coordinate and consolidate the transfer of tabulated data, analyses, and conclusions among recipients.

5. Assist national, state, or regional programs in the use of data to develop or improve hemophilia care programs.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria: (Total 100 points)

A. Capacity

1. The capacity of the applicant to access the state or regional hemophilia community that is receiving care within and outside of the traditional hemophilia treatment system. The capacity to access the hemophilia community is measured by (1) the extent that this proposal incorporates shared responsibility between hemophilia treatment centers and state or local health departments as delineated in letters of agreement, and (2) the extent of collaboration obtained from these entities with other organizations involved in the delivery of care to persons with hemophilia. (25 points)

2. The scope and magnitude of previous cooperative efforts between regional or state hemophilia treatment centers and state or local health departments that propose to collaborate in this application. (5 points)

3. The allocation of time, number, and qualifications of proposed staff to meet stated objectives and goals, and the availability of facilities to be used during the project period. (5 points)

4. The extent to which applicant has experience with or ties to racial/ethnic minority communities or demonstration of minority organizations involvement in the project. (5 points)

B. Goals and Objectives

The extent to which the applicant's proposed goals and objectives meet the required activities specified under section A. "Recipient Activities" of this announcement, and that are measurable, specific, time-phased, and realistic. (20 points)

C. Methods and Activities

1. The quality of the applicant's plan for conducting program activities and the extent to which surveillance methods proposed are: (1) Appropriate to accomplish stated goals and objectives; (2) adaptable to a variety of health care settings, multiple complications of hemophilia, and the collection of longitudinal data; (3) accurate to produce valid and reliable data, and (4) feasible within programmatic and fiscal restrictions. (20 points)

2. The applicant's willingness to cooperate with CDC and other funded applicants to (1) identify optimal surveillance methods, (2) develop standardized surveillance protocols, data collection instruments, interview questionnaires, progress report forms, and database software, and (3) modify proposed methods and activities to conform to standardized protocols. (10 points)

D. Program Management and Evaluation

The extent to which management systems, including the types, frequency, and methods of evaluation, are used to assure valid and reliable data obtained from active surveillance, medical record abstractions, patient interviews, data collection instruments, and record systems. (10 points)

E. Budget

The extent to which the budget is reasonable and consistent with the intended use of the cooperative agreement funds. (not scored)

Funding Priorities

In order to draw reasonable conclusions about the hemophilia community in the United States, funding priorities will take into consideration (1) geographic representation which would distribute recipients across a broad geographic spectrum minimizing the possibility of concentration within one region and (2) the extent of representation among persons with hemophilia who do not access traditional hemophilia treatment services, and (3) the demonstration of collaboration between health departments and hemophilia treatment centers.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should reference this announcement number (322) and forward recommendations to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–18, Atlanta, Georgia 30305. The due date for state process recommendations is 60 days after the application deadline date for new and competing continuation awards. CDC does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283, Centers for Disease Control and Prevention (CDC)—Investigations and Technical Assistance.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided which demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

All information obtained in connection with this surveillance program shall not, without such individual's consent, be disclosed except as may be necessary to provide services to him or her or as may be required by a law of a state or political subdivision of a state. Information derived from any such program may be disclosed: (1) In summary, statistical, or other form, or (2) for clinical or research proposed, but only if the identity of the individuals under such program is not disclosed.

HIV/AIDS Requirements

Recipients must comply with the document entitled "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions" (June 15, 1992), a copy of which is included in the application kit. In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel such as the one created by the state health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a government health department consistent with the content guidelines.

The names of the review panel members must be listed on the Assurance of Compliance Form CDC 0.1113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved, this includes conference agendas.

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7–94, and approved by OMB under control number 0937–0189) must be submitted to Edward L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–18, Atlanta, Georgia 30305, on or before July 23, 1993.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–18, Atlanta, Georgia 30305, (404) 842–6595. Programmatic technical assistance may be obtained from Sarah Wiley, Division of HIV/AIDS, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop G–29, Atlanta, Georgia 30333, (404) 639–2016.

Please refer to Announcement Number 322 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (telephone 202–783–3238).

Dated: July 16, 1993.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–17379 Filed 7–21–93; 8:45 am]

BILLING CODE 4160–18–P

[Program Announcement 341]

Model TB Prevention and Control Centers (Supplement to TB Surveillance, Prevention and Control/ Elimination Cooperative Agreements)

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds to provide support for Model TB Prevention and Control Centers as a competitive supplement to the Surveillance, Prevention and Control/ Elimination cooperative agreements.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of HIV Infection and Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section "WHERE TO OBTAIN ADDITIONAL INFORMATION.")

Authority

This program is authorized under section 301(a) (42 U.S.C. 241(a)), as amended; and section 317 (42 U.S.C. 247b). Regulations governing programs for preventive health services are codified at 42 CFR part 51b. Subpart A contains general provisions relating to the program.

Eligible Applicants

Public Law 102–394, Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 1993, appropriated funds to support emergency TB grants to address the serious TB problem in certain states and cities. The House Committee Report accompanying this law directs CDC to target these funds to the states and cities that have experienced the largest number of tuberculosis cases. Therefore, eligibility is limited to the 13 health departments (California, Florida, Georgia, New Jersey, New York, Texas, Chicago, Houston, Los Angeles, New York City, Philadelphia, San Diego, and San Francisco) which reported the largest number of TB cases in 1992, the most recent year for which data is available.

Eligible applicants must document the ability of the proposed model center to provide ongoing medical management to at least 125 confirmed active TB cases per year and must be affiliated with a licensed school of medicine or school of public health.

Availability of Funds

Approximately $4,000,000 is available in FY 1993 to supplement one to three cooperative agreements. Awards are expected to begin on or about September 15, 1993, for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change.

Purpose

The purpose of this program is to support model TB centers in high incidence urban areas that will provide (a) comprehensive and coordinated state-of-the-art diagnostic, treatment, prevention, and patient education services for TB cases, suspects, contacts, and preventive therapy subjects; (b) innovative approaches for ensuring adherence with drug therapy and for carrying out other prevention and control activities; and (c) training for all levels of health care workers providing TB screening, prevention and control services in the area. These activities should result in a substantial and documented improvement in the achievement of national TB objectives which should lead to a significant decrease in the incidence of active tuberculosis within the targeted area.

Program Requirements

In conducting the activities to achieve the purpose of this program, the recipient shall be responsible for conducting the activities under A. and

CDC shall be responsible for conducting the activities under B.

A. Recipient Activities

1. The recipient will ensure that the model TB center supported through this project will provide:

a. Comprehensive, state-of-the-art diagnostic, treatment, and prevention services consistent with CDC recommendations for TB patients, suspects, contacts, and other infected persons at high risk for TB.

b. On-site state-of-the-art radiographic and sputum induction services.

c. Availability of state-of-the-art mycobacteriology laboratory services.

d. Implementation of aggressive, on-site TB screening and use of directly observed preventive therapy or other innovative means of assuring completion of preventive therapy among clients at high risk for TB.

e. Screening and preventive therapy through collaborative arrangements with other healthcare providers, local drug treatment centers, and community-based organizations to address the serious problem of TB in medically under-served, low income persons, including high-risk racial and ethnic minority populations, and those entering the United States from areas of the world with high rates of TB.

f. Services which are readily accessible to the clients (e.g., through public transportation) at convenient hours, with reasonable waiting times in a comfortable setting which fosters a sense of privacy.

g. Innovative mechanisms such as providing special transportation arrangements, food, or other incentives and enablers to help ensure adherence with clinic appointments and drug therapy.

h. Medical evaluation of each patient and basic primary care (e.g., for diabetes, early stages of HIV infection, hypertension, substance abuse counseling and treatment) either onsite or through referral to another facility; if the latter, the model center should have a case management system in place to help ensure that the referral services have been provided and that feedback is received by the center.

i. Referral of patients to an inpatient facility through an efficient operating agreement. The inpatient facility should have (a) expertise in managing TB patients, (b) plans for full implementation of CDC recommendations to limit TB transmission within the facility, and (c) well-coordinated procedures with the health department for contact investigation and discharge planning.

j. Directly observed therapy for all TB cases and suspects. Therapy for TB should be directly observed by a health care provider or other designated person. The method of observation should be defined for each individual, based on a thorough assessment of each patient's needs, living/employment conditions, preferences and confidentiality.

k. Patient education which is medically accurate, linguistically appropriate, and culturally sensitive.

l. Interpreter services as needed.

m. Basic social service counseling and referral as needed.

n. Mechanisms to assess client satisfaction with services provided by the center.

o. A major training and teaching program to develop a cadre of knowledgeable TB health care workers at all levels and from a variety of facilities serving persons with or at high risk for TB (e.g., health department clinics, hospitals, drug treatment clinics, correctional facilities, HIV/AIDS service centers). Highest priority should be given to training medical staff responsible for managing patients with TB disease—including MDR TB—and their contacts. Training activities may include: (a) rotations of attending physicians, fellows, residents, medical students, nurses, nursing students, social workers, community health outreach workers, and others to provide experience and training, as well as integrated care for TB patients; (b) development of training courses with mechanisms for awarding CMEs, CEUs, and nursing contact hours.

2. In collaboration with the health department's HIV/AIDS prevention program and local drug treatment centers, the model center will: (1) Offer HIV counseling and testing for all TB cases, suspects, contacts, and persons with TB infection who have HIV risk factors; and (2) establish standards and implement procedures for the confidential notification of sex and needle sharing partners of persons with AIDS and HIV infection. The standards should emphasize: The role of the seropositive person in informing partners; training for seropositive persons in techniques for notifying partners; and, where appropriate, the assistance of health agencies in the confidential notification of partners.

3. The model center will participate in epidemiologic, clinical, laboratory, or operational research. (Funds for research activities should be sought separately from other sources.)

4. The model center will electronically collect and analyze data concerning demographic, clinical, laboratory, epidemiologic, and other types of relevant information on model center clients, with adequate security provisions to safeguard confidentiality.

5. The recipient will develop and implement an evaluation plan to measure the effectiveness of the model center's programs in meeting long and short term objectives. Applicants should seek assistance and collaboration on designing and implementing evaluation techniques from within their agency, from CDC, and from other institutions such as schools of public health.

B. CDC Activities

1. Provide medical, epidemiologic, programmatic, and educational consultation and technical assistance in planning, operating, improving, and evaluating a model TB center.

2. Assist in the investigation and analysis of special problems such as MDR TB and TB in HIV-infected persons.

3. Assist in disseminating the findings of the model center.

Review and Evaluation Criteria

Each application will be reviewed and evaluated individually against the following criteria:

A. The extent to which the applicant (1) describes the TB problem in the service area, (2) identifies TB prevention and control needs within high-risk populations in the service area, and (3) provides baseline data on current performance levels in achieving national TB prevention and control objectives. 20 points

B. The estimated number of (1) TB patients, suspects, contacts and preventive therapy subjects to be served each year by the center and (2) health care workers, who serve TB high-risk populations in the target area, to be trained at the center. 25 points

C. The extent to which the applicant documents collaborative relationships with appropriate health care facilities and community groups in planning, implementing, and evaluating services to be provided by the model center. 10 points

D. The soundness, practicability and feasibility of the proposed approach, including objectives, methods, and evaluation plans. 10 points

E. The extent to which proposed methods are innovative, cost-effective, and transferrable to other areas. 20 points

F. The qualifications and experience of the project director and key staff involved in the proposed activities of the model center. 15 points

In addition, consideration will be given to the extent to which the budget

is reasonable and clearly supplements existing Federal, state, and local resources for TB prevention and control activities.

Recipient Financial Participation

Applicants must document at least $1 of nonfederal support for every $3 of Federal funds for each budget year of this program. (An information paper on matching funds will be provided with each application kit).

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants should contact their Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instruction on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Elizabeth M. Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 30 days following application deadline date. (A waiver for the 60 day requirement has been requested.) The Program Announcement Number (341) and the Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.116.

Other Requirements

Confidentiality

Applicants must have in place systems to ensure the confidentiality of all patient records. All information obtained in connection with the examination, care, or treatment of any individual under any program which is being carried out with a cooperative agreement made under this announcement shall not, without such individual's consent, be disclosed except as may be necessary to provide service to him or as may be required by a law of a state or political subdivision of a state. Information derived from any such program may be disclosed—

(a) in summary, statistical, or other form, or

(b) for clinical or research purposes, but only if the identity of the individuals diagnosed or provided care or treatment under such program is not disclosed.

Pre- and Post-Test Counseling and Partner Notification

Recipients are required to provide HIV antibody testing to determine a person's HIV infection status; therefore, they must comply with state laws and regulations and CDC guidelines regarding pre- and post-test counseling and partner notification of HIV-seropositive patients, a copy of which will be included in the application kit. Recipients must also comply with state and local health department requirements relating to specific reportable disease or conditions. Recipients must provide referrals for HIV diagnosis and treatment.

HIV/AIDS Requirements

Recipients must comply with the document entitled "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions" (June 15, 1992), a copy of which is included in the application kit. In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel such as the one created by the state health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a government health department consistent with the Content guidelines. The names of the review panel members must be listed on the Assurance of Compliance Form CDC 0.1113, which also will be included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Application Submission and Deadline

The original and two copies of each application (Form PHS–5161–1) must be submitted to Elizabeth M. Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–16, Atlanta, GA 30305 on or before August 2, 1993.

A. *Deadline:* Applications shall be considered as meeting the deadline if they are:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

B. *Late Applications:* Applications that do not meet the criteria in A.1. or A.2. are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Manuel Lambrinos, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305, (404) 842–6777. Programmatic technical assistance may be obtained from John Seggerson, Division of Tuberculosis Elimination, National Center for Prevention Services, Centers for Disease Control and Prevention (CDC), Atlanta, GA 30333, (404) 639–8125.

Please refer to Announcement Number 341 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone: 202–783–3238).

Dated: July 16, 1993.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–17380 Filed 7–21–93; 8:45 am]

BILLING CODE 4160–18–P

Food and Drug Administration

[Docket No. 93M-0216]

Ventritex, Inc.; Premarket Approval of the Cadence® Tiered Therapy Defibrillator System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Ventritex, Inc., Sunnyvale, CA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Cadence® Tiered Therapy Defibrillator System. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of April 30, 1993, of the approval of the application.

DATES: Petitions for administrative review by August 23, 1993.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Doris Terry, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1018.

SUPPLEMENTARY INFORMATION: On October 1, 1991, Ventritex, Inc., Sunnyvale, CA 94086, submitted to CDRH an application for premarket approval of the Cadence® Tiered Therapy Defibrillator System. The Cadence® Tiered Therapy Defibrillator System consists of the following: the Cadence® Pulse Generator, Models V-100, V-100B, and V-100C, Models DP-5019 and DP-5038 Defibrillation patch leads (hereinafter referred to as the epicardial patch lead) or the commercially available Cardiac Pacemakers, Inc. (CPI) patch leads; the Model LA-6450 Adapter; the commercially available pace/sense leads; the HVS®-02 Cardiac Electrophysiology Device (hereinafter referred to as the HVS®-02); and the Models PR-1000 and PR-1001 Programmers with the Model AC-1020 Isolated Output Cable. Accessories for the HVS®-02 include the Model AC-2000 HVS Patient Cable, the Models AC-2480 and AC-2880 Adapter Blocks, and the Model 2300 Test Load. Programmer accessories include the Model AC-1010 Light Pen and the Model AC-1000 Programming Wand. The device is an implantable pacer cardioverter defibrillator and is indicated for use in patients with a history of hemodynamically compromising ventricular tachyarrhythmias. These patients may have experienced a cardiac arrest not associated with acute myocardial infarction or have ventricular tachyarrhythmias. In addition, the Cadence® can be used in patients whose primary therapy for hemodynamically significant, sustained ventricular tachycardia is antitachycardia pacing; the defibrillation capabilities of the device provide high energy therapy in the event that the arrhythmia accelerates.

The Cadence® is intended for use with the defibrillation lead systems with which it has been tested: Ventritex epicardial defibrillation leads, and commercially available CPI defibrillation patch leads and superior vena cava (SVC) spring leads. When used with the CPI patch leads or SVC leads, the Cadence® is intended for use as a replacement for CPI automatic implantable cardioverter defibrillators.

On February 4, 1992, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On April 30, 1993, CDRH approved the application by a letter to the applicant from the Deputy Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 23, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 14, 1993.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 93-17348 Filed 7-21-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93M-0210]

Collagen Corp. and Zimmer, Inc.; Premarket Approval of Collagraft® Bone Graft Matrix

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Collagen Corp., Palo Alto, CA, and Zimmer, Inc., Warsaw, IN, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Collagraft® Bone Graft Matrix. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of May 28, 1993, of the approval of the application.

DATES: Petitions for administrative review by August 23, 1993.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nirmal K. Mishra, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1036.

SUPPLEMENTARY INFORMATION: On March 6, 1991, Collagen Corp., Palo Alto, CA 94303, and Zimmer, Inc., Warsaw, IN 46580, submitted to CDRH an application for premarket approval of Collagraft® Bone Graft Matrix. The device is a nonosteoinductive bone void filler and is indicated, when mixed with autogenous bone marrow, for use in acute long bone fractures and traumatic osseous defects to provide a matrix for the repair process of bone. The fracture must be externally or internally fixed and should be no greater than 30 milliliters.

On August 16, 1991, the Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On May 28, 1993, CDRH approved the application by a letter to the applicant from the Deputy Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 23, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 14, 1993.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 93–17346 Filed 7–21–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93M–0212]

Cook, Inc.; Premarket Approval of Gianturco-Roubin Flex-Stent™ Coronary Stent

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Cook, Inc., Bloomington, IN, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Gianturco-Roubin Flex-Stent™ Coronary Stent. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 28, 1993, of the approval of the application.

DATES: Petitions for administrative review by August 23, 1993.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tara A. Ryan, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1197.

SUPPLEMENTARY INFORMATION: On June 6, 1991, Cook, Inc., Bloomington, IN 47402, submitted to CDRH an application for premarket approval of the Gianturco-Roubin Flex-Stent™ Coronary Stent. The device is an intravascular stent indicated for chronic placement in a coronary artery or graft to obtain vessel patency in the treatment of acute or threatened closure associated with an interventional procedure.

On May 11, 1992, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On May 28, 1993, CDRH approved the application by a letter to the applicant from the Deputy Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or

independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 23, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 14, 1993.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 93-17347 Filed 7-21-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93D-0177]

Proper Drug Use and Residue Avoidance by Nonveterinarians; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a new Compliance Policy Guide (CPG) 7125.37 entitled "Proper Drug Use and Residue Avoidance By Nonveterinarians." The CPG was established to provide regulatory guidance for the development of cases resulting from the use in food-producing animals of animal drugs contrary to label directions ("extra-label use") by nonveterinarians. It also provides guidance on measures that can be taken by nonveterinarians to ensure proper drug use and avoid illegal residues.

ADDRESSES: Submit written requests for single copies of CPG 7125.37 entitled "Proper Drug Use and Residue Avoidance by Nonveterinarians" to the Industry Information Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. CPG 7125.37 is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gloria J. Dunnavan, Center for Veterinary Medicine (HFV-236), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8785.

SUPPLEMENTARY INFORMATION: Extra-label use of drugs by nonveterinarians in food-producing animals is a significant public health concern and a contributing factor in illegal residues in edible animal tissue. Use of drug products by nonveterinarians in food-producing animals contrary to label directions is a violation of section 501(a)(5) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351(a)(5)). The presence of a residue of a new animal drug in food above permitted levels causes the food to be adulterated under section 402(a)(2)(D) of the act (21 U.S.C. 342(a)(2)(D)). Failure of persons who produce and sell food-producing animals and animal products to establish and utilize adequate controls with respect to use of animal drugs could result in a reasonable possibility of injury to human health because illegal drug residues often result. If inadequate control measures are documented, the food (edible animal tissues, milk, or eggs) may be adulterated under section 402(a)(4) of the act (21 U.S.C. 342(a)(4)).

Statements made in a CPG are not intended to bind the courts, the public, or FDA or to create or confer any rights, privileges, immunities, or benefits on or for any private person, but are intended merely for internal FDA guidance.

Dated: July 15, 1993.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 93-17349 Filed 7-21-93; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

[PN 2053]

Availability of Funds for the National Health Service Corps Loan Repayment Program and Grants for State Loan Repayment Programs

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately $47.5 million will be available in fiscal year (FY) 1993 for: (1) Awards for educational loan repayment under the National Health Service Corps (NHSC) Loan Repayment Program (LRP) (section 338B of the Public Health Service (PHS) Act) and (2) grants to States to operate loan repayment programs (section 338I of the PHS Act).

The HRSA, through this notice, invites health professionals to apply for participation in the NHSC LRP and invites States to apply for grants to operate State Loan Repayment Programs (LRPs). The HRSA estimates that approximately 495 NHSC Loan Repayment awards totaling $41.3 million may be made to primary care physicians, dentists, nurse midwives, nurse practitioners, and physician assistants. Approximately $6.2 million in discretionary grants will be awarded to States to operate LRPs. Approximately $3.9 million will be awarded for up to 19 competing continuation grants and 3-5 new starts. The range for these grants is approximately $20,000 to $1,000,000. Approximately $2.3 million is available for 8 noncompeting continuation grants. Awards will be made for a 1-year budget period and for up to a 3-year project period.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting health priority areas. These programs will contribute to the Healthy People 2000 objectives by improving access to primary health care services through coordinated systems of care for medically underserved populations in both rural and urban areas. Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-00100474-01) or Healthy People 2000 (Summary Report; Stock No. 017001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone 202-783-3238).

Part A of this notice contains specific information concerning the NHSC LRP, and Part B contains specific information concerning grants for State LRPs.

Part A—NHSC Loan Repayment Program

ADDRESSES: Application materials may be obtained by calling or writing, and completed applications should be returned to: Mr. Gerald Anderson, Deputy Chief, Loan Repayment Programs Branch, Division of Scholarships and Loan Repayments, Bureau of Primary Health Care, HRSA, room 7–22, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–0743. The 24-hour toll-free phone number is 1–800–435–6464, and the FAX number is (301) 443–9350. This application has been approved under Office of Management and Budget (OMB) Number 0915–0127.

DATES: To receive consideration for funding, health professionals must submit their applications by September 1, 1993. To assure early processing of the application and approval for site matching, individuals are encouraged to submit applications well ahead of the September 1 deadline.

Applications will be considered to be on time if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the established deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing. Applications received after the announced closing date will not be considered for funding.

FOR FURTHER INFORMATION CONTACT: For further program information, technical assistance, and business management issues, please contact Mr. Anderson at the above address, phone or FAX number.

SUPPLEMENTARY INFORMATION: Section 338B of the Public Health Service Act (42 U.S.C. 2541–1) authorizes the Secretary to establish the NHSC LRP to help in assuring, with respect to the provision of primary health services, an adequate supply of trained primary care health professionals for the NHSC. The NHSC is used by the Secretary to provide primary health services in federally designated health professional shortage areas (HPSAs). Primary health services are services regarding family medicine, internal medicine, pediatrics, obstetrics and gynecology, dentistry, or mental health, that are provided by physicians or other health professionals.

Under the NHSC LRP, the Secretary will repay graduate and undergraduate educational loans incurred by primary care health professionals. For the first 2 years of full-time service at an approved site in a federally designated HPSA, the Secretary will repay up to $25,000 per year of the educational loans of such individual. (There is a minimum 2-year service obligation.) For subsequent years of full-time service, if the NHSC LRP contract is extended, the Secretary will repay up to $35,000 per year. The Secretary will provide tax liability payments in an amount equal to 39 percent of the total loan repayments made during that tax year to reimburse the Program participants for increased tax liability resulting from loan repayments received under this Program. The increase in the amount of the tax liability payment made applies only to contracts entered into after November 16, 1990.

Payments may be made to participants on: (1) An advanced quarterly basis (one quarter in advance during the entire service obligation); (2) an advanced annual lump-sum basis for each of the first 2 years of a contract; or (3) an advanced lump sum payment for the total 2-year contract (one lump sum payment not to exceed $50,000 plus the 39 percent tax liability reimbursement). In addition to these amounts, NHSC LRP participants will receive a salary from a private nonprofit or public entity or, in some cases, the Federal Government during the term of their service.

The Secretary will identify and make available annually a list of those HPSA sites which will be available for service repayment under the NHSC LRP. The Secretary will select applicants for consideration for participation in the NHSC LRP according to the following criteria:

(1) The extent to which an individual's training in a health profession or specialty is determined by the Secretary to be needed by the NHSC in providing primary health services. From time to time, the Secretary will publish a notice detailing the professions and specialties most needed by the NHSC. Current professional and specialty priorities are outlined in this notice at the end of Part A.

(2) The extent to which an individual is determined by the Secretary to be committed to serve in a HPSA.

(3) The extent of an individual's demonstrated interest in providing primary health services.

(4) The immediacy of an individual's availability for service. Individuals who have a degree, have completed all necessary postgraduate training in their professions and specialties (i.e., in the case of physicians, are certified or eligible to sit for the certifying examinations of a specialty board), have a current and unrestricted license to practice their profession in a State, will receive highest consideration.

(5) The academic standing, prior professional experience in a HPSA, board certification, residency achievements, peer recommendations, and other criteria related to professional competence or conduct will also be considered.

In providing contracts under the NHSC LRP, priority will be given to those applicants:

(1) Whose health profession or specialty is most needed by the NHSC;

(2) Who have and whose spouses, if any, have characteristics that increase the probability of their continuing to serve in a HPSA upon completion of their service obligations; and

(3) Subject to subparagraph (2) immediately preceding this one, who are from disadvantaged backgrounds.

Eligible Participants

To be eligible to participate in the NHSC LRP, an individual must:

(1)(a) Have a degree in allopathic or osteopathic medicine, dentistry, or other health profession, or be certified as a nurse midwife, nurse practitioner, or physician assistant;

(b) Be enrolled in an approved graduate training program in allopathic or osteopathic medicine, dentistry, or other health profession; or

(c) Be enrolled as a full-time student at an accredited school in a State and in the final year of a course of study or program leading to a degree in allopathic or osteopathic medicine, dentistry, or other health profession;

(2) Be eligible for appointment as a commissioned officer in the Regular or Reserve Corps of the PHS or be eligible for selection for civilian service in the NHSC; and

(3) Submit an application for a contract to participate in the NHSC LRP which contract describes the repayment of educational loans in return for the individual serving for an obligated period.

Any individual who previously incurred an obligation for health professional service to the Federal Government, a State Government, or other entity is ineligible to participate in the NHSC LRP unless such obligation will be completely satisfied prior to the beginning of service under this Program. Any individual who has breached an obligation for health professional service to the Federal Government, a State Government or other entity is

ineligible to participate in the NHSC LRP.

No loan repayments will be made for any professional practice performed prior to the effective date of the NHSC LRP contract. All individuals must have a current and unrestricted license to practice their profession in a State prior to beginning service under this Program.

Professions and Specialties Needed By the NHSC

At this time, the Secretary has determined that priority will be given to physicians who are certified or eligible to sit for the certifying examination in the specialty boards of family practice, osteopathic general practice, obstetrics/gynecology, internal medicine, and pediatrics.

Other Award Information

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, since Executive Order 12372 does not cover payments to individuals. In addition, this program is not subject to the Public Health System Reporting Requirements, since the requirements do not cover payment to individuals.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.162.

Part B—Grants for State Loan Repayment Programs

ADDRESSES: Application materials for State Loan Repayment Programs may be obtained from, and completed applications should be returned to: Alice H. Thomas, Grants Management Officer, Bureau of Primary Health Care, HRSA, 12100 Parklawn Drive, Rockville, Maryland 20857, (301) 443–5887. The Grants Managements staff is available to provide assistance on business management issues.

Application for these grants will be made on PHS Form 5161–1 with face sheet DHHS Form 424, revised as of July 1992, and approved by the OMB under control number 0937–0189. Specific instructions for completing the application form for this program will be sent to any State requesting an application package.

DATES: Applications are due July 1, 1993. Applications will be considered to have met the deadline if they are: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing. Late applications will not be considered for funding and will be returned to the applicant. The application deadline date for this program was published on April 16, 1993 at 58 FR 19827.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, please contact Betty Deberry-Sumner, D.D.S., M.P.H., Chief, Site Development and Placement Branch, National Health Service Corps, Bureau of Primary Health Care, HRSA, 5600 Fishers Lane, room 7A–19, Rockville, MD 20857, (301) 443–1400, the FAX number is (301) 443–4785.

SUPPLEMENTARY INFORMATION: Section 338I of the PHS Act (42 U.S.C. 254q-1) authorizes the Secretary, acting through the Administrator, HRSA, to make grants to States for the purpose of assisting the States in operating programs as described in this notice for the repayment of educational loans of health professionals in return for their practice in federally designated HPSAs to increase the availability of primary health services in federally designated HPSAs.

Eligibility Requirements

State Loan Repayment Programs (LRPs) eligible for funding under this announcement must meet the following requirements:

(1) Direct administration by a State agency;

(2) Payment of all or part of the qualifying educational loans (including principal, interest, and related educational loan expenses) of health professionals agreeing to provide primary health services in federally designated HPSAs. "Qualifying educational loans" are Government and commercial loans for actual costs paid for tuition, reasonable educational expenses, and reasonable living expenses relating to the graduate or undergraduate education of a health professional;

(3) Assignment of participating health professionals only to public and nonprofit private entities located in and providing primary health services in federally designated HPSAs; and

(4) Participant contracts which provide remedies for any breach of contract by participating health professionals.

Contract Requirements

Contracts provided by a State are not to be on terms that are more favorable to health professionals than the most favorable terms the Secretary is authorized to provide for contracts under the Federal NHSC Loan Repayment Programs under section 338B of the PHS Act, including terms regarding:

(a) The annual amount of payments provided on behalf of the professionals regarding educational loans; and

(b) The availability of remedies for any breach of the contracts by the health professionals involved.

States are required to develop contracts that reflect a minimum of 2 years of obligated full-time service. The annual amount of payments under a contract will not exceed the maximum amount of $35,000 authorized in section 338B(g)(2)(A) of the PHS Act unless: (1) This excess amount is paid solely from non-Federal contributions, and (2) the contract provides that the health professional involved will satisfy the requirement of obligated service under the contract solely through the provision of primary health services in a federally designated HPSA that is receiving priority for the purposes of section 333A(a)(1), and is authorized to receive assignments of individuals who are participating in the NHSC Scholarship Program.

No loan repayments will be made for any professional practice performed prior to the effective date of the health professional's State Loan Repayment Program contract, and no credit will be given for any practice done while the provider is in a professional school or graduate training program. Any individual who previously incurred an obligation for health professional service to the Federal Government, a State Government, or other entity is ineligible to participate in the State LRP unless such obligation will be completely satisfied prior to the beginning of service under this Program. Any individual who has breached an obligation for health professional service to the Federal Government, a State Government or other entity is ineligible to participate in the State LRP.

Program Requirements

States seeking support under this notice for the cost of State LRPs must provide adequate assurances that:

(1) With respect to the costs of making loan repayments under contracts with health professions, the State will make available (directly or through donations from public or private entities) non-Federal contributions in cash in an amount equal to not less than $1 for each $1 of Federal funds provided in the grant. The federal grant funds and the State matching funds will be used only for loan repayments to health professionals who have entered into contracts with States. In determining the amount of non-Federal contributions in

cash that a State has to provide, no other Federal funds may be used.

(2) The State will assign health professionals participating in the program only to public and nonprofit private entities located in and providing primary health services in federally designated HPSAs.

(3) Applications must identify the State entity and key personnel who will administer the grant.

Future Support

The Secretary must determine that the State has complied with each of the agreements of the grant in order for funding to continue. Before making a grant for a subsequent year of State LRP support, the Secretary will, in the case of a State with one or more initial breaches by health professionals of the repayment contracts, reduce the amount of a grant to the State for the fiscal year involved. The grant will be reduced by an amount equal to the sum of the expenditures of Federal funds made regarding the State LRP contracts involved, including interest on the amount of such expenditures, determined on the basis of the maximum legal rate prevailing for loans made during the time amounts were paid under the contract, as determined by the Treasurer of the United States. The Secretary may waive the reduction in the subsequent grant award if the Secretary determines that a health professional's breach was attributable solely to the professional having a serious illness or death.

Evaluation Criteria

For new and competing continuation grants the following criteria will be used to evaluate State applications to determine which States are to be supported under this notice:

(a) The extent of State's need for health professionals consistent with the health professions and specialties identified later in this notice;

(b) The extent to which special consideration will be extended to federally designated HPSAs with large minority populations;

(c) The number and type of providers the State proposes to support through this program;

(d) The appropriateness of the proposed placements of State LRP recipients (e.g., consistency and coordination with State-based plans to improve access to primary health services for the underserved communities and individuals);

(e) The appropriateness of the qualifications, the administrative, and managerial ability of the staff to implement the proposed project;

(f) The suitability of the State's approach and the degree to which the plan of a State is coordinated with Federal, State, and other programs for meeting the State's health professional needs and resources, including mechanisms for ongoing evaluation of the program's activities;

(g) The source and plans for the use of the State match (the degree to which the State match exceeds the minimum requirements or has increased over time, and the amount of the match relative to the needs and resources of the State);

(h) For competing continuation applicants only, the grantees progress in achieving stated goals and objectives for the previous year's grant: this includes a progress report on the impact the State LRP placements have had on the State's short-term and long-term professional needs;

(i) An assessment of the reasons for initial breaches by health professionals of repayment contracts; and

(j) The grantee's history of compliance with reporting requirements.

Noncompeting continuation applications will be evaluated on the following criteria: (a) The grantee's progress in achieving stated goals and objectives for the previous year's grant: This includes a progress report on the impact the State LRP placements have had on the State's short-term and long-term professional needs;

(b) An assessment of the reasons for initial breaches by health professionals of repayment contracts;

(c) The grantee's history of compliance with reporting activities including goals, objectives, evaluation plans, organizational structure, financial management, and personnel changes; and

(d) The adequacy and appropriateness of the proposed budget.

No funding preferences will be applied.

Professions and Specialties Needed

To be supported under this program, the State Program must establish State priorities for the selection of health professionals consistent with the NHSC LRP. At this time, the Secretary has determined that to be eligible, an individual must have a degree in allopathic or osteopathic medicine, dentistry, or other health profession, or, be certified as a nurse midwife, nurse practitioner, or physician assistant.

Other Award Information

This program is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system to review applications from within their States for assistance under certain Federal programs. The application kit, to be made available under this notice, will contain a listing of States which have chosen to set up a review system and will provide a single point of contact (SPOC) in the States for that review. Applicants (other than Federally-recognized Indian tribal governments) should contact their State SPOC as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the appropriate application deadline date. The BPHC does not guarantee that it will accommodate or explain its response to State process recommendations received after the due date.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.165.

Dated: July 16, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–17407 Filed 7–21–93; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Division of Research Grants; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meeting and roster of panel members.

Meeting To Review Small Business Innovation Research Program Applications

Scientific Review Administrator: Dr. Peggy McCardle, (301) 594–7293.
Date of Meeting: August 2, 1993.
Place of Meeting: Westwood Bldg., Rm. 305, NIH, Bethesda, MD (Telephone Conference).
Time of Meeting: 1:00 p.m.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 15, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–17470 Filed 7–21–93; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive Patent License

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent 4,883,761 (issued from U.S. Patent Application 06/843,727) entitled "Pertussis Toxin Gene: Cloning and Expression of Protective Antigen" to the Biocine Company having a place of business at Emeryville, California. The patent rights in these inventions have been assigned to the United States of America. No foreign patent applications have been filed on the inventions embodied in U.S. Patent 4,883,761.

The prospective exclusive license will be for the field of vaccines. It will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

These inventions relate to the DNA sequence of the *Bordetella pertussis* toxin. Related inventions, including mutants of the *Bordetella pertussis* toxin (U.S. Patent Applications 07/311,612 and 07/542,149), will be licensed at a later date. The availability of U.S. Patent 4,883,761 for licensing was published in the July 18, 1990 edition of the **Federal Register**.

ADDRESSES: Requests for a copy of the above identified patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Mark Hankins, J.D., Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892; Telephone: (301) 496–7735; FAX: (301) 402–0220. Properly filed competing applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer within sixty (60) days of this notice will be considered.

Dated: July 13, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93–17469 Filed 7–21–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–610–03–4112–02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Paperwork Reduction Project (1004–0134), Washington, DC 20503, telephone 202–395–7340.

Title: 43 CFR 3160—Onshore Oil and Gas Operations, Non-form Items
OMB Approval Number: (1004–0134)
Abstract: Federal and Indian (except Osage) oil and gas operators and operating rights owners are required to retain and/or provide data so that proposed operations may be approved or compliance with granted approvals may be monitored.
Bureau Form Numbers: None.
Frequency: Nonrecurring.
Description of Respondents: Operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases.
Estimated Completion Time: ½ hour.
Annual Responses: 193,855.
Annual Burden Hours: 96,190.
Bureau Clearance Officer (Alternate): Marsha A. Harley (202) 653–6105.

Dated: May 21, 1993.

Hillary A. Oden,

Assistant Director, Energy and Mineral Resources.

[FR Doc. 93–17403 Filed 7–21–93; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Land Management

[OR–096–03–6332–02: GP3–316]

Emergency Closure of Public Lands; Lane County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure of public lands in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands in Lane County, Oregon are temporarily closed to sliding, wading, swimming and all other activities within the waters of Lake Creek, from July 17, 1993 until a notice rescinding this closure is published in the **Federal Register**. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this emergency closure are specifically identified as the Lake Creek Slide, a natural bedrock feature in the bed of Lake Creek, within public lands located as follows:

Willamette Meridian, Oregon

T. 16 S., R. 7 W.
T. 16 S., R. 7 W.
Sec. 19: Metes and Bounds within the SE¼SE¼.

Containing approximately 2 acres.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; state, local and federal law enforcement personnel; Bureau contractors and their subcontractors. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine

not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The public lands temporarily closed to public use under this order will be posted with signs at points of public access.

The purpose of this emergency temporary closure is to protect the public from injury incurred by sliding into a rock ledge that has recently developed near the base of the slide as a result of a shift in the bedrock of Lake Creek.

DATES: This closure is effective from July 17, 1993.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands are available from the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Wayne E. Elliott, Coast Range Area Manager, Eugene District Office, at (503) 683–6600.

Dated: July 16, 1993.

Wayne E. Elliott,

Area Manager.

[FR Doc. 93–17381 Filed 7–21–93; 8:45 am]

BILLING CODE 4310–33–M

[MT–930–4320–01]

Intent To Prepare Environmental Assessment of Animal Damage Control; Statewide (Miles City, Lewistown, and Butte District Offices) MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management and the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), will prepare an Environmental Assessment (EA) to disclose the environmental effects of the proposed Animal Damage Control (ADC) alternatives for BLM lands in Montana. This analysis will be tiered to the EIS relating to ADC, completed in 1979, by the U.S. Fish and Wildlife Service (USFWS).

EFFECTIVE DATE: Persons wishing to submit written comments regarding the scope of the EA, including alternatives and environmental effects to be addressed, should do so by August 10, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Brooks, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2929.

SUPPLEMENTARY INFORMATION: Controlling predatory animals on public land is the responsibility of the ADC unit of the U.S. Department of Agriculture, APHIS. Animal Damage Control activities are directed toward individual predators or local populations of predators where loss or damage to livestock has been verified and the livestock owner has requested control services from APHIS. The proposed ADC EA will address the following topics:

- Predators to be controlled;
- The conditions under which control may or may not be allowed (e.g., high use recreation areas) and potential seasonal restrictions (e.g., bird hunting season);
- The methods of control allowed (e.g., aerial gunning; call and shoot; traps and snares; denning; electronic "guards;" guard dogs; or M–44s, a spring-activated device using sodium cyanide). The following alternatives, in addition to any others that may be developed in the public participation process, will be considered in the EA:

I. Integrated Pest Management (ADC BLM-proposed action)

This alternative emphasizes an Integrated Pest Management (IPM) approach to reduce animal damage. Integrated Pest Management is the process of applying a variety of practical methods for prevention and control to keep animal damage to livestock or human health as low as possible. This IPM process draws from a large array of options using lethal and non-lethal techniques, depending on the nature of the problem. These techniques would be applied as either corrective (in response to actual loss or repeated harassment) or preventive (in response to historical losses) strategies.

II. No Preventative Control

This alternative would be similar to Alternative I except that lethal preventative control measures would not be authorized. The corrective control techniques described in Alternative I would be applied after ADC has confirmed a recent loss of livestock to predation.

III. No Action (Emergency Control Only)

This alternative would be similar to Alternative II in that lethal preventative control measures would not be authorized, and corrective control techniques would be applied only where losses are confirmed. The difference between these alternatives is the additional administrative procedures required under this alternative. Emergency ADC is requested by an operator when losses are occurring. Under this alternative, BLM reviews and approves/disapproves these requests on a case-by-case basis, which is not the case for Alternative II.

IV. No ADC Activities on BLM Lands

Under this alternative, no APHIC ADC programs would be authorized on BLM land in Montana. However, private landowners would continue to be able to enter into agreements with ADC to carry out ADC on private, state, and other non-BLM lands. No organized ADC control activities would occur on BLM land, although predators could continue to be taken by individuals pursuant to state law.

Dated: July 12, 1993.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 93–17400 Filed 7–21–93; 8:45 am]

BILLING CODE 4310–DN–M

[OR–030–03–4710–05; G3–299]

Road Closure; Oregon

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following order closes approximately 2000 feet of road along South Fork Walla Walla River on public land in WM, T.4 N., R.37 E., sections 10, 14, and 15 in Umatilla County, Oregon.

The purpose of this order is to close this road for the duration of the construction of a trail head at the end of the road. Use of the road could pose a safety hazard to members of the public and workers at the site. Under the authority of 43 CFR 8364.1, the above described road is closed to public use and access through the completion of construction.

Persons exempt from this order include emergency service and law enforcement personnel, Bureau of Land Management and U.S. Forest Service employees performing official duties, contractors and sub-contractors working at the site, and persons acting under specific authorizations granted by the Bureau of Land Management.

EFFECTIVE DATE: August 8, 1993.

FOR FURTHER INFORMATION CONTACT: Gerry Meyer, BLM Baker Resource Area, P.O. Box 987, Baker City, Oregon 97814, (503) 523-6391.

Dated: July 12, 1993.

Larry A. Taylor,

Area Manager.

[FR Doc. 93–17404 Filed 7–21–93; 8:45 am]

BILLING CODE 4310–33–M

[CA-940-03-4111-15; CACA 24209]

California: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas lease CACA 24209 for lands in Glenn County, California, was timely filed and was accompanied by all required rentals and royalties accruing from December 1, 1992, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 USC 188), the Bureau of Land Management is proposing to reinstate the lease effective December 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

Dated: July 15, 1993.

Fred O'Ferrall,

Chief, Leasable Minerals Section.

[FR Doc. 93-17399 Filed 7-21-93; 8:45 am]

BILLING CODE 4310-84-M

[OR-943-2300-02; GP3-294; OR-44990]

Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior

ACTION: Notice.

SUMMARY: This action will open 2,359.24 acres of acquired lands to surface entry, and 1,190.72 acres to mining and mineral leasing. Of the balance, 440 acres are already open to mining and mineral leasing, the mineral estate in 246.80 acres is not in Federal ownership, and the 481.72-acre balance will be opened to the mining and mineral leasing laws to the extent that the minerals are in Federal ownership.

EFFECTIVE DATE: August 27, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: 1. Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described lands were acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 34 S., R. 25 E.,
Sec. 36, lots 1, 2, 3, and 4.
T. 35 S., R. 25 E.,
Sec. 3, lots 1 to 15, inclusive N½SW¼, and NW¼SE¼;
Sec. 4, lot 1, SW¼SW¼, and NE¼SE¼;
Sec. 5, lots 1 and 3;
Sec. 7, lots 1 to 5, inclusive, 9, and 10;
Sec. 8, NE¼, E½ NW¼, NW¼NW¼, E½SW¼, and SE¼;
Sec. 9, NW¼NW¼;
Sec. 16, NW¼;
Sec. 17, lot 1, NE¼, NE¼NW¼, S½NW¼, E½SW¼, NW¼SW¼, and SE¼;
Sec. 19, lot 2;
Sec. 20, NE¼NW¼;
Sec. 30, lots 2, 3, 6, 7, 10, and 11.

The areas described aggregate 2,359.24 acres in Lake County.

2. At 8:30 a.m., on August 27, 1993, the above described lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on August 27, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

3. At 8:30 a.m., on August 27, 1993, the following described land will be opened to location and entry under the United States mining laws, or to the extent that the minerals are in United States ownership. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts:

Willamette Meridian

T. 35 S., R. 25 E.,
Sec. 3, lots 1 to 5, inclusive, and N½SW¼;
Sec. 5, lot 1;
Sec. 7, lots 1 to 5, inclusive, 9, and 10;
Sec. 8, NW¼NE¼, S½NE¼, E½NW¼, NW¼NW¼, and E½SW¼;
Sec. 16, NW¼;
Sec. 17, NE¼NW¼;
Sec. 30, lots 6, 7, 10, and 11.

The areas described aggregate 1,190.172 acres in Lake County.

Willamette Meridian

Four fifths Interest in United States Ownership

T. 35 S., R. 25 E.,
Sec. 4, lot 1 and SW¼SW¼;
Sec. 5, lot 3;
Sec. 8, SW¼SE¼;
Sec. 9, NW¼NW¼;
Sec. 17, lot 1, NW¼NE¼, S½NW¼, N½SW¼, and SE¼SW¼;
Sec. 20, NE¼NW¼.

The areas described aggregate 481.72 acres in Lake County.

4. At 8:30 a.m., on August 27, 1993 the land described in paragraph 3 will be opened to applications and offers under the mineral leasing laws or to the extent that the minerals are in United States ownership.

Dated: July 13, 1993.

Champ C. Vaughan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-17388 Filed 7-21-93; 8:45 am]

BILLING CODE 4310-33-M

[CA-010-03-4210-04; CA-32584 FD]

Realty Action Exchange of Public Lands, El Dorado County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action: exchange of public lands, CA-32584 FD.

SUMMARY: The following described public land (surface and mineral estate) located in El Dorado County is being considered for exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713):

Selected Public Lands:

Mount Diablo Meridian, California

T. 9 N., R. 11 E.
Sec. 6: Lot 28.
Containing 4.35 acres, more or less.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to resolve an encroachment problem. A survey revealed that a portion of the adjacent landowner's home (Sherman Schroder) was erroneously built on the above-described public lands. The subject land would be exchanged to the Nature Conservancy (TNC) who, in turn, would sell the property to Mr. and Mrs. Sherman Schroder at the appraised fair market value. In exchange for the above public land, TNC would offer to the United States valuable wetlands and waterfowl habitat located in the Central Valley of California. The proposed exchange is consistent with the North American Waterfowl Management Plan and the Central Valley Habitat Venture as well as with the Bureau of Land

Management's land use plans. The public interest will be served if this exchange is completed because it will enable the Bureau to acquire lands with high public values, and will increase management efficiency of public lands.

The tract of land would be transferred from the United States subject to a reservation for a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945). All necessary clearances, including clearances for cultural and historical resources, Threatened and Endangered Plants and Animals, have been completed on these lands.

This notice, as provided in 43 CFR 2201.1(b), segregates the above-described public land being considered for this exchange from settlement, location and entry under the public land laws, including the mining laws. The segregative effect shall terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation, or two (2) years from the date of this notice, whichever occurs first.

For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, c/o Folsom Resource Area Manager, Folsom Resource Area, 63 Natoma St., Folsom, CA 95630.

FOR FURTHER INFORMATION CONTACT: Marianne Wetzel Lopez, Realty Specialist, BLM Folsom Resource Area, 63 Natoma St., Folsom, CA 95630, (916) 985–4474.

Dated: July 13, 1993.

D. K. Swickard,

Area Manager.

[FR Doc. 93–17392 Filed 7–21–93; 8:45 am]

BILLING CODE 4310–40–M

[OR–015–4210–05: GP–3–310]

Realty Action; Competitive and Modified Competitive Sale of Public Land in Lake County, Oregon

The following parcels of public land are suitable for competitive and modified competitive sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than the appraised fair market value. The land will not be offered for sale for at least 60 days following the publication of this notice in the **Federal Register.**

Legal description	Acreage	Sale price	Deposit
Parcel No. 1, OR 49385			
T.26S., R.18E., W.M., Oregon	40	$2,600.00	$780.00
Section 5: SW¼SE¼			
Parcel No. 2, OR 49386			
T.25S., R.14E., W.M., Oregon	935	75,000.00	7,500.00
Section 28: S½			
Section 33: N½, N½SW¼, E½SW¼SW¼, SE¼SW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼, SW¼SE¼SE¼, N½SE¼SE¼SE¼			
Parcel No. 3, OR 49387			
T.25S., R.14E., W.M., Oregon	320	25,700.00	2,570.00
Section 34: S½			
Parcel No. 4, OR 49388			
T.25S., R.14E., W.M., Oregon	480.89	38,800.00	3,880.00
Section 28: NW¼			
T.25S., R.15E., W.M., Oregon			
Section 31: Lots 3, 4, E½SW¼, SE¼			
Parcel No. 5, OR 49389			
T.25S., R.14E., W.M., Oregon	960.00	79,400.00	7,940.00
Section 24: S½			
Section 25: All			

The above described land parcels are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute for 270 days from the date of publication or until title transfers are completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This land will be offered for sale in accordance with a congressionally directed plan to restore and maintain the public/private ownership ratio in Lake County. The land is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with Bureau planning for the land involved and will serve important public objectives.

Sale parcel OR 49385 will be offered under competitive sale procedures. Sale parcels OR 49386, OR 49387, OR 49388 and OR 49389 will be offered using modified competitive sale procedures. Under the modified sale procedures the following designated bidders will be provided the opportunity to match the highest bid received as specified. Ken Kruse of Fort Rock, Oregon for sale parcels OR 49386 and OR 49387, Alan Parks (Poplars Ranch Inc.) of Fort Rock, Oregon and Gordon Wanek of LaPine, Oregon for sale parcels OR 49388 and OR 49389, respectively. The above preferences will not apply beyond the date of first sale offering. Modified competitive sale procedures are considered appropriate, in these cases, as the designated bidders are adjoining landowners and/or existing users of the land who wish to consolidate the subject properties into their existing business operations. Both sale procedures are authorized under 43 CFR 2711.3–3.

The land will be offered for sale at public auction beginning at 10 am p.s.t., on October 29, 1993, and will be by sealed bid only. All sealed bids must be submitted to the BLM, Lakeview District Office at P.O. Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630, no later than 4:30 pm p.s.t., October 28, 1993. A separate written bid must be submitted for each parcel desired and bids must be for not less than the appraised sale price indicated. Each written sealed bid must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior-BLM for not less than the bid deposit specified in this notice. All bids

shall be enclosed in a sealed envelope clearly marked, in the lower left hand corner, "Bid for Public Land Sale OR (number), Lake County, Oregon, October 29, 1993." The total purchase price for the land shall be paid within 180 days of the date of sale or the bid deposit will be forfeited and the parcel(s) will be reoffered to the public.

The terms, conditions and reservations applicable to the sales are as follows:

1. Patents to all sale parcels will contain a reservation to the United States for ditches and canals.

2. The sale parcels will be subject to all valid existing rights of record at the time of patent issuance.

3. The mineral interests being offered for conveyance with the sale parcels have no known value. A deposit or bid to purchase a parcel(s) will also constitute an application for conveyance of the mineral estate with the following reservations;

a. The oil and gas and geothermal resources will be reserved to the United States for all sale parcels, except the SW¼ of section 28 of Parcel OR 49389 where the minerals are privately owned.

b. Diatomite will be reserved to the United States on parcels OR 49385, OR 49386, OR 49387 and OR 49388, the NW¼ of section 28 only.

The above mineral reservations are being made in accordance with section 209 of the Federal Land Policy and Management Act of 1976.

All qualified bidder(s) must include with their bid deposit a non-refundable $50.00 filing fee for conveyance of the mineral estate.

4. Sale parcels OR 49386 and OR 49387 will be subject to the grazing use occurring within the Highway Grazing Allotment No. 904 by the existing permittee, Kenneth Kruse. The privilege to graze domestic livestock on the subject property according to the terms and conditions in operator record No. 361475 dated March 1, 1989, shall cease on February 28, 1998. The level of use allowed on the subject property will not exceed 126 animal unit months annually.

Sale parcel OR 49388 will be subject to the grazing use occurring within the Valley Grazing Allotment No. 911 by the existing permittee, Alan Parks (Poplars Ranch Inc.). The privilege to graze domestic livestock on the subject property according to the terms and conditions in operator record No. 361473 dated March 1, 1991, shall cease on February 28, 2001. The level of use allowed on the subject property will not exceed 78 animal unit months annually.

Sale parcel OR 49389 will be subject to the grazing use occurring within the Homestead Grazing Allotment No. 905 by the existing permittee, Gordon Wanek. The privilege to graze domestic livestock on the subject property according to the terms and conditions in operator record No. 361470 dated March 1, 1988, shall cease on February 28, 1998. The level of use allowed on the subject property will not exceed 120 animal unit months annually.

The successful bidder is entitled to receive annual grazing fees from the current permittee(s) in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the **Federal Register.** If the present permittee(s) are determined to be the successful bidders(s) or if, any time prior to the expiration date above, the permittee(s) sells or leases the base property to another person, the above conditions of patent will become null and void. The preference affected by this sale is non-transferable.

Federal law requires that all bidders must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

Under modified competitive sale procedures, an apparent high bid will be declared at public auction. In the event of a tie, the tied bidders will be notified and given the opportunity to modify their original bids. The apparent high bidder and the designated bidder(s) will then be notified. The designated bidder(s) shall have 15 days from the date of high bid notification to exercise the preference consideration given to match the high bid. Should the designated bidder fail to submit a bid that matches the apparent high bid within the specified time period, the apparent high bidder shall be declared the higher bidder.

If the land identified in this notice is not sold on the date of first sale offering, the unsold parcels will be available on an over-the-counter competitive sale basis. No purchase preference shall be awarded for over-the-counter sales. All over-the-counter sale parcels will be sold subject to the above terms and conditions and at no less than the indicated sale price. Sealed bids will be accepted on the unsold parcels at the Lakeview District Office during regular business hours (7:45 a.m. to 4:30 p.m. p.s.t. Monday through Friday) at the address shown below. All sealed bids received will be opened the first Wednesday of each subsequent month until the land is either sold or withdrawn from sale. Prospective buyers should inquire about unsold parcels after October 29, 1993.

Detailed information concerning the sale, including the reservations, sale procedures, terms and conditions, planning and environmental documentation, is available at the Lakeview District Office, P.O. Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Lakeview Resource Area Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the District Manager who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 14, 1993.

Scott R. Florence,

Manager, Lakeview Resource Area.

[FR Doc. 93–17406 Filed 7–21–93; 8:45 am]

BILLING CODE 4310–33–M

East Mojave National Scenic Area; Adjustment of Daily Recreation Use Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Daily recreation use fees at Mid Hills and Hole-in-the-Wall Campgrounds in the East Mojave National Scenic Area, CA are increased from $4.00 per campsite to $6.00 per campsite. This action is necessary to recover increasing costs associated with campground maintenance.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Jim Foote, Outdoor Recreation Planner, Needles Resource Area, P.O. Box 888, Needles, CA 92363; telephone (619) 326–3896.

SUPPLEMENTARY INFORMATION: Mid Hills and Hole-in-the-Wall Campgrounds were developed and daily recreation use fees established during the mid-1960s. The current use fee of $4.00 has been charged for more than a decade; information pertaining to use fees for these sites prior to the 1980s is unavailable.

An increase in daily recreation use fees reflects steadily increasing costs associated with maintenance of campground facilities. This action does not result in fees which exceed those established for similar facilities by other Federal agencies, non-Federal public agencies and the private sector located

within the service area of Mid Hills and Hole-in-the-Wall Campgrounds.

Authority for establishing daily recreation use fees is found at 36 CFR part 71 as promulgated pursuant to section 4, Land and Water Conservation Fund Act of 1965, 16 U.S.C.A. 4601–6a (Supp., 1974), and section 3, Act of July 11, 1972, 86 Stat. 461.

Dated: July 9, 1993.

Henri Bisson,

District Manager, California Desert.

[FR Doc. 93–17394 Filed 7–21–93; 8:45 am]

BILLING CODE 4333–04–M

[MT–070–03–4990–03]

Resource Management Plan

AGENCY: Butte District Office, Bureau of Land Management, DOI.

ACTION: Amendment to the notice of intent to prepare a Resource Management Plan (RMP) Amendment for acquired lands located in the Garnet Resource Area, Montana.

SUMMARY: The original Notice of Intent to prepare an amendment to the Garnet RMP was published in the **Federal Register**, Vol. 56, No. 27 (February 8, 1991). It did not include the announcement that two tracts are being proposed for designation as Areas of Critical Environmental Concern (ACECs). Since proposed ACECs are to be described for public consideration and comment, the original notice is herein amended to bring that information before the public.

The two tracts of land that are being proposed for ACEC designation are Tract 10 (Squaw Rock) and Tract 11 (Bear Creek Flats). Descriptions of those tracts are:

Squaw Rock Tract

Size: 640 acres
Location: T 7 N, R 16 W, Sec. 16, PMM

Special Features: Wildlife/fisheries, watershed, recreation and scenic values are the outstanding features of this tract. It is within a high-value bighorn sheep spring/summer/fall habitat, and is particularly important as a lambing area for the Upper Rock Creek Bighorn Sheep herd. It also provides high-value deer, elk and bighorn sheep winter range. An extensive rock cliff complex overlooking Rock Creek provides excellent raptor nesting habitat.

A portion of Rock Creek flows across the southern end of the tract. Rock Creek is a blue ribbon trout stream and renowned nationwide for its fishing.

Rock Creek and the rock cliffs above it afford a high quality visual zone on the tract. Observers are able to view bighorn lambs on the rock cliffs during the spring lambing season from a nearby county road.

Bear Creek Flats Tract

Size: 669 acres
Location: T 14 N, R 14 W, Secs. 1, 2, 11 and 12

Special Features: This tract was purchased with Land and Water Conservation Funds for its wildlife/fisheries, watershed, recreation and scenic values. Portions of the tract provide big game winter habitat. The Blackfoot River and its associated riparian zone provide important foraging and winter roosting habitat for bald eagles.

The tract is part of the Blackfoot River Recreation Corridor, a cooperative management area established to preserve the natural and recreational values of the river. The Blackfoot River is appreciated locally and nationally for its recreational opportunities (floating, fishing, camping) and natural beauty. Consequently, there is wide concern about what is happening to the river; increasing recreational use and the effects of other past and present uses (mining, logging, grazing, etc.).

Riparian values are another important feature of the tract. The west boundary of the tract is formed by the Blackfoot River and its associated riparian zone. Bear Creek and its associated riparian zone cross the southern end of the tract and join the river. Approximately 3 miles of riparian habitat are associated with this tract.

The public is also invited to nominate any of the other ten (10) tracts for consideration as an ACEC. Each tract nominated will be evaluated by the criteria for relevance and importance to determine if it qualifies for designation. Relevance refers to significant natural, historic or cultural values; or significant natural systems or processes associated with the tract; or any natural hazards of the tract. Importance is determined by the significance of the values, and generally requires more than local significance.

DATES: The period for nominating other tracts for ACECs is until August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Attention: Delon Potter, 3255 Fort Missoula Road, Missoula, Montana 59801, Phone: 406–329–3824.

Dated: July 13, 1993.

Gary L. Gerth,

Acting District Manager.

[FR Doc. 93–17395 Filed 7–21–93; 8:45 am]

BILLING CODE 4310–DN–M

Bureau of Reclamation

River Maintenance Program for the Rio Grande—Velarde to Caballo Dam—Rio Grande and Middle Rio Grande Projects, New Mexico

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of final supplement to the 1977 final environmental impact statement (FSFEIS), INT–FES–93–15.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) has prepared a final supplement to the 1977 final environmental impact statement (FSFEIS) on a reformulated river maintenance program within the Rio Grande floodway. The proposed maintenance program consists of 6 broad-based alternatives for river channel maintenance, based on 10 distinctive morphological reaches of the Rio Grande.

ADDRESSES: Single copies of the final supplement to the FSFEIS may be requested from Reclamation's offices at the addresses below.

Copies of the FSFEIS are available for inspection at the following locations:

- Regional Director, Bureau of Reclamation, Upper Colorado Regional Office, Federal Building, 125 South State Street, Attention: UC–700, Salt Lake City, UT 84147–0568; telephone: (801) 524–5517.
- Projects Manager, Bureau of Reclamation, Albuquerque Projects Office, 505 Marquette, NW., suite 1313, Attention: ALB–150, Albuquerque, NM 87102–2162; telephone: (505) 766–1753.
- Bureau of Reclamation, Technical Liaison Division, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240; telephone: (202) 208–4662.
- Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, room 167, Denver, CO 80225; telephone: (303) 236–6963.
- Middle Rio Grande Conservancy District, 193 Second Street, SW., Albuquerque, NM 87103; telephone: (505) 247–0234.

Libraries

Albuquerque City Libraries:
- Main Library, 501 Copper Avenue, NW.
- Erna Ferguson, 3700 San Mateo Boulevard, NE.
- Ernie Pyle, 900 Girard Boulevard, SE.
- Esperanza, 5600 Esperanza Drive, NW.
- Juan Tabo, 3407 Juan Tabo Boulevard,

NE.
Lomas and Tramway, 908 Eastridge Drive, NE.
Los Griegos, 1000 Griegos Road, NW.
San Pedro, 5600 Trumbull Avenue, SE.
South Valley, Bernalillo County, 3908 Isleta Boulevard, SW.
Taylor Ranch, 5700 Bogart, NW.
University of New Mexico, Albuquerque, New Mexico
New Mexico State University, Las Cruces, New Mexico

FOR FURTHER INFORMATION CONTACT: Mr. William E. Burleigh, Activity Manager, Albuquerque Projects Office, Attention: ALB-150, 505 Marquette, NW., suite 1313, Albuquerque, NM 87102-2162; telephone: (505) 766-2518.

SUPPLEMENTARY INFORMATION: Under the reformulated river maintenance program, river channel maintenance was designed based on the hydrologic characteristics of the Rio Grande and consideration of the environmental values associated with each reach. Future mitigation measures will be addressed on a site-specific basis based on "best management practices."

Dated: June 2, 1993.

Doe D. Hall,

Deputy Commissioner.

[FR Doc. 93-17336 Filed 7-21-93; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-697823

Applicant: Regional Director, Region 5, U.S. Fish and Wildlife Service, Hadley, MA.

Applicant requests amendment to their current permit to take Karner blue butterfly (*Lycaeides melissa samuelis*) for purposes of scientific research and enhancement of propagation of survival of the species in accordance with recovery documents.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420c, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420c, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: July 19, 1993.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93-17413 Filed 7-21-93; 8:45 am]

BILLING CODE 4310-55-M

Availability of Draft Recovery Plan for "Hibiscadel phus Distans"

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for *Hibiscadelphus distans*. This species is known only from the island of Kauai, Hawaii, and is currently limited to only two wild populations, made up of approximately 100 individuals; only 56 are reproductively mature.

DATES: Comments on the draft recovery plan must be received on or before September 20, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, P.O. Box 50167, Honolulu, Hawaii 96850 (Building address: 300 Ala Moana Boulevard, Honolulu, Hawaii 96813) (Phone: 808-541-2749). Copies of the draft plan are available for inspection at the Lihue Public Library, 4344 Hardy Ave., Lihue, Hawaii 96766 (Phone: 808-245-3617). Written comments and materials regarding the plan should be addressed to Robert P. Smith, Field Supervisor of the Pacific Islands Office at the above Honolulu address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours, at the above Honolulu address.

FOR FURTHER INFORMATION CONTACT: Karen Rosa, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States, its Territories and Commonwealths. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The species being considered in this recovery plan is *Hibiscadelphus distans* The genus *Hibiscadelphus* is endemic to Hawaii, and is considered to be one of the world's rarest groups of trees. This genus once inhabited the diverse mesic forests found at middle elevations. Introduced animals and land clearing for agriculture over the past 200 years have altered these forests so extensively that little primary habitat remains. *H. distans* was discovered in 1972 in a highly degraded native dryland forest. Browsing by introduced goats, competition with alien plants, and landslides are now the major threats to the species' survival. Other threats are introduced insect predators and pathogens.

Hibiscadelphus distans is currently represented by only two populations, made up of less than 60 reproductive individuals in total. The areas of emphasis for recovery actions are the population sites located in Koaie Valley, Waiamea Canyon. In addition, the recovery plan emphasizes establishing

new populations in the Waiamea Canyon area.

Recovery efforts will focus on protection of all extant individuals from goats, alien plant species, landslides, insect predators and pathogens, propagation of genetically suitable plants to augment the existing populations, and establishment of new populations in suitable habitat areas.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 14, 1993.

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 93-17401 Filed 7-21-93; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 161 *et seq.*) and the regulations governing marine mammals (50 CFR part 18).

Applicant: Alaska Fish and Wildlife Research Center PRT-740507 Anchorage, AK

Type of Permit: Scientific Research

Name and Number of Animals: Alaska sea otters (*Enhydra lutris*)

Summary of Activity to be Authorized: The applicant requests amendment to their permit for import of blood samples collected from live sea otters in Canada and Russia while conducting research with foreign counterparts. Samples will be imported for analyses of serum chemistry, serum hormones, and genetics.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), 4401 N. Fairfax Dr., room 420c, Arlington, VA 22203 and must be received by the Director within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director submit request to: U.S. Fish and Wildlife Service, OMA, 4401 North Fairfax Drive, room 420c, Arlington, VA 22203. Phone: (1-800-358-2104); Fax: (703/358-2281).

Dated: July 16, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93-17363 Filed 7-21-93; 8:45 am]

BILLING CODE 4310-55-M

Damage Assessment Plan: Southern Lakes Trap and Skeet Club, Lake Geneva, WI

AGENCY: U.S. Fish and Wildlife Service, Region 3, Department of the Interior.

ACTION: Notice of 30-day comment period.

SUMMARY: Notice is given that the draft document entitled: "Damage Assessment Plan: Southern Lakes Trap and Skeet Club, Lake Geneva, Wisconsin" is available for public review and comment.

The Service is acting as trustee for migratory birds, endangered species, and certain anadromous fish, on behalf of the Secretary of the Department of Interior, pursuant to section 107(f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9602 *et seq.* and Federal Regulations at 43 CFR 11.32(c)(1).

The Service is undertaking an assessment of damages to the migratory birds of the United States, and the habitats which support them, that have been injured by exposure to a hazardous substance. In particular, the Service believes that Canada geese (*Branta canadensis*) have been killed by ingesting lead shot at the site. Lead is listed as a hazardous substance, pursuant to CERCLA, in Federal regulations at 40 CFR 302.4. Canada geese are migratory birds pursuant to the Migratory Bird Treaty Act of 1918, as amended, 16 U.S.C. 703 *et seq.*

The Service is following the Federal Regulations at 43 CFR part 11, issued by the Department of the Interior in conducted this damage assessment. The public review of this draft Damage Assessment Plan, announced by this notice, is provided at 43 CFR 11.32(c).

Interested members of the public are invited to request a copy of this Plan and the Service's Preassessment Screen and Determination issued on January 22, 1993, from the Assistant Regional Director for Ecological Services, U.S. Fish and Wildlife Service, Region 3, at the address given below. All written comments will be considered by the Service and incorporated into the Report of Assessment.

DATES: Comments may be submitted on or before August 23, 1993.

FOR FURTHER INFORMATION CONTACT: John A. Blankenship, Assistant Regional Director for Ecological Services, US FWS Region 3 (ATTN: ES/EC-NRDA), Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111 (phone 612/725-3593 or fax 612/725-3526).

SUPPLEMENTARY INFORMATION: On behalf of the Secretary of the Department of Interior, the trustee for migratory birds, the Service is authorized by section 107(f) of CERCLA to recover damages for the injury, destruction or loss of migratory birds, and the habitats which support them, caused by the release of hazardous substances. Under this authority, the Service issued a Preassessment Screen and Determination on January 22, 1993, in which the Service conducted a preliminary review of existing and readily available information concerning the facts of this case and determined that a damage assessment could and should be done.

The purpose of the draft Damage Assessment Plan announced here is to ensure that the assessment is performed in a planned and systematic manner and that the methodologies selected can be conducted at reasonable cost. This notice invites comments on that document.

On November 25, 1992, the Service notified the Wisconsin Department of Natural Resources (WDNR) of potential co-trusteeship at the site. The WDNR has declined to participate as a trustee for this case.

The Service, and the U.S. Environmental Protection Agency (EPA) pursuant to their response authority under CERCLA, have begun discussions with the potentially responsible parties on how to proceed with removal, remediation, and restoration at this site. The Damage Assessment Plan will provide the basis for investigations at the site to determine the extent of injury to trust resources at the site and the monetary value of damages to the public.

The intent of the Service is to calculate damages as the cost of restoring the functions of the disturbed

wetland on the site and surrounding habitat, plus the approximate value of lost waterfowl, plus the costs to the Service of assessing damages at the site. The Service is particularly interested in receiving information from the public on methods for easily estimating the value of lost waterfowl.

The Damage Assessment Plan provides for: (1) Mapping the distribution of lead shot; (2) inventorying site flora; (3) evaluating site habitats; (4) characterizing site physical features; and (5) development of a clean-up criterion. This information will be used to estimate the cost of restoration.

As an initial step in the assessment, the horizontal and vertical distribution of lead shot pellets will be determined through analysis of sediment core samples. This information will be used to evaluate options for removal of the lead and restoration of the site. Options will be evaluated based on effectiveness, feasibility, and cost. The cost estimate of the selected option will become an element of the restoration-based liability for this site.

An inventory of the flora, a habitat evaluation, and a characterization of the physical features will be conducted to establish the condition of the habitat prior to removal of the lead and to establish goals for the restoration.

Sampling and analysis of sediment, water, and vegetation will be conducted to determine if pathways exist for exposure of geese to lead, other than direct ingestion, for exposure to polynuclear aromatic hydrocarbons from remnant clay targets ("clay pigeons").

As part of the assessment, a clean-up criterion for acceptable lead shot residual levels (those levels which will be protective of trust species using the site following restoration) will be developed. Using the probability of waterfowl ingesting a toxicologically significant number of pellets, an objective expressed as the maximum permissible number of lead pellets per unit area will be calculated.

The potential responsible parties have been invited to participate in the development of the Damage Assessment Plan announced here. The Service intends to allow them and their consultants to implement any part of the Plan under the direction, guidance, and supervision of the Service. In addition, the Service will continue to coordinate closely with the EPA in recognition of the possibility that EPA-led activities at the site may satisfy goals of the Plan.

Comments are being solicited to ensure that important resource concerns are not omitted from the assessment, that methodologies are given an independent review and appropriate methodologies are chosen for the assessment, and that costs of assessment are reasonable.

Marvin E. Moriarty,

Acting Regional Director, U.S. Fish and Wildlife Service, Region 3.

[FR Doc. 93-17382 Filed 7-21-93; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Privacy Act of 1974—Deletion of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting from its inventory of Privacy Act systems of records two notices describing records maintained by the U.S. Geological Survey. The systems of records notices being abolished are entitled "Accounts Receivable—Interior, USGS-3," which was previously published in the **Federal Register** on September 7, 1990 (55 FR 36904) and "Travel Files—Interior, GS-14," which was previously published in the **Federal Register** on June 4, 1985 (50 FR 23523). These systems of records are no longer being maintained in the Department of the Interior.

Prior to October 14, 1992, the U.S. Geological Survey maintained a separate record of persons and corporate entities who owed money to the U.S. Geological Survey for the purpose of billing debtors and accounting for payments received (USGS-3), and a record of employee travel for the purpose of processing travel authorizations and claims (GS-14). With the establishment of the Departmentwide system of records "Federal Financial System—Interior, OS-90" (57 FR 47118), these systems became obsolete. On December 14, 1992, the records maintained in these systems were incorporated into the Federal Financial System.

These changes shall be effective on publication in the **Federal Register** (July 22, 1993). Additional information regarding this action may be obtained from the Departmental Privacy Act Officer, Office of the Secretary, Office of Administrative Services, PMO, 1849 "C" Street NW., Mail Stop 5412 MIB, Washington, D.C. 20240, telephone (202) 208-6045.

Dated: July 16, 1993.

Albert C. Camacho,

Director, Office of Administrative Services.

INTERIOR/USGS-18

SYSTEM NAME:

Computer Registration System—Interior, USGS-18.

SYSTEM LOCATION:

Information Systems Division, National Center, U.S. Geological Survey, Mail Stop 801, Reston, Virginia 22092; Menlo Park Service Center, 345 Middlefield Road, Menlo Park, California 94025; Flagstaff Service Center, 2255 N. Gemini Drive, Flagstaff, Arizona 86001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of computer services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, computer user number, city/state telephone number, subsystem registration, account number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 486(c); 41 CFR part 201-7.

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

The primary use of the records is: (a) To record registration information for computer users; and (b) to contact computer users. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) Of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (3) To a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) To a Federal agency which has requested information relevant or necessary to its hiring or

retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; and (5) To Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit.

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

STORAGE:

Records are maintained on magnetic disk.

RETRIEVABILITY:

By user name, user number, city/state telephone number, subsystem, account number.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Item 102–01.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Systems Division, U.S. Geological Survey, Mail Stop 801, National Center, Reston, Virginia 22092; Chief, Menlo Park Service Center, U.S. Geological Survey, 345 Middlefield Road, Menlo Park, California 94025; Chief, Flagstaff Service Center, U.S. Geological Survey, 2255 N. Gemini Drive, Flagstaff, Arizona 86001.

NOTIFICATION PROCEDURES:

A request for notification of the existence of records shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of a record shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual users of computer services.

Interior/USGS–24

SYSTEM NAME:

Employee Work Report Edit and Individual Employee Production Rates—Interior, USGS–24.

SYSTEM LOCATION:

1. Eastern Mapping Center, National Mapping Division, U.S. Geological Survey, National Center, Mail Stop 567, Reston, Virginia 22092.

2. Mid-Continent Mapping Center, National Mapping Division, U.S. Geological Survey, 1400 Independence Road, Rolla, Missouri 65401.

3. Rocky Mountain Mapping Center, National Mapping Division, U.S. Geological Survey, Box 25046, Mail Stop 510, Denver, Colorado 80225.

4. Western Mapping Center, National Mapping Division, U.S. Geological Survey, 345 Middlefield Road, Mail Stop 531, Menlo Park, California 94025.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Production employees in Mapping Centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, social security number, hours, and square miles mapped by individual production employees in each of the offices listed above, as well as Geological Survey professionals (geographers, cartographers, etc.) who conducted research and investigations for which results are published in Geological Survey reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 3010; 43 U.S.C. 31, 1467.

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

The primary use of the records is for analysis of cost and production rates for individual employees and for units of National Mapping Division. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) Of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (3) To a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) To a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (5) To Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit.

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

STORAGE:

Maintained on magnetic tape and disc.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access restricted to authorized persons only from locked storage.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Item 102–01.

SYSTEM MANAGER(S) AND ADDRESS:

1. Chief, Branch of Program Management, Eastern Mapping Center, National Mapping Division, U.S. Geological Survey, National Center, Mail Stop 567, Reston, Virginia 22092.

2. Chief, Branch of Program Management, Mid-Continent Mapping Center, National Mapping Division, U.S. Geological Survey, 1440 Independence Road, Rolla, Missouri 65401.

3. Chief, Branch of Program Management, Rock Mountain Mapping Center, National Mapping Division, U.S. Geological Survey, Box 25046, Mail Stop 510, Denver, Colorado 80225.

4. Assistant Chief, Western Mapping Center, National Mapping Division, U.S. Geological Survey, 345 Middlefield Road, Mail Stop 531, Menlo Park, California 94025.

NOTIFICATION PROCEDURE:

A request for notification of the existence of records shall be addressed

to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of a record shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Data from work prepared by individuals.

[FR Doc. 93-17397 Filed 7-21-93; 8:45 am]

BILLING CODE 4310-31

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1990, Public Law 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Records Management Officer, Renee Poehls, (202) 875-1608, FA/AS/ISS/RM, room 930B, N.S., Washington, DC 20523.

Date Submitted: July 2, 1993

Submitting Agency: Agency for International Development

OMB Number: 0412-0020

Form Number: AID 1450-4

Type of Submission: Renewal

Title: Supplier's Certificate and Agreement with A.I.D. for Project Commodities/Invoice and Contract Abstract

Purpose: When A.I.D. is not a party to a contract which it finances, it must monitor those contracts to assure adherence to A.I.D. requirements. This information collection item enables A.I.D. to keep records of commodity expenditures for program management purposes and required reports. It also allows A.I.D. to measure the extent of small and minority business participation in the commodity program. Respondents are identified as Supplier of commodities who must submit data per each transaction. The total annual collective burden on respondents is estimated at $3,408. These costs are projected from such items as personnel, recordkeeping, reporting, and overhead costs.

Annual Reporting Burden: Respondents: 100, annual responses: 200; average hours per response: .50; annual burden hours: 100

Reviewer: Jeffery Hill (202) 395-7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503

Dated: July 6, 1993.

Elizabeth Baltimore,

Information Support Services Division.

[FR Doc. 93-17405 Filed 7-21-93; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, Room 3219, Washington, DC 20423, (202) 927-5750 or (202) 927-6212.

Comments on the following assessment are due 15 days after the date of availability:

AB-265 (Sub-No. 3X), State of Vermont and Vermont Railway, Inc.—Discontinuance of Service Over North Burlington Branch in Chittenden County, Vermont. EA available July 13, 1993.

AB-55 (Sub-No. 465X), CSX Transportation, Inc.—Abandonment and Discontinuance of Trackage Rights in Fayette County, West Virginia. EA available July 16, 1993.

AB-6 (Sub-No. 351X), Burlington Northern Railroad Co. Abandonment in St. Cloud, Stearns County, Minnesota. EA available July 16, 1993.

AB-32 (Sub-No. 52X), Boston & Maine Corporation and Springfield Terminal Railway Company—Abandonment and Discontinuance of Service—Stafford County, New Hampshire. EA available July 12, 1993.

Comments on the following assessment are due 30 days after the date of availability: None.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-17435 Filed 7-21-93; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 459X)]

CSX Transportation, Inc.—Abandonment Exemption—In Montgomery County, AL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by CSX Transportation, Inc., of 1.45 miles of rail line extending between mileposts SL-827.08 and SL-828.53 near Eastmont, Montgomery County, AL, subject to standard labor protective conditions.

DATES: This exemption will be effective on August 21, 1993, if no formal expression of intent to file an offer of financial assistance has been filed. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by August 2, 1993, petitions to stay must be filed by August 6, 1993, requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by August 11, 1993, and petitions to reopen must be filed by August 16, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 459X) to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Charles M. Rosenberger, 500 Water Street, Speed Code J-150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw (202) 927-5610. (TDD for hearing impaired: (202) 927-5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone:

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

(202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: July 13, 1993.

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

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–17436 Filed 7–21–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32316]

Exemption; Decatur Terminal Railway Co.—Acquisition and Operation Exemption—Indiana Hi-Rail Corp.

Decatur Terminal Railway Co. (Decatur), a noncarrier, has filed a notice of exemption to acquire from Indiana HiRail Corporation (IHRC) its rights as current operator of certain rail lines in the State of Illinois and to operate those lines. IHRC operates the following lines under contract: (1) Approximately 17.54 miles between milepost A 728.00 at Assumption and milepost A 745.54 near Elwin, IL, owned by Central Illinois Shippers, Inc.; and (2) approximately 13.47 miles between milepost 14.22 at Cisco, IL, and milepost 27.63 at Green's Switch, owned by Cisco Grain Cooperative Company. In addition, IHRC will assign to Decatur its interchange rights over lines of the Illinois Central Railroad at Decatur, IL.

This transaction is related to a notice of exemption filed concurrently in Finance Docket No. 32315, Pioneer Railcorp—Continuance in Control Exemption—Decatur Terminal Railway Co., in which Decatur's parent, noncarrier Pioneer Railcorp, seeks to continue in control of Decatur and six other rail carriers upon Decatur's becoming a carrier.

Any comments must be filed with the Commission and served on John D. Heffner, Gerst, Heffner, Carpenter & Precup, 1700 K Street, NW., suite 1107, Washington, DC 20006.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 16, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–17433 Filed 7–21–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32315]

Exemption; Pioneer Railcorp—Continuance In Control Exemption—Decatur Terminal Railway Co.

Pioneer Railcorp (Pioneer), a noncarrier, has filed a notice of exemption to continue to control Decatur Terminal Railway Co. (Decatur), a newly established noncarrier, upon Decatur's becoming a carrier. Decatur has concurrently filed a notice of exemption in Finance Docket No. 32316, Decatur Terminal Railway Co.—Acquisition and Operation Exemption—Indiana Hi-Rail Corporation to acquire from Indiana Hi-Rail Corporation (IHRC) its rights as current operator of certain rail lines in the State of Illinois and to operate those lines, which consist of the following: (1) Approximately 17.54 miles between milepost A 728.00 at Assumption and milepost A 745.54 near Elwin, IL, owned by Central Illinois Shippers, Inc.; and (2) approximately 13.47 miles between milepost 14.22 at Cisco, IL, and milepost 27.63 at Green's Switch, owned by Cisco Grain Cooperative Company. Also included in the acquisition is IHRC's assignment to Decatur of its interchange rights over lines of the Illinois Central Railroad at Decatur, IL.

Pioneer owns and controls the following class III rail common carriers: Alabama Railroad Co., Alabama & Florida Railway Co., Fort Smith Railroad Co., Mississippi Central Railroad, Wabash & Grand River Railway Co., and West Jersey Railroad Co. It indicates that: (1) The properties operated by the named railroads will not connect with each other; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: John D. Heffner, Gerst, Heffner, Carpenter & Precup, 1700 K Street, NW., suite 1107, Washington, DC 20006.

Decided: July 16, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–17434 Filed 7–21–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

BACKGROUND: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills (202–219–5095).

Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution

Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 (202)–395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Mine Safety and Health Administration

Mine Operator Dust Data Card
1219–0011
Bimonthly
Businesses or other for-profit; Small businesses or organizations 80,700 responses; 1 hour, 1 minute average per response; 81,991 total hours

Approximately 50 percent of coal mine operators are required to collect and submit respirable dust samples to MSHA for analysis. Pertinent information associated with identifying and analyzing these samples is submitted on the dust data card that accompanies the samples.

Signed at Washington, DC this 15th day of July, 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–17372 Filed 7–21–93; 8:45 am]

BILLING CODE 4510–43–M

Employment and Training Administration

[TA–W–28,475]

Airfoil Forging Textron, Euclid, OH; Negative Determination Regarding Application for Reconsideration

By an application dated June 14, 1993, Local #2562 of the United Auto Workers (UAW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 17, 1993 and published in the **Federal Register** on June 15, 1993 (58 FR 33121).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at the Euclid plant produce unfinished forgings for jet engine blades. The Euclid plant has no outside customers but ships its forgings to two other corporate domestic plants neither of which have workers certified for TAA. The findings also show that Airfoil Forging does not import forgings for jet engine blades.

The union claims that several Congressional and Governmental reports support their position that imported jet aircraft have adversely affected their employment.

Imported jet aircraft, like the European Airbus, cited by the union as having taken marketshare away from U.S. aircraft manufacturers, are not like or directly competitive with unfinished jet forgings for jet engine blades produced by the Airfoil Forging Division at Euclid.

Early in the administration of the worker adjustment assistance program, the courts addressed the issue of component and finished articles. In *United Shoe Workers of America, AFL–CIO* v. *Bedell*, 506 F2d 174 (D.C. Cir. 1974), the court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Similarly, unfinished jet forgings for jet engine blades cannot be considered like or directly competitive with jet airplanes or jet engines.

Other findings show that the decline in production of forgings are the result of factors unrelated to increased imports of forgings.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 13th day of July 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–17373 Filed 7–21–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–26,733]

ICI Americas, Inc. a/k/a Zeneca, Inc., Dighton, MA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 18, 1992, applicable to all workers of ICI Americas, Inc., Dighton, Massachusetts. The notice was published in the **Federal Register** on March 31, 1992 (57 FR 10924).

At the request of the company, the Department reviewed the subject certification. The investigation findings show that on June 1, 1993, Zeneca, Inc., replaced ICI Americas as the employer of the former ICI workers. Zeneca produces the same products as ICI did before.

Accordingly, the Department is amending the certification to show that Zeneca, Inc. is the successor-in-interest firm.

The amended notice applicable to TA–W–26,733 is hereby issued as follow:

All workers of Zeneca, Inc., Dighton, Massachusetts, the successor-in-interest firm of ICI Americas, in Dighton, Massachusetts who became totally or partially separated from employment on or after December 31, 1990 are eligible to apply for trade adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of July 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–17371 Filed 7–21–93; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. BHP Mineral International, Inc.

[Docket No. M–93–77–C]

BHP Mineral International, Inc., P.O. Box 155, Fruitland, New Mexico 87416 has filed a petition to modify the application of 30 CFR 77.1304(a) (blasting agents; special provisions) to its Navajo Mine (I.D. No. 29–00097) located in San Juan County, New Mexico. The petitioner proposes to use fuel oil blended with recycled oil as a

blasting agent. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Power Operating Co., Inc.

[Docket No. M-93-78-C]

Power Operating Company, Inc., P.O. Box 25, Osceola Mills, Pennsylvania 16666 has filed a petition to modify the application of 30 CFR 77.1607(aa) (loading and haulage equipment; operation) to its Frenchtown Mine (I.D. No. 36-02713) located in Clearfield County, Pennsylvania. The petitioner requests that the cited standard be modified to exclude coverage of rock trucks hauling overburden in the pit area. The petitioner proposes to eliminate pedestrians from the working areas of the pit, including tipping areas, and to ensure that all vehicles in the pit respect the working radius of any other equipment. The petitioner states that the proposed alternate method would ensure the safety of the miners at the mine.

3. Snyder Coal Co.

[Docket No. M-93-80-C]

Snyder Coal Company, R.D. #2, Box 93, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its N and L Slope (I.D. No. 36-02203) located in Northumberland County, Pennsylvania. The petitioner proposes to use bar and pin or link and pin couplers on underground haulage equipment instead of automatic couplers. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

4. Consolidation Coal Co.

[Docket No. M-93-81-C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241-1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Osage No. 3 Mine (I.D. No. 46-01455) located in Monongalia County, West Virginia. Due to deteriorating roof conditions, certain areas of the return air course cannot be safely traveled. The petitioner proposes to establish evaluation check points to monitor the affected area and test for methane and the quantity of air would be determined weekly by a certified person. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

5. New Warwick Mining Co.

[Docket No. M-93-82-C]

New Warwick Mining Company, R.D. 1, Box 167A, Mount Morris, Pennsylvania 15349 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Warwick Mine (I.D. No. 36-02374) located in Greene County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the return air course cannot be safely traveled. The petitioner proposes to establish a check point to monitor the air in the affected area. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

6. Consolidation Coal Co.

[Docket No. M-93-83-C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241-1421 has filed a petition to modify the application of 30 CFR 75.380 (d)(4) (escapeways; bituminous and lignite mines) to its Dilworth Mine (I.D. No. 36-04281) located in Greene County, Pennsylvania. The petitioner seeks to modify the requirement that escapeways be maintained at least 6 feet wide. As an alternative, the petitioner proposes to establish two separate and distinct escapeways with a clearance of 42 inches on one side of the supply cars when an unattended trip of the cars, not to exceed 300 feet in length, is parked in the track/intake escapeway entry of the three-entry development sections. A reflective sign would be posted at both the inby and outby ends of the trip of cars to indicate the side of travel. The petitioner would establish two separate and distinct escapeways identified with signs and markers. The secondary escapeway would be in the belt entry from the longwall face to the track entry at a distance not to exceed 1,000 feet. The minimum width of the travelway in the belt entry would be at 2 feet with a reflective sign posted at both the inby and outby end of the area. Walkways would be clear and free of obstructions; personnel would be instructed to use the primary escapeway in an emergency when the primary escapeway is impassable to transport persons; the longwall machine belt line would be deenergized; and personnel would be trained prior to implementing the alternate method. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. Neumeister Coal Co.

[Docket No. M-93-84-C]

Neumeister Coal Company, R.D. #1, Box 327-D, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.332(b)(1) and (b)(2) (working sections and working places) to its No. 2 Slope (I.D. No. 36-07166) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during pre-shift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

8. Neumeister Coal Co.

[Docket No. M-93-85-C]

Neumeister Coal Company, R.D. #1, Box 327-D, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 2 Slope (I.D. No. 36-07166) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

9. Neumeister Coal Co.

[Docket No. M-93-86-C]

Neumeister Coal Company, R.D. #1, Box 327-D, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its No. 2 Slope (I.D. No. 36-07166) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have intake air used to ventilate the charging station to continue through the normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternate

method would provide at least the same measure of protection as would the mandatory standard.

10. Neumeister Coal Co.

[Docket No. M-93-87-C]

Neumeister Coal Company, R.D. #1, Box 327-D, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 2 Slope (I.D. No. 36-07166) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

11. Neumeister Coal Co.

[Docket No. M-93-88-C]

Neumeister Coal Company, R.D. #1, Box 327-D, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4), and (5) (weekly examination) to its No. 2 Slope (I.D. No. 36-07166) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be safely traveled. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

12. Neumeister Coal Co.

[Docket No. M-93-89-C]

Neumeister Coal Company, R.D. #1, Box 327-D, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1002-1(a) (location of other electric equipment; requirements for permissibility) to its No. 2 Slope (I.D. No. 36-07166) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

13. Neumeister Coal Co.

[Docket No. M-93-90-C]

Neumeister Coal Company, R.D. #1, Box 327-D, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1100-2(a)(2) (quantity and location of firefighting equipment) to its No. 2 Slope (I.D. No. 36-07166) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

14. Neumeister Coal Co.

[Docket No. M-93-91-C]

Neumeister Coal Company, R.D. #1, Box 327-D, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its No. 2 Slope (I.D. No. 36-07166) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

15. Neumeister Coal Company

[Docket No. M-93-92-C]

Neumeister Coal Company, R.D. #1, Box 327-D, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1202-1(a) (temporary notations, revisions, and supplements) to its No. 2 Slope (I.D. No. 36-07166) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

16. E & E Fuels

[Docket No. M-93-93-C]

E & E Fuels, Box 322, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.332(b)(1) and (b)(2) (working sections and working places) to its Orchard Slope (I.D. No. 36-08346) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during pre-shift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

17. E & E Fuels

[Docket No. M-93-94-C]

E & E Fuels, Box 322, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Orchard Slope (I.D. No. 36-08346) located in Schuylkill County, Pennsylvania. The petitioner request a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

18. E & E Fuels

[Docket No. M-93-95-C]

E & E Fuels, Box 322, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its Orchard Slope (I.D. No. 36-08346) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have intake air used to ventilate the charging station to continue through the normal route to the last open crosscut and into the

monkey airway (return). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

19. E & E Fuels

[Docket No. M-93-96-C]

E & E Fuels, Box 322, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Orchard Slope (I.D. No. 36-08346) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

20. E & E Fuels

[Docket No. M-93-97-C]

E & E Fuels, Box 322, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.364(b) (1), (4), and (5) (weekly examination) to its Orchard Slope (I.D. No. 36-08346) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be safely traveled. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

21. E & E Fuels

[Docket No. M-93-98-C]

E & E Fuels, Box 322, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1002-1(a) (location of other electric equipment; requirements for permissibility) to its Orchard Slope (I.D. No. 36-08346) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

22. E & E Fuels

[Docket No. M-93-99-C]

E & E Fuels, Box 322, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1100-2(a)(2) (quantity and location of firefighting equipment) to its Orchard Slope (I.D. No. 36-08346) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

23. E & E Fuels

[Docket No. M-93-100-C]

E & E Fuels, Box 322, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1200 (d) and (i) (mine map) to its Orchard Slope (I.D. No. 36-08346) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

24. E & E Fuels

[Docket No. M-93-101-C]

E & E Fuels, Box 322, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1202-1(a) (temporary notations, revisions, and supplements) to its Orchard Slope (I.D. No. 36-08346) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

25. J. R. & L. Coal Co.

[Docket No. M-93-102-C]

J. R. & L. Coal Company, P.O. Box 676, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.332 (b)(1) and (b)(2) (working sections and working places) to its No. 2 Middle Split Slope (I.D. No. 36-08305) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during pre-shift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

26. J. R. & L. Coal Co.

[Docket No. M-93-103-C]

J. R. & L. Coal Company, P.O. Box 676, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 2 Middle Split Slope (I.D. No. 36-08305) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in 10 the psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

27. J. R. & L. Coal Co.

[Docket No. M-93-104-C]

J. R. & L. Coal Company, P.O. Box 676, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 2 Middle Split Slope (I.D. No. 36-08305) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination

after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

28. J. R. & L. Coal Co.

[Docket No. M-93-105-C]

J. R. & L. Coal Company, P.O. Box 676, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1002-1(a) (location of other electric equipment; requirements for permissibility) to its No. 2 Middle Split Slope (I.D. No. 36-08305) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

29. J. R. & L. Coal Co.

[Docket No. M-93-106-C]

J. R. & L. Coal Company, P.O. Box 676, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1200 (d) and (i) (mine map) to its No. 2 Middle Split Slope (I.D. No. 36-08305) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

30. J. R. & L. Coal Co.

[Docket No. M-93-107-C]

J. R. & L. Coal Company, P.O. Box 676, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1202-1(a) (temporary notations, revisions, and supplements) to its No. 2 Middle Split Slope (I.D. No. 36-08305) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

31. Wenrich Coal Co.

[Docket No. M-93-108-C]

Wenrich Coal Company, HCR 1, Box 44, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Buck Mt. Slope (I.D. No. 36-05717) located in Schuylkill County, Pennsylvania. The petitioner request a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

32. Wenrich Coal Co.

[Docket No. M-93-109-C]

Wenrich Coal Company, HCR 1, Box 44, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Buck Mt. Slope (I.D. No. 36-05717) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

33. Wenrich Coal Co.

[Docket No. M-93-110-C]

Wenrich Coal Company, HCR 1, Box 44, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.364(b) (1), (4), and (5) (weekly examination) to its Buck Mt. Slope (I.D. No. 36-05717) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be safely traveled. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

34. Wenrich Coal Co.

[Docket No. M-93-111-C]

Wenrich Coal Company, HCR 1, Box 44, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1100-2(a)(2) (quantity and location of firefighting equipment) to its Buck Mt. Slope (I.D. No. 36-05717) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

35. Wenrich Coal Co.

[Docket No. M-93-112-C]

Wenrich Coal Company, HCR 1, Box 44, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1200 (d) and (i) (mine map) to its Buck Mt. Slope (I.D. No. 36-05717) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

36. Wenrich Coal Co.

[Docket No. M-93-113-C]

Wenrich Coal Company, HCR 1, Box 44, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1202-1(a) (temporary notations, revisions, and supplements) to its Buck Mt. Slope (I.D. No. 36-05717) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

37. Buck Mt. Coal Company No. 2

[Docket No. M-93-114-C]

Buck Mt. Coal Company No. 2, RD 2, Box 425-B2, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.332(b)(1) and (b)(2) (working sections and working places) to its Buck Mt. Slope (I.D. No. 36-02053) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during pre-shift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

38. Buck Mt. Coal Company No. 2

[Docket No. M-93-115-C]

Buck Mt. Coal Company No. 2, RD 2, Box 425-B2, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its Buck Mt. Slope (I.D. No. 36-02053) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have intake air used to ventilate the charging station to continue through the normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

39. Buck Mt. Coal Company No. 2

[Docket No. M-93-116-C]

Buck Mt. Coal Company No. 2, RD 2, Box 425-B2, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Buck Mt. Slope (I.D. No. 36-02053) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

40. Buck Mt. Coal Company No. 2

[Docket No. M-93-117-C]

Buck Mt. Coal Company No. 2, RD 2, Box 425-B2, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.364(b) (1), (4), and (5) (weekly examination) to its Buck Mt. Slope (I.D. No. 36-02053) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be safely traveled. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

41. Buck Mt. Coal Company No. 2

[Docket No. M-93-118-C]

Buck Mt. Coal Company No. 2, RD 2, Box 425-B2, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1002-1(a) (location of other electric equipment; requirements for permissibility) to its Buck Mt. Slope (I.D. No. 36-02053) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation any time the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

42. Buck Mt. Coal Company No. 2

[Docket No. M-93-119-C]

Buck Mt. Coal Company No. 2, RD 2, Box 425-B2, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1200 (d) and (i) (mine map) to its Buck Mt. Slope (I.D. No. 36-02053) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

43. Buck Mt. Coal Company No. 2

[Docket No. M-93-120-C]

Buck Mt. Coal Company, RD 2, Box 425-B2, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1202-1(a) (temporary notations, revisions, and supplements) to its Buck Mt. Slope (I.D. No. 36-02053) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6-month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

44. Kintzel Coal Co.

[Docket No. M-93-121-C]

Kintzel Coal Company, 43 Laurel Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.332 (b)(1) and (b)(2) (working sections and working places) to its Lykens Valley 6 (I.D. No. 36-01886) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during pre-shift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed

alternate method would provide at least the same measure of protection as would the mandatory standard.

45. Kintzel Coal Co.

[Docket No. M-93-122-C]

Kintzel Coal Company, 43 Laurel Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Lykens Valley 6 (I.D. No. 36-01886) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

46. Kintzel Coal Co.

[Docket No. M-93-123-C]

Kintzel Coal Company, 43 Laurel Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its Lykens Valley 6 (I.D. No. 36-01886) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have intake air used to ventilate the charging station to continue through the normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

47. Kintzel Coal Co.

[Docket No. M-93-124-C]

Kintzel Coal Company, 43 Laurel Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Lykens Valley 6 (I.D. No. 36-01886) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

48. Kintzel Coal Co.

[Docket No. M-93-125-C]

Kintzel Coal Company, 43 Laurel Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.364(b) (1), (4), and (5) (weekly examination) to its Lykens Valley 6 (I.D. No. 36-01886) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be safely traveled. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

49. Kintzel Coal Co.

[Docket No. M-93-126-C]

Kintzel Coal Company, 43 Laurel Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1002-1(a) (location of other electric equipment; requirements for permissibility) to its Lykens Valley 6 (I.D. No. 36-01886) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

50. Kintzel Coal Co.

[Docket No. M-93-127-C]

Kintzel Coal Company, 43 Laurel Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1100-2(a)(2) (quantity and location of firefighting equipment) to its Lykens Valley 6 (I.D. No. 36-01886) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

51. Kintzel Coal Co.

[Docket No. M-93-128-C]

Kintzel Coal Company, 43 Laurel Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its Lykens Valley 6 (I.D. No. 36-01886) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

52. Kintzel Coal Co.

[Docket No. M-93-129-C]

Kintzel Coal Company, 43 Laurel Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1202-1(a) (temporary notations, revisions, and supplements) to its Lykens Valley 6 (I.D. No. 36-01886) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

53. M&S Coal Co.

[Docket No. M-93-130-C]

M&S Coal Company, P.O. Box 604, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.332 (b)(1) and (b)(2) (working sections and working places) to its Buck Mt. Slope (I.D. No. 36-05619) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure

air quality by sampling intake air during pre-shift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

54. M&S Coal Co.

[Docket No. M-93-131-C]

M&S Coal Company, P.O. Box 604, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Buck Mt. Slope (I.D. No. 36-05619) located in Schuylkill County, Pennsylvania. The petitioner request a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

55. M&S Coal Co.

[Docket No. M-93-132-C]

M&S Coal Company, P.O. Box 604, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Buck Mt. Slope (I.D. No. 36-05619) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

56. M&S Coal Co.

[Docket No. M-93-133-C]

M&S Coal Company, P.O. Box 604, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4), and (5) (weekly examination) to its Buck Mt. Slope (I.D. No. 36-05619) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be safely traveled. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

57. M&S Coal Co.

[Docket No. M-93-134-C]

M&S Coal Company, P.O. Box 604, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1002-1(a) (location of other electric equipment; requirements for permissibility) to its Buck Mt. Slope (I.D. No. 36-05619) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

58. M&S Coal Co.

[Docket No. M-93-135-C]

M&S Coal Company, P.O. Box 604, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1100-2(a)(2) (quantity and location of firefighting equipment) to its Buck Mt. Slope (I.D. No. 36-05619) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

59. M&S Coal Co.

[Docket No. M-93-136-C]

M&S Coal Company, P.O. Box 604, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its Buck Mt. Slope (I.D. No. 36-05619) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

60. M&S Coal Co.

[Docket No. M-93-137-C]

M&S Coal Company, P.O. Box 604, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1202-1(a) (temporary notations, revisions, and supplements) to its Buck Mt. Slope (I.D. No. 36-05619) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

61. Jeff Coal Co.

[Docket No. M-93-138-C]

Jeff Coal Company, RD #1, Box 12-A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1002-1(a) (location of other electric equipment; requirements for permissibility) to its Tracey Vein Slope (I.D. No. 36-07328) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

62. Jeff Coal Co.

[Docket No. M-93-139-C]

Jeff Coal Company, RD #1, Box 12-A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1100-2(a)(2) (quantity and location of firefighting equipment) to its Tracey Vein Slope (I.D. No. 36-07328) located in Schuylkill County, Pennsylvania. The

petitioner proposes to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

63. Jeff Coal Co.

[Docket No. M-93-140-C]

Jeff Coal Company, RD #1, Box 12-A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1200 (d) and (i) (mine map) to its Tracey Vein Slope (I.D. No. 36-07328) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

64. Jeff Coal Co.

[Docket No. M-93-141-C]

Jeff Coal Company, RD #1, Box 12-A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1202-1(a) (temporary notations, revisions, and supplements) to its Tracey Vein Slope (I.D. No. 36-07328) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

65. B&E Anthracite Coal Co.

[Docket No. M-93-142-C]

B&E Anthracite Coal Company, 225 Main Street, Joliett, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Rock Ridge Slope (I.D. No. 36-07741) located in Schuylkill County, Pennsylvania. The petitioner request a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

66. B&E Anthracite Coal Co.

[Docket No. M-93-143-C]

B&E Anthracite Coal Company, 225 Main Street, Joliett, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its Rock Ridge Slope (I.D. No. 36-07741) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have the intake air used to ventilate the charging station to continue through the normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

67. Kocher Coal Co.

[Docket No. M-93-144-C]

Kocher Coal Company, P.O. Box 127, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1002-1(a) (location of other electric equipment; requirements for permissibility) to its Porter Tunnel (I.D. No. 36-01892) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 23, 1993. Copies of these petitions are available for inspection at that address.

Dated: July 14, 1993.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 93-17374 Filed 7-21-93; 8:45 am]

BILLING CODE 4510-43-P

Office of the Assistant Secretary for Veterans' Employment and Training

Procedures for Application for Funds; Stewart B. McKinney Homeless Assistance Act, FY 1993—Rural Projects

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training (OASVET), Labor.

ACTION: Notice of availability of funds and of solicitation for grant applications for Homeless Veterans Reintegration Projects (HVRPs) in rural areas.

SUMMARY: This notice sets forth the procedures for obtaining an application for funds for a Homeless Veterans Reintegration Project (HVRP) funded under the Stewart B. McKinney Homeless Assistance Act, title VII, subtitle C, section 738 to operate in a rural area. Projects will be administered by the Department of Labor through grants with State and local public agencies and nonprofit organizations.

DATES: The closing date for receipt of a completed application package in response to this notice is August 24, 1993. Applications received after that time will be considered for award according to the instructions in the application package governing late proposals.

ADDRESSES: A copy of the application package and instructions for completion may be obtained by fax or written request directed to: U.S. Department of Labor, Office of Procurement Services, room. S5220, 200 Constitution Avenue NW., Washington DC 20210, Grant Officer, Attention: Robert MacLeod, Reference SGA 93-04. Self-addressed mailing labels will be appreciated. The fax number is 202-219-6853.

FOR FURTHER INFORMATION CONTACT: Robert MacLeod, U.S. Department of Labor, Office of Procurement Services, 200 Constitution Avenue NW., room S5220, Washington, DC 20210, Telephone (202) 219-6246.

SUPPLEMENTARY INFORMATION: The Office of the Assistant Secretary for Veterans' Employment and Training (OASVET) announces the availability of an application package for Fiscal Year 1993 HVRP funds to serve homeless veterans

in rural areas. Funding for these projects is authorized by section 738 of the Stewart B. McKinney Homeless Assistance Act, (Pub. L. 100–77). Most recently under the Homeless Veterans Comprehensive Service Programs Act of 1992 (Pub. L. 102–590, enacted on November 10, 1992) the Homeless Veterans Reintegration Project was reauthorized through Fiscal Year 1995.

The McKinney Act provides funds to various Federal agencies to administer a variety of programs for homeless persons. Title VII, subtitle C, section 738 of the Act authorizes programs "to expedite the reintegration of homeless veterans into the labor force." There is approximately $400,000 available in Fiscal Year 1993 to carry out demonstration HVRPs in rural areas. A separate competition for urban projects was announced in the **Federal Register** on April 7, 1993 with a closing date of May 14, 1993.

Awards are expected to range from $75,000 to $100,000. Between 3 and 5 projects will be funded. Projects will begin no later than September 30, 1993 for a one-year period with an option to renew for an additional year.

In keeping with the demonstration nature of the McKinney Act, the program is designed to provide each potential program operator with flexibility in determining the range of supportive and training-related activities which best meet the need of the homeless veteran population in a rural jurisdiction.

There are three elements, however, which will be required in each HVRP:

(1) An outreach component focusing on reaching rural homeless veterans and facilitating their entry into the program as well as outreach efforts in the community to other potential service providers who can assist the homeless veterans;

(2) Linkages with providers of employment and training and supportive services, including, where applicable, other recipients of funds under the McKinney Act; and

(3) Projects must be employment-focused in order to provide the employment and training services needed to reintegrate rural homeless veterans into the labor force.

Potential jurisdictions which will be served under this solicitation are sparsely populated areas of a State, the Commonwealth of Puerto Rico, or territories which are outside of metropolitan areas and not contiguous to them or part of their Standard Metropolitan Statistical Area (SMSA). Urbanized areas are usually those with a population of 50,000 or above and a minimum population density of 1,000 people per square mile. Generally a rural area may have a unit or units (towns, townships, village) with a population of up to 2,500 people. The intent of this solicitation is to fund programs that will operate in non-metropolitan areas that are not densely populated and are not residential areas surrounding major cities. It will be incumbent upon the applicant to demonstrate the rural nature of the proposed jurisdiction to be served. Such proposed areas should be contiguous to the extent possible, as in adjoining counties or a similar configuration, but this is not mandatory.

Entities which are eligible to submit applications for serving the jurisdictions listed above are:

(1) State and local public agencies; and

(2) Nonprofit organizations.

"Local public agency" refers to any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties).

Nonprofit organizations invited to apply are those who have operated employment and training program for the homeless or veterans; have proven capacity to manage Federal grants; and will provide or develop the necessary linkages for services in rural areas.

The application instructions will include a more detailed program description, program guidelines, and approach to implementation. The application package will consist of a standard application form, a narrative description of proposed activities and current services, and a detailed budget.

Criteria for identifying the most promising and effective proposals will be applied, and between 3–5 applicants will be identified as potential grantees. Applicants are advised that discussions may be necessary to clarify any inconsistencies in their applications. The final decision on the award will be based upon what is advantageous to the Federal Government as determined by the Grant Officer.

Signed at Washington, DC this 16th day of July, 1993.

Jeffrey C. Crandall,

Acting Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 93–17370 Filed 7–21–93; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL

Meetings

AGENCY: National Commission on Judicial Discipline and Removal.

ACTION: Notice of public meeting; correction.

SUMMARY: In the **Federal Register** issue of July 16, 1993, page 58 FR 38444, third column, please amend the following: change the date from July 23, 1993, to July 28, 1993, and change the meeting room from room 2237 of the Rayburn House Office Building to room B352 of the Rayburn House Office Building.

CONTACT PERSONS FOR FURTHER INFORMATION: Contact Michael J. Remington or William J. Weller at the National Commission on Judicial Discipline and Removal, suite 690, 2100 Pennsylvania Ave, NW., Washington, DC 20037–3202; or call (202) 254–8169.

William J. Weller,

Deputy Director.

[FR Doc. 93–17450 Filed 7–21–93; 8:45 am]

BILLING CODE 6820–DB–M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Letter 89–10, Supplement 6 "Information on Schedule and Grouping, and Staff Responses to Additional Public Questions"

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter supplement. A generic letter is an NRC document that (1) requests licensees to submit analyses or descriptions of proposed corrective actions, or both, regarding matters of safety, safeguards, or environmental significance, or (2) requests licensees to submit information to the NRC on other technical or administrative matters, or (3) transmits information to licensees regarding approved changes to rules or regulations, the issuance of reports or evaluations of interest to the industry, or changes to NRC administrative procedures. This draft generic letter supplement provides (1) additional information with respect to the staff's positions regarding schedule delays and grouping of motor-operated valves and (2) staff responses to questions raised at the February 25, 1993, public meeting with the Motor-Operated Valve Users

Group. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter supplement presented under the **SUPPLEMENTARY INFORMATION** heading. This proposed generic letter supplement and supporting documentation were discussed in meeting number 243 of the Committee to Review Generic Requirements (CRGR). The relevant information that was sent to the CRGR to support their review of the proposed generic letter supplement is available in the Public Document Rooms under accession number 9307150128. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter supplement. The NRC's final evaluation will include a review of the technical position and, when appropriate, an analysis of the value/impact on licensees. Should this generic letter supplement be issued by the NRC, it will become available for public inspection in the Public Document Rooms.

DATES: Comment period expires August 23, 1993. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas G. Scarbrough (301) 504–2794.

SUPPLEMENTARY INFORMATION:

TO: ALL LICENSEES OF OPERATING NUCLEAR POWER PLANTS AND HOLDERS OF CONSTRUCTION PERMITS FOR NUCLEAR POWER PLANTS

SUBJECT: GENERIC LETTER 89–10, SUPPLEMENT 6, "INFORMATION ON SCHEDULE AND GROUPING, AND STAFF RESPONSES TO ADDITIONAL PUBLIC QUESTIONS"

Background

In Generic Letter (GL) 89–10 (June 28, 1989), "Safety-Related Motor-Operated Valve Testing and Surveillance," the U.S. Nuclear Regulatory Commission (NRC) staff requested holders of operating licenses and construction permits to provide additional assurance of the capability of safety-related motor-operated valves (MOVs) and certain other MOVs in safety-related systems by reviewing MOV design bases, verifying MOV switch settings initially and periodically, testing MOVs under design basis conditions where practicable, improving evaluations of MOV failures and necessary corrective action, and trending MOV problems. Supplement 1 to GL 89–10 (June 13, 1990) provided the results of public workshops held to discuss the GL. In Supplement 2 to GL 89–10 (August 3, 1990), the NRC staff stated that inspections of program descriptions would not commence until January 1, 1991; thus, the program descriptions did not need to be available on site until that date. Based on the results of NRC-sponsored MOV tests, Supplement 3 to GL 89–10 (October 25, 1990) requested licensees of boiling-water reactor (BWR) nuclear plants to taken action in advance of the GL 89–10 schedule to resolve concerns about the capability of MOVs used for containment isolation in the steam supply line of the high pressure coolant injection and reactor core isolation cooling systems and in the supply line of the reactor water cleanup system, as well as other systems directly connected to the reactor vessel. Supplement 4 to GL 89–10 (February 12, 1992) allowed BWR licensees to not address inadvertent MOV operation as part of their GL 89–10 program because a staff study indicated no significant increase in core melt probability resulting from inadvertent MOV operation in BWR plants. Supplement 5 to GL 89–10 addresses MOV diagnostic equipment accuracy.

Discussion

On February 25, 1993, the NRC staff held a public workshop to discuss GL 89–10 and to answer questions from the public on the inspections of licensee programs developed in response to the GL. In this supplement to the GL, the staff further clarifies the positions on the schedule for completing the MOV testing to verify design-basis capability recommended in GL 89–10 and grouping of MOVs to establish valve setup conditions. The staff responses to other general public questions and a list of recently issued NRC GLs are also provided in the enclosures to this supplement.

GL 89–10 Schedule

In GL 89–10, the NRC staff requested nuclear power plant licensees to develop a program to verify the capability of safety-related MOVs to perform their safety function by June 28, 1994, or three refueling outages after December 28, 1989 (whichever is later). Some licensees justified longer schedules. From its inspections of GL 89–10 programs, the NRC staff found some licensees to have made insufficient progress toward completing their GL 89–10 programs in a timely manner. In GL 89–10, the staff stated that nuclear power plant licensees must notify the staff of any changes to their schedule commitments to GL 89–10 but that licensees should retain the justification on site for NRC staff review.

Licensees are responsible for taking actions to correctly set up MOVs with known inadequacies. GL 89–10 requested licensees to develop and implement a program to verify the capability of their MOVs to operate under design-basis conditions. As a minimum, the staff expects all licensees to have their valves set up with the best available industry data by the original completion date accepted by the staff, whether or not all testing has been completed. The staff will consider whether subsequent MOV failures represent inadequate corrective action for known MOV inadequacies contrary to the requirements of Criterion XVI, Corrective Action, of Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," of part 50 to title 10 of the Code of Federal Regulations (10 CFR).

If a licensee does not believe that it can meet its original schedular commitment for verifying the capability of MOVs within the scope of GL 89–10, the following information would be helpful to the staff in evaluating the licensee's justification for extending the GL 89–10 test program for capability verification and establishing appropriate audit/inspection plans and schedules:

(1) The completion status of the licensee's GL 89–10 program as of the program commitment date, including the valve type, size, safety function, and risk significance of the MOVs whose capability has not yet been verified by dynamic test data under the program by the schedule completion date;

(2) The basis used for confirming the operability of each MOV whose capability has not yet been verified by dynamic test data under the program by the scheduled completion date; and

(3) The schedule for completing MOV testing and any modifications for those MOVs whose capability has not yet been verified by dynamic test data under the program by the schedule completion date.

In addition to reviewing the above information, the staff will consider the following factors in assessing the licensee's justification for schedule extensions:

(1) The extent of completed MOV testing under dynamic conditions;

(2) The extent that plant and industry data have been used to establish the sizing and setting methodology;

(3) The maintenance and modification activities to improve the performance of the MOVs and to provide assurance that marginal and deficient MOVs have been addressed; and

(4) The justifications for any grouping methods including design-basis test data and comparison with industry data.

MOV Grouping

In GL 89–10 and its supplements, the NRC staff requests that licensees test each MOV under design-basis differential pressure and flow conditions where practicable. However, the staff recognizes that it is not practicable to test each MOV within the scope of GL 89–10 in situ under dynamic conditions. Therefore, if a licensee does not perform prototype testing for each MOV that is not practicable to test in situ, the licensee will have to group MOVs that are not practicable to test in a manner that provides adequate confidence that the MOVs are capable of performing their design-basis function. As indicated in NRC Information Notice (IN) 92–17 (February 26, 1992), "NRC Inspections of Programs Being Developed at Nuclear Power Plants in Response to Generic Letter 89–10," some licensees are attempting to group MOVs, which could be dynamically tested in situ, to reduce the number of MOVs to be dynamically tested under their GL 89–10 programs.

The staff continues to recommend testing MOVs under design-basis conditions where practicable. Paragraph 1 of GL 89–10 allows licensees to propose alternatives to the recommendations of the generic letter where justification is provided. Grouping data from design-basis differential pressure testing of similar MOVs at or near design-basis test conditions may be an acceptable option to establish design-basis valve setup conditions.

If a licensee chooses to group MOVs, the staff believes the following considerations are particularly important:

(1) Verification of design adequacy of the grouped MOVs through a review and analysis of both industry and plant-specific data;

(2) Use of benchmarked data from a representative sample of the MOVs (nominally 30 percent and no less than two MOVs) in the group tested at or near plant-specific design basis conditions;

(3) Diagnostic testing of each MOV in the group under at least static conditions;

(4) To the extent practicable, selection of valves for dynamic testing in the group based on a prioritization scheme that considers greatest safety-significance and least performance margin;

(5) Validation of design-basis assumptions for all MOVs in the group based on benchmarked data;

(6) In assessing group feasibility, consideration and documentation of such similarities as: valve manufacturer, model and size; valve flow, temperature, pressure, hydraulics, and installation configuration; valve material condition; and performance during static and dynamic testing as evidenced by full-stroke diagnostic traces; and

(7) If an MOV in a group fails or reveals adverse performance during testing or operations, evaluation of the applicability of that information to each MOV in the group.

In response to Question 24 in Supplement 1 to 89–10, the staff stated that it expects licensees to ensure that data intended for use in demonstrating the operability of an MOV have been obtained under the provisions of a quality assurance program in accordance with appendix B of 10 CFR part 50. As further information, licensees using data from tests performed under an approved program (for example, other licensee data) developed in accordance with appendix B of 10 CFR part 50 need not verify or audit the tests covered by other licensee appendix B procedures or processes.

Additional Public Questions

In an enclosure to this GL supplement, the staff responds to the additional questions raised during the February 25 public workshop, including questions involving the scope of GL 89–10 programs and the prioritization of MOVs based on probabilistic risk assessments. The staff has paraphrased these additional questions and grouped them by subject. The staff addressed many of the questions previously either in general or in detail. The staff references other documents where particular questions have been addressed. Licensees may contact their NRC project manager for discussion of plant-specific questions.

Backfit Discussion

On the basis of operating experience and research results, the NRC staff determined several years ago that MOV tests beyond those previously accepted under the inservice testing program are necessary to satisfy the NRC regulations. As that determination constituted a backfit, the staff prepared GL 89–10 in accordance with NRC procedures for the issuance of staff guidance containing backfit provisions. This GL supplement and its enclosure (1) restate staff positions contained in the GL and its earlier supplements, (2) provide additional guidance for meeting the staff positions contained in the generic letter and its earlier supplements, and (3) relax the staff position on the need for in situ testing of each MOV.

Backfit analyses for the restated and relaxed staff positions are not required. A backfit analysis was not prepared for the additional guidance in this GL 89–10 supplement because the compliance backfit analysis associated with the original GL and its earlier supplements is applicable. This guidance does not increase the recommendations associated with the staff positions contained in the GL or its earlier supplements. Rather, the guidance provides detailed methods of implementation of the basic GL 89–10 program which the staff has found to be acceptable based on the individual inspections and reviews of licensee programs which the staff has conducted to date. The use of this guidance is voluntary and the staff will review alternate methods on a case by case basis.

The staff prepared this GL supplement in response to questions and comments received during a public workshop on February 25, 1993. Some licensees have indicated their intention to extend their schedule commitment for completing MOV testing under the GL 89–10 programs. The staff has evaluated the justifications prepared by those licensees on a case-by-case basis. In this GL supplement, the staff describes the information that the staff has used in evaluating the licensees' justifications for schedule extensions. In their original response to GL 89–10, certain licensees did not commit to the recommendation in GL 89–10 to test each safety-related MOV where practicable, but rather, indicated plans to group MOVs to limit the amount of dynamic testing. In this GL supplement, the staff describes important considerations in grouping MOVs that the staff has been discussing with those licensees. If a licensee intends to extend its MOV dynamic testing schedule, the staff will expect the licensee to provide assurance that all MOVs are set up adequately by the original completion date accepted by the staff. If a licensee intends to group MOVs, the staff will expect the licensee to justify valve grouping including the applicability of the dynamic test data of MOVs in the

group and to take action for all MOVs in the group in response to any adverse performance of the dynamically-tested MOVs. Therefore, if a licensee modifies its commitments regarding schedule or grouping of MOVs in accordance with the provisions of this GL supplement, the staff has determined that adequate protection of the public health and safety will be maintained.

This GL supplement is being issued without a public comment period so that (1) licensees are notified at the earliest possible time of the importance of ensuring that MOVs within the scope of GL 89–10 are set up adequately in accordance with the original completion date accepted by the staff and (2) licensees can adjust their plans for MOV tests to be performed during their upcoming outages, as necessary.

Reporting Requirements

GL 89–10 and certain of its earlier supplements specify reporting requirements. The staff does not request that licensees provide a separate submittal in response to this GL supplement.

If you have any questions about this matter, please contact the technical contact or lead project manager listed below, or the appropriate Office of Nuclear Reactor Regulation project manager.

Enclosure

1. Public Questions during the February 1993 Workshop on GL 89–10

ENCLOSURE TO DRAFT GENERIC LETTER 89–10 SUPPLEMENT 6

PUBLIC QUESTIONS DURING THE FEBRUARY 1933 WORKSHOP ON GENERIC LETTER 89–10

General

The NRC staff received general questions regarding the need for a single approach to resolving the motor-operated valve (MOV) issue throughout the industry, the need to continue licensee efforts to improve MOV performance, the parallel efforts of the NRC staff and industry in such areas as probabilistic risk assessment (PRA) studies, and the sharing of technical information among the NRC staff and licensees.

NRC Response

As discussed under **Background** in Generic Letter (GL) 89–10, the NRC staff issued GL 89–10 to request that nuclear power plant licensees develop programs to verify the capability of safety-related MOVs to perform their design-basis functions as a result of NRC Bulletin 85–03, NRC-sponsored MOV research, and operating experience at nuclear power plants. GL 89–10 and its supplements provided one recommended approach to the resolution of the concerns regarding the performance of MOVs in nuclear power plants. The NRC staff required licensees to respond to the recommendations of the GL, but did not require licensees to follow its specific recommendations if a licensee could justify a different approach. For example, some licensees provided a response that indicated their intent to develop a justifiable grouping methodology to minimize the number of MOVs to be tested under dynamic conditions. The staff indicated in its replies to those licensee submittals, and during inspections, that licensees will be expected to justify that their particular approach will resolve the concern for the performance of safety-related MOVs at their plants.

During the implementation of GL 89–10, licensees have discovered more MOV problems than envisioned by the staff when the generic letter was issued in 1989. Although the staff believes that licensees have made progress toward resolving the concerns regarding the performance of MOVs in nuclear power plants, the staff does not consider that sufficient progress has been made at all plants to generically reduce the scope of the program or lengthen its completion schedule. The staff will discuss proposals on specific MOV programs with licensees as requested. Information on individual schedule extensions is provided in the body of Supplement 6 to GL 89–10.

The staff performs independent regulatory oversight of activities on MOV issues performed by licensees, the Electric Power Research Institute (EPRI), and the Nuclear Management and Resources Council (NUMARC). The staff will continue to meet with the industry to discuss MOV issues.

The staff periodically informs licensees of generic information on MOV issues. For example, the staff issues information notices and participates in meetings of the MOV Users Group. The staff believes that licensees would benefit from increased cooperative efforts to resolve concerns regarding the performance of MOVs.

Scope and the Use of PRA Studies in Prioritizing MOVs

The NRC staff received questions on the scope of GL 89–10 involving such areas as the status of the staff's study of valve mispositioning in pressurized-water reactor (PWR) nuclear plants, the use of PRA studies within the GL 89–10 program, the removal of certain valves under various flow conditions from the GL 89–10 program, and the consideration of MOVs identified in emergency operating procedures.

NRC Staff Response

The staff discussed the scope of GL 89–10 in response to Questions 3 to 13 and 25 in Supplement 1 and in Supplement 4 to the generic letter. The staff has not changed the scope of GL 89–10 from the discussions in Supplements 1 and 4. Except where valve mispositioning is applicable, a licensee may eliminate MOVs from its GL 89–10 program where the licensee can clearly demonstrate that operation of that valve does not represent a safety function and that its operation is not necessary to permit the operation of its safety-related equipment. In addition, a licensee might determine that the scope of MOVs to be dynamically tested may be reduced by eliminating MOVs in hard-piping ventilation systems with low design-basis differential pressure in which static loads are significant compared to dynamic loads. Licensees may determine that certain MOVs are not practicable to test or that the test would not provide useful results in justifying design-basis capability. However, the licensee should continue to include those MOVs within the other aspects of the GL 89–10 program.

As discussed in Supplement 4 to GL 89–10 and NRC Information Notice (IN) 92–17 (February 26, 1992), "NRC Inspections of Programs Being Developed at Nuclear Power Plants in Response to Generic Letter 89–10," the NRC staff has contracted a national laboratory to perform a core melt frequency study of the effect of valve mispositioning in PWR plants. When this study is completed, the staff will consider the findings and make a determination on the issue.

In response to Question 12 in Supplement 1 to GL 89–10, the staff stated that a licensee may choose to give priority to MOVs that it considers to be most important to safe and reliable operations. In Supplement 3 to GL 89–10, the staff requested BWR licensees to give high priority to MOVs used for containment isolation in certain high pressure systems connected directly to the reactor vessel. In discussing possible extensions of the schedule for completing MOV testing under GL 89–10, the staff has requested individual licensees to prioritize their MOVs to ensure that testing for the most safety significant MOVs is completed in a timely manner. For example, the staff will consider whether the licensee assigned a higher priority to testing of MOVs that must operate to perform an active safety function than to testing of MOVs that only receive a confirmatory

signal to operate. Also, the licensee could assign a lower priority to MOVs with significant design margin.

The staff considers the use of PRA studies to be appropriate as an input for prioritizing the schedule for testing MOVs in response to GL 89–10. However, the staff does not consider PRA studies to be sufficiently reliable to allow their use as the sole basis for eliminating safety-related MOVs from the GL 89–10 program. Further, PRA studies are not well-suited for common-mode problems such as the weakness in the original design and qualification of MOVs. The staff is performing an independent assessment of the use of PRA studies for prioritizing MOVs within the GL 89–10 program. Upon request, the staff will meet with industry representatives to discuss this issue.

As discussed in response to Question 3 in Supplement 1 to GL 89–10, the GL scope includes gate, butterfly, and global valves. Although licensees have found gate valves to be susceptible to the largest number of performance problems, they also have discovered performance problems with butterfly valves at several plants. The staff does not believe that GL 89–10 should be limited to gate valves.

The staff discussed the removal of MOVs from the scope of GL 89–10 programs in response to Questions 3 and 6 in Supplement 1 to GL 89–10. For example, the staff eliminated MOVs in sheet-metal ducting systems because static running loads would likely be significant compared to dynamic loads. In light of Supplement 4 to GL 89–10 on mispositioning, a BWR licensee may delete an MOV from its GL 89–10 program if the licensee can demonstrate that the MOV does not have to change position to perform a safety function. In response to a specific question, if an MOV is pulled closed by flow (such as a globe valve with flow over the seat), the licensee could justify that the MOV does not need to be included in the GL 89–10 test program for the closing direction.

As indicated by the discussion of scope in Supplement 1 to GL 89–10, except where valve mispositioning is applicable, licensees do not need to consider MOVs identified in emergency operating procedures as within the scope of GL 89–10 if they are not within the design basis of the plant.

Additional information on grouping of MOVs is provided in the body of Supplement 6 to GL 89–10.

MOV Sizing and Switch Settings

The NRC staff received questions regarding the responsibility of licensees to validate assumptions used in their calculations (including parameters provided by valve vendors), to consider various uncertainties within the MOV calculations, to ensure the structural capability of safety-related MOVs in performing their design-basis functions, and to justify the use of a contractor study on the overthrust capability of certain valve actuators.

NRC Staff Response

As discussed in response to Questions 19 and 20 in Supplement 1 to GL 89–10, MOV tests and problems have revealed that valve vendors underestimated the thrust and torque required to operate many valves under dynamic conditions. As indicated in IN 92–17, the staff has found during inspections of GL 89–10 programs that some licensees had not justified their assumptions used in validating the size and settings of the MOVs within the scope of GL 89–10. The staff expects licensees to validate their assumptions for thrust and torque requirements to open and close their valves based on the best available MOV test data.

As further information, the staff considers the best available MOV test data (in order of reliability) to be valve-specific data, plant-specific data, EPRI test data, and industry test data. Where it is not practicable to test an MOV under sufficient dynamic conditions to demonstrate design-basis capability, licensees may use engineering or statistical methods to determine appropriate assumptions for such parameters as valve and stem friction, and load sensitive behavior from other MOVs, where justified.

As required by Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," of part 50 to title 10 of the Code of Federal Regulations (10 CFR), the staff expects licensees to include appropriate margin to account for uncertainties in their design assumptions. As discussed in IN 92–17, staff inspections found that some licensees had not addressed uncertainties such as actuator repeatability and diagnostic equipment inaccuracy. The staff also expects licensees to include sufficient margin to provide assurance that the MOV will remain capable of performing its design-basis function until the next test.

Under **Background** in GL 89–10, the staff stated that licensees should be aware that increasing MOV thrust by increasing torque switch settings may subject the valve components to increased forces. In IN 92–83 (December 17, 1992), "Thrust Limits for Limitorque Actuators and Potential Overstressing of Motor-Operated Valves," the staff alerted licensees to possible overstressing of MOVs during operation and testing. As further explanation, the staff expects licensees to provide adequate justification to ensure that the structural or operating capability of the MOVs within the scope of GL 89–10 is not exceeded when performing their design-basis functions. The staff will review this justification during GL 89–10 inspections.

Several licensees contracted Kalsi Engineering to evaluate the structural thrust capability of Limitorque actuators. Limitorque had endorsed the Kalsi study to justify specific thrust limits above the published structural ratings of the actuators but, at this time, has not increased the structural ratings of its actuators. In IN 92-83, the staff alerted licensees to the review by the NRC staff of the Kalsi study. As is the staff's longstanding practice, licensees that rely on contractor studies are responsible for justifying their use. For example, licensees using the Kalsi overthrust report will be expected to implement the provisions of that report and to periodically inspect the actuators to identify any adverse effects from the increased thrust above the structural ratings. Licensees that rely on contractor studies are responsible for evaluating any subsequent MOV problems that might be attributable to the contractor study and taking corrective action to address the problem for all MOVs whose setup is based on the contractor study. The staff will consider whether any such failure indicates that the licensee may not have met the NRC regulations for design control.

MOV Testing

The NRC staff received questions in such areas as the testing of MOVs where practicable, the testing of MOVs under all design-basis conditions (including degraded voltage), the collection of test data during MOV testing, the measurement of thrust and torque during MOV testing, the acceptance criteria for evaluating MOV tests, the extrapolation of test data, the discovery of new information that might reveal problems with design-basis capability of MOVs, the need to verify design-basis capability for those valve types for which reliable diagnostic equipment might not be available, the determination of minimum voltage at the motor terminals, the application of prototype test data for MOVs installed in nuclear plants, the use of the results of the EPRI MOV Performance Prediction Program, and quality assurance controls for the proposed industry MOV test data base.

NRC Staff Response

GL 89–10 and its supplements recommend that licensees test MOVs within the scope of the generic letter under design-basis differential pressure and flow conditions where practicable. For MOVs that cannot be tested under these conditions, Supplement 1 to GL 89–10 recommend that the MOVs be tested under maximum achievable conditions to provide the best available MOV test data. Since then, licensee results from testing similar MOVs have shown that specific valve testing provides the best available data. However, a licensee might justify an alternative approach, such as grouping, where the licensee has sufficient information to demonstrate the validity of its approach. For example, licensee test results have indicated that grouping globe valves may be justifiable. Information on grouping is provided in the body of Supplement 6 to GL 89–10.

In response to Question 22 in Supplement 1 to GL 89–10, the staff stated that licensees should consider the safety implications of performing design-basis testing of MOVs in situ. As further explanation, the staff does not expect licensees to test MOVs under all design-basis conditions (such as degraded voltage). Such testing might damage the MOV or jeopardize the safety of the plan and is impractical to perform. The staff expects licensees to demonstrate the degraded voltage capability of MOVs by a justifiable analytical method.

In response to Question 30 in Supplement 1 to GL 89–10, the staff stated that measured parameters from MOV tests should be capable of providing information to assist the licensee in demonstrating that the MOV will operate under design-basis conditions. As further explanation, licensees need only collect information that is required to evaluate the test data. If the collection of that information can be performed with sufficient accuracy without installation of additional test equipment, the staff does not expect licensees to modify plant systems to obtain test data.

In response to Question 31 in Supplement 1 to GL 89–10, the staff stated that the actuator must be able to deliver the required amount of torque or thrust. In response to Question 30 in Supplement 1 to GL 89–10, the staff stated that if only one parameter (such as thrust) was measured rather than two or more parameters (such as torque and thrust), the licensee may need to ensure that additional margin is available in the demonstration that the MOV will operate under design-basis conditions. As further explanation, if a licensee measures only thrust and assumes a stem friction coefficient to estimate the torque required to operate the valve, the staff expects the licensee to validate its assumption for stem friction coefficient. Licensee testing had indicated that stem friction coefficients are valve specific and may range from less than 0.1 to greater than 0.2. Although laboratory testing might show a low stem friction coefficient, licensees have not demonstrated that a specific assumption for stem friction coefficient can be made at a nuclear plant based on laboratory test results.

NRC regulations in appendix B to 10 CFR part 50 require that tests of safety-related MOVs be evaluated. In IN 92–17, the staff reported that weaknesses had been found during GL 89–10 inspections in acceptance criteria at some plants for MOV testing before returning the MOV to service. Several licensees (for example, Comanche Peak) have developed detailed acceptance criteria that the staff considers acceptable. Further, the BWR Owners' Group is developing acceptance criteria that may be adequate when completed. Below, the staff summarizes criteria for the evaluation of test data that have been found acceptable:

1. Static Test Acceptance

- Available thrust and torque is within the window defined by the license design-basis calculations and margins.
- Diagnostic traces do not indicate significant abnormalities or anomalies.
- Valve stroke times conform with requirements of Section XI of the American Society of Mechanical Engineers (ASME) Code and the applicable technical specifications.

2. Differential Pressure Test Acceptance

- The valve fully opens with appropriate open torque switch bypass indication and fully closes with diagnostic indication of hard seat contact and control room indication.
- The control switch settings provides adequate thrust margin to overcome design-basis requirements, including consideration of diagnostic equipment inaccuracy, control switch repeatability, load sensitive behavior, and margin for degradation until the next test.
- The motor output capability at degraded voltage is in excess of the control switch setting including consideration of diagnostic equipment inaccuracy, control switch repeatability, load sensitive behavior, and margin for degradation until the next test.
- The maximum thrust and torque achieved by the MOV including diagnostic equipment inaccuracy and control switch repeatability do not exceed the allowable structural capability limits for the individual parts of the MOV.
- The diagnostic traces do not indicate any significant abnormalities or anomalies.

After returning the MOV to service, the licensee performs a more detailed followup evaluation of test data for such items as the following:

- In the event of greater-than-predicted thrust or torque requirements, evaluate other applicable MOVs (such as parallel train valves) before plant startup. If plant is operating, evaluate promptly in accordance with GL 91–18 (November 7, 1991), "Information to Licensees Regarding Two NRC Inspection Manual Sections on Resolution of Degraded and Nonconforming Conditions and on Operability."
- Perform a detailed evaluation of the diagnostic trace for such items as bent stem, spring pack gap, and stem/stem nut interface problems. For example, training for the VOTES diagnostic equipment for MOVs recommends comparing in-rush motor current to running current for magnesium rotor degradation.
- Incorporate valve factors and stem friction coefficients into MOV sizing and switch setting methodology to ensure thrust windows are correct.

In response to Question 25 in Supplement 1 to GL 89–10, the staff stated that licensees may extrapolate the results of MOV tests to design-basis conditions where justified. As further explanation, the staff does not have a specific percentage of design-basis differential pressure where the test results can be reliably extrapolated to design-basis conditions. Licensees may justify their own method of extrapolation and the extent of that extrapolation. The staff describes one extrapolation method developed by the Idaho National Engineering Laboratory (INEL) in NUREG/CR–5720 (June 1992), "Motor-Operated Valve Research Update." Licensees may use that method if justified for their MOVs. The staff does not have any current plans to mandate the use of the extrapolation method outlined in NUREG/CR–5720.

At the February 25 workshop, a participant asked a question on whether unwedging forces need to be extrapolated. The staff believes that only thrust and torque required to overcome dynamic fluid forces need to be extrapolated from test conditions to design-basis conditions. A licensee

might justify that unwedging forces do not need to be extrapolated from test conditions to design-basis conditions.

As required through Criterion XVI, Corrective Action, of Appendix B to 10 CFR part 50, it is the responsibility of licensees to ensure that adverse information from MOV testing does not reveal a problem with other MOVs in the plant. In IN 92–17, the staff reported that GL 89–10 inspections had found that some licensees did not appear to be aware of their obligations in this area. Although test information might not be sufficient to justify the capability of a similar MOV, adverse test information can reveal a potential operability problem with other MOVs that a licensee must address. The requirements in Criterion XVI of Appendix B also apply to new information that might reveal a problem with the design-basis capability of MOVs, such as increased MOV diagnostic equipment inaccuracy.

In response to Question 30 in Supplement 1 to GL 89–10, the staff stated that it did not plan to insist that licensees use diagnostic equipment in implementing GL 89–10, but believed that such equipment would be almost essential for adequate implementation of the generic letter. As further explanation, licensees are responsible for demonstrating the design-basis capability of MOVs even where uncertainties exist in available diagnostic equipment. However, the staff will consider this factor in reviewing justifications for Schedule extensions for completing testing under GL 89–10. In response to Question 36 in Supplement 1 to GL 89–10, the staff briefly described its position on the consideration of degraded voltage in evaluating MOV capability under GL 89–10. In IN 92–17, the staff reported that many licensees are updating their degraded voltage studies. Below, the staff provides a more detailed explanation of an acceptable approach to considering degraded voltage with respect to MOV capability.

For 480-Vac motors, the licensee determines minimum voltage at the motor terminals considering cable size and length, temperature, and thermal overload resistance. The licensee considers the worst-case postulated motor control center (MCC) voltage based either on the lower of the voltage supplied from the diesel generator or the offsite supply. Where the offsite supply is the limiting case, as is typical, the licensee uses the degraded grid relay set point as the starting point for determining the minimum voltage at the motor terminals for ac motors. The appropriate set point to be used is for the degraded grid relay which provides for separation from the offsite supply, and connection to the emergency diesel generator with or without a specific time delay or concurrent accident signal.

In addition to the degraded grid voltage relays, some plants use an additional alarm relay (set higher than the degraded grid voltage relays) to alert the operator to a sustained degraded grid condition. The licensee would not use the alarm relay setting to calculate the voltage required at the MOVs. Likewise, the staff does not consider taking credit for administrative procedures and operator response (to separate from the offsite supply) to be acceptable unless these actions have been accepted generically for all safety equipment.

For dc motors, the licensee uses the worst-case battery voltage profile (including aging and temperature factors). The licensee properly accounts for voltage drops from the battery to the MCC. After determining the minimum voltage at the motor, the degraded voltage factor is calculated. The degraded voltage factor is then multiplied by the rated motor output torque and compared to the torque required.

In Technical Update 92–02, Limitorque states that, between 90 and 99 percent of rated voltage, the degraded voltage factor is equal to one and that the application factor makes allowances for motor torque loss up to 90 percent voltage. In Technical Update 92–02, Limitorque also states that the degraded voltage factor is applied if motor terminal input voltage is less than 90 percent of the motor rated voltage at any time during the valve stroke. For ac-powered MOVs, the degraded voltage factor is equal to the square of the ratio of the minimum motor terminal voltage to the motor rated voltage. For dc-powered MOVs, the degraded voltage factor is equal to the minimum motor terminal voltage divided by the motor rated voltage. However, Limitorque has only approved this approximation for motor voltages over 70 percent.

The following is a summation of two acceptable methods for calculating the expected ac-motor terminal voltage at degraded bus voltage conditions:

Method One: A motor circuit one-line diagram is constructed consisting of the known cable and overload heater impedances. The motor impedance is calculated by the following formula:

$$Z(m) = \frac{V(r)}{SQRT(3) \times I(lr)}$$

where: Z(m)=motor impedance
V(r)=motor nominal voltage
I(lr)=rated locked rotor current

Then, a voltage divider calculation is performed with the result being the calculated motor terminal voltage under worst-case bus voltage conditions.

Method Two: A motor current value, representative of worst-case conditions, is assumed. Some licensees assume nominal locked rotor current, which should be the most conservative. Other licensees are assuming alternate values such as current at torque switch trip, which may not be conservative because the current at torque switch trip may depend on the applied voltage and consequently may be higher under degraded voltage conditions. Additionally, current at torque switch trip is not always the worst case because unseating current could be higher in some cases. Also, if the current was derived from a test at less than full differential pressure, the current at torque switch trip also might be underestimated as a result of differences in inertial forces. Therefore, the licensee justifies the use of any current value less than that of nominal locked-rotor current. Motor terminal voltage is then calculated by multiplying the assumed motor current times the cable and overload impedances and subtracting this value from the worst-case bus voltage. The licensee uses the power factor specified in a table provided by Limitorque for locked-rotor conditions.

For dc motors, an acceptable approach to determine the worst-case motor torque is more straightforward. The locked-rotor resistance of the motor is calculated from actual locked-rotor current test data. Then, appropriate values are assumed for cable, overload heater, and starting resistor resistances. The licensee accounts for uncertainties in the generic motor curves. An example calculation for determining dc motor torque is shown in a Limitorque Maintenance Update dated August 17, 1988.

In response to Question 26 in Supplement 1 to GL 89–10, the staff describes the demonstration of the applicability of prototype test data to MOVs installed in their plants. As indicated in Supplement 1, the staff believes that the most justifiable method of demonstrating applicability is to use performance-based criteria where the MOV in question is tested under partial dynamic conditions and its performance is related to the performance of the prototype MOV under similar conditions. However, each licensee may develop its own method of justifying the applicability of prototype test data.

Since the staff issued Supplement 1 to GL 89–10, EPRI has established an MOV

Performance Prediction Program that might provide important information to assist licensees in demonstrating the design-basis capability of MOVs that cannot practicably be tested under dynamic conditions. The staff expects licensees to proceed with their GL 89–10 programs and not to wait for the completion of the EPRI program. Where the EPRI program does not provide sufficient information regarding an MOV, the staff expects each licensee to provide justification for the design-basis capability of the MOV.

In response to Question 28 in Supplement 1 to GL 89–10, the staff stated that the capability of an MOV under design-basis conditions might be demonstrated by means of a data base of test results if properly justified. The staff also indicated that the MOV Users Group might be able to provide assistance in developing such a data base. Recently, the MOV Users Group indicated that it is planning to develop a data base of test results. The staff expects the industry MOV test data base to be established and maintained with appropriate quality assurance controls. The staff may audit the data base to provide an independent assessment of the quality of the data. The staff currently does not plan to mandate its use, but licensees will be expected to be aware of its contents to help ensure that a potential plant-specific MOV problem is not revealed by the data base.

Periodic Verification and Post-Maintenance Testing

The NRC staff received questions on the use of static tests to satisfy the recommendation in GL 89–10 to periodically verify the design-basis capability of MOVs, the frequency of periodic verification of design-basis capability, and the use of motor current following valve packing adjustments or replacement.

NRC Staff Response

Recommendation d of GL 89–10 requests licensees to periodically verify that MOVs within the scope of GL 89–10 are capable of performing their design-basis functions. In response to Question 33 in Supplement 1 to GL 89–10, the staff stated that the licensee should develop a method to ensure that, following the initial demonstration that the MOV would operate under design-basis conditions, the MOV switches remain set adequately. As indicated in IN 92–17, many licensees have stated their intent to rely on static test data to address the GL 89–10 recommendation on periodic verification. In recommendation d of GL 89–10 and in response to Question 35 in Supplement 1 to GL 89–10, the staff stated that the ASME Code Section XI stroke-time testing required by 10 CFR Part 50 would not satisfy this provision of GL 89–10. The staff discussed the relationship between ASME Section XI and GL 89–10 in response to Question 49 in Supplement 1 to GL 89–10.

Based on the results of GL 89–10 inspections to date, no licensee has as yet justified the use of static test data for periodically demonstrating the design-basis capability of MOVs. The staff will review the jurisdiction provided by licensees during inspections when licensees begin implementing their method for periodically verifying the design-basis capability of MOVs.

In GL 89–10, the staff recommend that the design-basis capability of MOVs be verified approximately every 5 years but noted that an alternative schedule might be justified. As further information, a licensee may evaluate the safety significance of an MOV in determining an appropriate frequency for periodically verifying design-basis capability.

In response to Question 38 in Supplement 1 to GL 89–10, the staff stated that the licensee should justify that the MOV switch settings remain correct, or have been adjusted adequately, upon completion of any activity involving the MOV that might affect its ability to operate under design-basis conditions.

Since then, the industry has found the use of motor current to not always reliably predict changes in thrust delivered in operating a valve. However, Commonwealth Edison Company has developed a method of using motor current when sufficient margin is available following valve packing adjustments. The staff will be meeting with Commonwealth Edison to review the acceptability of its methodology for post-maintenance testing.

Trending

The NRC staff received a question on the staff's expectations regarding tracking and trending of MOV problems in response of GL 89–10.

NRC Staff Response

In response to Question 39 in Supplement 1 to GL 89–10, the staff referred licensees to Attachment A to GL 89–10 for MOV problems that could be trended. The staff has documented in its GL 89–10 inspection reports instances in which licensees have developed thorough trending programs.

Schedule

The NRC staff received questions on the need to complete the GL 89–10 program within the schedule recommended in the generic letter and the justification necessary to extend the schedule commitment date.

NRC Staff Response

Information on schedule is provided in the body of Supplement 76 to GL 89–10.

In addition to testing under recommendation c of GL 89–10, the staff discusses the long-term aspects of the MOV program in recommendations d, f, h and j of the generic letter.

Pressure Locking and Thermal Binding of Gate Valves

The NRC staff received questions on the need to consider pressure locking and thermal binding of gate valves as part of a licensee's response to GL 89–10, the drilling of a hold in the valve disk to prevent pressure locking, the schedule for evaluating pressure locking and thermal binding, and the need for detailed measurements of external heat loads in evaluating the potential for pressure locking and thermal binding.

NRC Staff Response

The NRC Office for Analysis and Evaluation of Operational Data (AEOD) has completed AEOD Special Study AEOD/S92–07 (December 1992), "Pressure Locking and Thermal Binding of Gate Valves." The staff issued the AEOD report in NUREG–1275, Volume 9 (March 1993), "Operating Experience Feedback Report—Pressure Locking and Thermal Binding of Gate Valves." In its report, AEOD concludes that licensees have not taken sufficient action to provide assurance that pressure locking and thermal binding will not prevent a gate valve from performing its safety function.

The NRC regulations require that licensees design safety-related systems to provide assurance that those systems can perform their safety functions. In GL 89–10, the staff requested licensees to review the design bases of their safety-related MOVs. In complying with the NRC regulations, licensees are expected to have evaluated the potential for pressure locking and thermal binding of gate valves and taken action to ensure that these phenomena do not affect the capability of MOVs to perform their safety-related functions. If a licensee identifies a potential for pressure locking and thermal binding of gate valves, the NRC regulations require that the licensee take action to resolve that problem.

Based on information from staff inspections and discussions, the staff considers the following to be an acceptable approach to addressing

pressure locking and thermal binding of gate valves within the scope of GL 89–10:

1. Document an evaluation of the gate valves within the scope of GL 89–10 as having operational configurations with a potential for pressure locking or thermal binding, including the basis for determining whether the valves (a) are susceptible to pressure locking or thermal binding or (b) can be removed from further consideration. For example, solid wedge disc gate valves might not be susceptible to pressure locking. Double disc gate valves are not likely to be susceptible to thermal binding.

The evaluation would include consideration of the potential for an MOV to undergo pressure locking or thermal binding during surveillance testing. For example, the inboard containment isolation MOV in the reactor core isolation cooling (RCIC) system steam line at a plant recently failed in the closed position following closure for routine surveillance testing. The cause was believed to be pressure locking.

The evaluation also would include review of generic studies for site-specific applicability, such as in the areas of thermal effects and design-basis depressurization.

Examples of unacceptable reasons for eliminating valves from consideration of pressure locking or thermal binding are (1) leakage rate, (2) engineering judgment without justification, and (3) lack of event occurrence at the specific plant.

The AEOD study indicated that safety-related gate valves involved in pressure locking events were:

- Low pressure coolant injection (LPCI) and low pressure core spray (LPCS) system injection valves
- Core spray (CS) valves
- Residual heat removal (RHR) shutdown cooling (SDC) isolation valves
- RHR hot leg crossover isolation valves
- RHR containment sump and suppression pool suction valves
- High pressure coolant injection (HPCI) steam admission valves
- RHR heat exchanger outlet valves
- Emergency feedwater isolation valves

The AEOD study indicated that safety-related gate valves involved in thermal binding events were

- Reactor depressurization system isolation valves
- RHR inboard suction isolation valves
- HPCI steam admission valves
- Power-operated relief valve (PORV) block valves
- Reactor coolant system letdown isolation valves
- RHR suppression pool suction valves
- Containment isolation valves (sample line, letdown heat exchanger inlet header)
- Condensate discharge valves
- Reactor feedwater pump discharge valves

A recent event at a plant involving possible pressure locking of a RCIC valve indicates that MOVs in steam lines also are susceptible to pressure locking.

2. Document an analysis of the safety-related gate valves (identified in 1 above) with the potential for either pressure locking or thermal binding to ensure all such valves can be opened to perform their safety function under all modes of plant operation. Credit for bonnet pressure decay within the valve response time might not be acceptable unless operation of the actuator motor at locked-rotor conditions would not degrade motor torque capability.

Specific acceptable modifications and actions to prevent pressure locking or thermal binding are listed on page 7 of NUREG/CR–1275.

The NRC regulations require an analysis under 10 CFR 50.59 for any valve modifications and the establishment of adequate post-modification and inservice testing of any valves installed as part of the modification. For example, the licensee would evaluate the effects of drilling the hole in the disk if used to resolve a pressure locking concern. One consideration in this evaluation is the fact that the MOV will be leaktight in only one direction.

As required through appendix B to 10 CFR part 50, the licensee would establish training for plant personnel to perform any necessary actions and incorporate specific procedural precautions/revisions into the existing plant operating procedures. For example, plant personnel might periodically stroke certain valves to reduce the potential for thermal binding.

If an MOV is found to be susceptible to pressure locking or thermal binding and the licensee relies on the capability of the MOV to overcome pressure locking or thermal binding, the staff will review the licensee justification during inspections in consideration of the uncertainties surrounding the prediction of the required thrust to overcome these phenomena. If the staff finds that a licensee has not adequately addressed the potential for pressure locking and thermal binding of gate valves, enforcement actions and schedules for response will depend on the safety significance of the issue at the plant.

With respect to a particular question on the consideration of external heat loads, licensees may evaluate the effects of these loads in a bounding manner to minimize the need for detailed measurements and analyses in the plant.

From the evaluation of licensee activities during GL 89–10 inspections, the staff will determine whether regulatory action is necessary with respect to other types of power-operated valves (such as air-operated valves) in regard to the potential for pressure locking and thermal binding.

Miscellaneous

The NRC staff received miscellaneous new questions on plans for a generic letter on air-operated valves (AOVs), the need for on-line continuous monitoring of MOVs, the plans for a proposed NRC staff meeting with MOV experts from other countries, the role of vendors in resolving the MOV issue, and the status of NRC staff comments on the EPRI MOV Performance Prediction Program.

NRC Staff Response

The staff has been considering the issue of performance of AOVs and currently does not believe that a generic letter is necessary.

Use of on-line continuous monitoring would be a licensee decision.

The staff has requested the International Atomic Energy Agency (IAEA) to set up a meeting under the aging program to discuss problems with the performance of MOVs in other countries and the resolution of those problems.

The staff encourages licensees to work closely with the vendors to resolve MOV performance concerns.

The staff sent a letter in December 1992 to EPRI discussing issues regarding the EPRI MOV program.

Dated at Rockville, Maryland, this 15th day of July 1993.

For the Nuclear Regulatory Commission.

Gail H. Marcus,

Chief, Generic Communications Branch, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–17468 Filed 7–21–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following

preliminary schedule is published to reflect the current situation, taking into account additional meetings that have been scheduled and meetings that have been postponed or cancelled since the last list of proposed meetings was published June 23, 1993 (58 FR 34067). Those meetings that are firmly scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS and ACNW full Committee meetings designated by an asterisk (*) will be closed in whole or in part to the public. The ACRS and ACNW full Committee meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS and ACNW full Committee meetings, and when ACRS, Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the August 1993 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., (EDT).

ACRS Subcommittee Meetings

Auxiliary and Secondary Systems, July 27 (8:30 a.m. until close of business) and 28, 1993 (8:30 a.m.–10:30 a.m.), Bethesda, MD. The Subcommittee will review the La Salle Fire PRA and the proposed resolution of Generic Issue 57, "Effects of Fire Protection System Actuation on Safety-Related Equipment."

Advanced Boiling Water Reactors, July 28, 1993, Bethesda, MD (11 a.m.). The Subcommittee will discuss fire PRA, fire hazards analysis, and fire barrier design associated with the Advanced Boiling Water Reactor design.

Improved Light Water Reactors, August 4, 1993, Bethesda, MD. The Subcommittee will discuss the NRC staff's response to ACRS comments and recommendations related to certain policy, technical, and licensing issues pertaining to evolutionary and advanced light-water reactor designs. Also, the Subcommittee will discuss the staff positions on certain remaining policy issues for passive plant designs.

Planning and Procedures, August 4, 1993, Bethesda, MD (2 p.m.–4:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Portions of this meeting may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

Materials and Metallurgy, August 16, 1993, Bethesda, MD (12 noon). The Subcommittee will review proposed rulemaking on fracture toughness requirements for reactor pressure vessels—revisions to 10 CFR 50.61, Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events, Appendix G, Fracture Toughness Requirements, Appendix H, Reactor Vessel Material Surveillance Program Requirements, and a new rule on reactor vessel thermal annealing (10 CFR 50.66).

Mechanical Components, August 17, 1993, Bethesda, MD. The Subcommittee will discuss the status of the ongoing NRC and industry activities associated with motor-operated valves, check valves, butterfly valves, and other related matters.

Advanced Boiling Water Reactors, September 8, 1993, Bethesda, MD. The Subcommittee will discuss the status of resolution of the remaining open issues in the ABWR Standard Safety Analysis Report and the resolution of USIs and GSIs. Also, it will discuss the NRC staff's schedule for submittal of the Final Safety Evaluation Report.

Planning and Procedures, September 8, 1993, Bethesda, MD (2 p.m.–4:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Portions of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

Computers in Nuclear Power Plant Operations, September 15, 1993, Bethesda, MD—POSTPONED.

Thermal Hydraulic Phenomena, September 21, 1993 (tentative), Oregon State University (OSU), Corvallis, OR. The Subcommittee will continue its review of the Westinghouse and NRC integral systems and separate effects test programs supporting the AP600 design certification effort. The meeting discussion will focus on the OSU integral systems test facility program.

Severe Accidents, September 22–24, 1993, Los Angeles, CA or Portland, OR. The Subcommittee will continue its review of the severe accident issues associated with the GE ABWR design certification review.

Planning and Procedures, October 6, 1993, Bethesda, MD (2 p.m.–4:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Portions of this meeting may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

Thermal Hydraulic Phenomena, October 20–21, 1993 (tentative), Bethesda, MD. The Subcommittee will review selected aspects of the NRC–RES-sponsored ROSA–V confirmatory test program being conducted in support of the Westinghouse AP600 passive plant design certification effort. Specific review topics will include: facility design modifications and additions, the test matrix, and instrumentation and controls. Also the Subcommittee will continue its review of the NRC RELAP5/MOD 3 code.

Advanced Boiling Water Reactors, October 26–27, 1993, Bethesda, MD. The Subcommittee will begin its review of the NRC staff's Final Safety Evaluation Report for the GE ABWR design.

Advanced Boiling Water Reactors, November 16–17, 1993, Bethesda, MD. The Subcommittee will continue its review of the NRC staff's Final Safety Evaluation Report for the GE ABWR design.

Advanced Boiling Water Reactors, January 25–26, 1994, Bethesda, MD. The Subcommittee will review any residual issues associated with the ABWR design and prepare a proposed ACRS report on the ABWR issues for consideration by the full Committee.

ACRS Full Committee Meetings

400th ACRS Meeting, August 5–7, 1993, Bethesda, MD. During this meeting, the Committee plans to consider the following:

A. *Remaining Policy Issues for Passiv Plant Designs*—Review and comment on the draft Commission paper on the remaining policy issues related to the passive plant designs. Representatives of the NRC staff will participate.

B. *Proposed Resolution of Generic Safety Issue 57, "Effects of Fire Protection System Actuation on Safety-Related Equipment," and Lessons Learned from the La Salle Fire PRA*—Review and comment on the proposed resolution of Generic Safety Issue 57, and the Lessons Learned from the La Salle Fire PRA. Representatives of the NRC staff will participate.

Representatives of the industry will participate, as appropriate.

C. *Proposed Resolution of Generic Issue 143, "Availability of Chilled Water Systems and Room Cooling"*—Review and comment on the NRC staff's proposed resolution of Generic Issue 143. Representatives of the NRC staff will participate.

D. *Advanced Light Water Reactor Policy Issue on Emergency Planning*—Review and comment on a draft Commission paper related to emergency planning for Advanced Light Water Reactors. Representatives of the NRC staff will participate.

E. *Meeting with Chairman Selin*—Hold discussions with NRC Chairman Selin on items of mutual interest.

F. *Resolution of ACRS Comments and Recommendations*—Discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

G. *Prioritization of Generic Issues*—Discuss proposed assignments for reviewing the priority rankings proposed by the NRC staff for a group of generic issues.

*H. *ACRS Subcommittee Activities*—Hear reports and hold discussions regarding the status of ACRS subcommittee activities, including reports from the Subcommittees on Thermal Hydraulic Phenomena and Advanced Boiling Water Reactors. Portions of this session may be closed to discuss information deemed proprietary by the Westinghouse Electric Corporation per 5 U.S.C. 552b(c)(4).

*I. *Planning and Procedures Subcommittee Report*—Hear a report of the Planning and Procedures Subcommittee involving matters related to the status of appointment of new members and organizational and personnel matters relating to ACRS staff members. A portion of this session may be closed to public attendance pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

J. *Future ACRS Activities*—Discuss topics proposed for consideration by the full Committee during future meetings.

K. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of matters and specific issues that were not completed during previous meetings as time and availability of information permit.

401st ACRS Meeting, September 9–11, 1993, Bethesda, MD. Agenda to be announced.

402nd ACRS Meeting, October 7–9, 1993, Bethesda, MD. Agenda to be announced.

403rd ACRS Meeting, November 4–6, 1993, Bethesda, MD. Agenda to be announced.

404th ACRS Meeting, December 9–11, 1993, Bethesda, MD. Agenda to be announced.

ACNW Full Committee and Working Group Meetings

56th ACNW Meeting, August 25–26, 1993, Holiday Inn, Bethesda, MD. During this meeting, the Committee plans to consider the following:

*A. The Committee will meet in executive session to discuss a strategy for implementing recent direction from the Commission on the ACNW charter and renewal of appointment for members. Methods for ACNW operation, candidates for appointment to the Committee, and topical areas for ACNW review will form the central focus of this meeting.

*B. *Committee Activities*—Discuss anticipated and proposed Committee activities, future meeting agenda, and organizational and personnel matters.

C. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit.

This meeting will be closed to the extent it discusses organizational and personnel matters that relate solely to the internal personnel rules and practices of this advisory committee and the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(2) and (6).

57th ACNW Meeting, September 29–30, 1993, Bethesda, MD. Agenda to be announced.

ACNW Working Group on Characterization of the Unsaturated Zone Flow and Transport Properties Fracture vs. Matrix Flow, October 26, 1993, Las Vegas, NV. The Working Group will examine the relationships between precipitation, recharge, and flux through the unsaturated zone at the proposed Yucca Mountain site, and the adequacy of ongoing field studies to ascertain these relationships. Emphasis will be placed on the modeling of flow in the unsaturated zone, alternative conceptual models of fracture versus matrix flow, and conditions under which fracture flow can be shown to predominate. The Working Group will also focus on the recharge term in hydrogeologic models, alternative conceptual models for how and where regional recharge occurs, and the effect of assumptions about recharge on model results.

58th ACNW Meeting, October 27–28, 1993, Las Vegas, NV. Agenda to be announced.

59th ACNW Meeting, November 22–23, 1993, Bethesda, MD. Agenda to be announced.

60th ACNW Meeting, December 15–16, 1993, Bethesda, MD. Agenda to be announced.

Dated: July 16, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–17341 Filed 7–21–93; 8:45 am]

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[Docket No. 50–318]

Baltimore Gas & Electric Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DRP–69, issued to Baltimore Gas & Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 2 located in Calvert County, Maryland.

The proposed amendment would revise Technical Specifications (TS) 3/4.2, "Power Distribution Limits," and 3/4.3, "Instrumentation," to relax the requirements for the number and distribution of operable incore detectors. The incore detectors are required to verify that the core power distribution is consistent with the safety assumptions used in the safety analyses and to protect the current power distribution TS limits. The proposed changes would also apply penalties to the values measured by the incore detectors prior to their comparison with TS limits to assure that the TS limits monitored by the incore detectors will continue to be valid.

Specifically, footnotes will be added to the following TS and will be applicable for only the remainder of the Calvert Cliffs Nuclear Power Plant, Unit 1, Operating Cycle 11, as follows:

TS 3.2.2.1, Total Planar Radial Peaking Factor, Limiting Condition for Operation (LCO), 3.2.3, Total Integrated Radial Peaking Factor LCO; and 4.2.1.4.b.1, Surveillance Requirements for Incore Detector Monitoring System

will have footnotes indicating that when the percentage of operable incore detector locations (strings) fall below 75%, the measurement-calculational uncertainty factor will be increased by 1% prior to being compared to the TS limits.

TS 4.2.1.4.a, Surveillance Requirements for Incore Detector Monitoring System; 4.2.2.1.2.b, Total Planar Radial Peaking Factor; and 4.2.3.2.b, Total Integrated Radial Peaking Factor, will have footnotes indicating that when the percentage of operable incore detector locations (strings) falls below 75% the full core power distribution mapping frequency will be increased to at least once per 15 days of accumulated operation while in Operating Mode 1.

TS 3.3.3.2.a, Monitoring Instrumentation LCO, for monitoring Azimuthal Power Tilt will have a footnote which supersedes the current requirement. The current requirement for two quadrant symmetric incore detector segment groups at each axial location is changed to a total of eight quadrant symmetric incore detector segment groups. The current requirement for at least two azimuthal power tilt values at each detector segment axial elevation is changed to at least one azimuthal power tilt value at each detector segment axial elevation and at least two azimuthal power tilt values at three detector segment axial elevations.

TS 3.3.2.b.1, Monitoring Instrumentation LCO, for recalibration of the Excore Neutron Monitoring Flux Detector System; and 3.3.3.2.C.1, Monitoring Instrumentation, for monitoring the Unrodded Planar Radial Peaking Factor, the Unrodded Integrated Radial Peaking Factor, or the linear heat rate will have footnotes which will change the minimum number of operable detector segments and strings from 75% to 60%.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change has been evaluated against the standards in 10 CFR 50.92 and has been determined to not involve a significant hazards consideration, in that operation of the facility in accordance with the proposed amendments:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would relax requirements for the number and distribution of operable incore detectors. The safety function of the incore detectors is to verify that the core power distribution is consistent with the assumptions used in the safety analyses. Sufficient measurements will be required to adequately verify compliance with power distribution Technical Specification limits. Penalties will be applied to the values measured by the incore detectors prior to comparison with the Technical Specifications limits when the number of operable detector strings falls below the current requirement. This will ensure that all current Technical Specification and fuel design limits are protected and the core power distribution assumptions in all analyses remain valid. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new different type of accident from any accident previously evaluated.

The proposed change does not represent a change in the configuration or operation of the plant. The current Technical Specifications limits measured by the incore detector system will still be met. Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The proposed changes will continue to protect the current power distribution Technical Specifications limits. When the number of operable incore detector strings falls below the current Technical Specification requirement, a penalty will be added to the measured values before they are compared with the Technical Specification limits. This penalty has been shown by prior analysis to be greater than the increased uncertainty. This penalty ensures that the Technical Specifications limits monitored using the incore detectors will continue to be protected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 23, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. 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 Calvert County Library, Prince Frederick, Maryland. 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 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 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.

If a hearing is requested, the Commission will make a final determination of the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

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 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) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra: 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 D.A. Brune, Esq., General Counsel, Baltimore Gas and Electric Company, P.O. Box 1475, Baltimore, Maryland 21203, 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).

For further details with respect to this action, see the application for amendment dated July 16, 1993, 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 Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 19th day of July 1993.

For the Nuclear Regulatory Commission.

Daniel G. McDonald,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–17464 Filed 7–21–93; 8:45 am]

BILLING CODE 7590–01–M

Gulf States Utilities Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

[Docket No. 50–458]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47 issued to Gulf States Utilities Company (the licensee) for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

The proposed amendment would change the Technical Specifications to extend the Radioactive Effluent Release Report submittal frequency from semiannual to annual and to extend the preparation period from 60 days to 90 days. Additionally, the proposed amendment would change the listed reference for acceptable calculation methods contained in Radiological Effluents Bases sections.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended

(the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change being implemented is an administrative alteration of River Bend Station (RBS) technical specifications (TS) and does not cause a significant increase in the probability or consequences of a previously evaluated accident. This change involves a decrease in the frequency of the effluent release report from twice a year to once per year; additionally, the report preparation time is extended from 60 days to 90 days in accordance with the change in title 10, Code of Federal Regulations § 50.36, effective October 1, 1992. Also, due to acquiring new effluent tracking software, the reference for acceptable methods of calculating liquid and gaseous effluents is being changed from Regulatory Guide 1.109, "Calculation of Annual Doses to Man from Routine Releases of Reactor Effluents for the Purpose of Evaluating Compliance with 10 CFR part 50, appendix I," to NUREG–0133, "Preparation of Radiological Effluent Technical Specifications for Nuclear Power Plants."

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

This change does not create any possible new accidents or variations of accidents previously evaluated. This change is administrative only. This change alters the frequency of and preparation time for the effluent report. Additionally, this change notes that due to new computer software, NUREG–0133 will be referenced as the source of acceptable methods of calculating liquid and gaseous effluents.

3. The proposed change does not involve a significant reduction in the margin of safety.

This change does not present any reduction in any margin of safety because this change is administrative. The administrative section of RBS TS is being changed to adopt the NRC's new annual frequency for effluent reports and concurrently, to extend the preparation time from 60 days to 90 days. Additionally, the reference listed for acceptable methods of calculating liquid and gaseous effluents is being changed from Regulatory Guide 1.109 to NUREG–0133.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 23, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. 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 Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. 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 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 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 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 an on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to these 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 on which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

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 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) 248–5100 (In Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Suzanne C. Black: 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 Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street, NW., Washington, DC 20005, 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).

For further details with respect to this action, see the application for amendment dated July 2, 1993, 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 Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 19th day of July 1993.

For the Nuclear Regulatory Commission.

Edward T. Baker,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–17465 Filed 7–21–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Gulf States Utilities Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47 issued to Gulf States Utilities Company (the licensee) for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

The proposed amendment would change the Technical Specifications to indicate that for Cycle 5 the impact on the operating limit minimum critical power ratio from a misoriented fuel bundle need not be considered due to extensive core verification.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A River Bend Station (RBS) calculation has been performed to estimate the probability of operation with a misoriented fuel bundle given the current core verification procedures. This calculation estimated the probability to be 7.36E–07 per cycle. In addition, independent verification has been performed by General Electric to show all fuel bundles are properly oriented in the Cycle 5 core. This additional verification reduces the probability lower than 7.36E–07 per

cycle. Therefore, the probability of operation with a misoriented fuel bundle is insignificant. The probability is well below that for moderate frequency and infrequent events and is even below the probability for limiting faults such as a large LOCA. Therefore, there is no increase in the probability of any previously analyzed accidents.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

All analyses of anticipated operational occurrences required to be performed for reload cores, including a misoriented fuel bundle accident, are identified in GESTAR. The anticipated operational occurrences are analyzed and the results reported in the Cycle 5 Supplemental Reload Licensing Report. With the extensive and independent verification of fuel bundle alignment, no possibility of a previously unanalyzed accident is created.

3. The proposed change does not involve a significant reduction in the margin of safety.

It has been shown that with the extensive RBS core verification as mentioned above, the probability of operation with a misoriented fuel bundle during any cycle is extremely small. Because of the increased awareness and extra care taken during refuel 4, there is no misoriented bundle for operation during Cycle 5. Essentially, the extra attention paid to fuel orientation during refuel 4 has decreased the probability of operating with a misoriented fuel bundle during Cycle 5 to 7.36E–07, which is so small that it can be considered zero. Since there is no misoriented fuel bundle, there is no effect on the margin of safety created by this request.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 23, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. 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 Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. 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 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 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 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.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

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 data. Where petitions are filed during the last 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) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Suzanne C. Black: 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 Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street NW., Washington, DC 20005, 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).

For further details with respect to this action, see the application for amendment dated July 2, 1993, 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 Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 19th day of July 1993.

For the Nuclear Regulatory Commission.

Edward T. Baker,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–17466 Filed 7–21–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–461

Illinois Power Co. & Soyland Power Cooperative, Inc.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 79 to Facility Operating License No. NPF–62, issued to Illinois Power Company, et al. (IP, the licensee) which revised the Technical Specifications for operation of the Clinton Power Station, Unit No. 1, located in DeWitt County, Illinois. The amendment is effective as of the date of issuance and shall be implemented within 30 days.

The amendment modified the Technical Specifications to eliminate contradictory statements, allow adequate time to perform required surveillances without resulting in a violation of Technical Specification 4.0.4, clarify startup surveillance requirements, and establish plant conditions to perform surveillances associated with change of plant operational conditions.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for a Hearing in connection with this action was published in the Federal Register on February 16, 1988 (53 FR 4477). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to this action see (1) the application for amendment dated October 30, 1987, (2) Amendment No. 79, to License No. NPF–62, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the local public document room located at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland this 15th day of July 1993.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–17467 Filed 7–21–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Chicago Stock Exchange, Inc.

July 16, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Commercial Net Lease Realty, Inc.
Common Stock, $.01 Par Value (File No. 7–10968)

CRI Liquidating Reit, Inc.
Common Stock, $.01 Par Value (File No. 7–10969)

Edisto Resources Corp.
Common Stock, $.01 Par Value (File No. 7–10970)

Kohl's Corporation
Common Stock, $.01 Par Value (File No. 7–10971)

Kuhlman Corporation
Common Stock, $1.00 Par Value (File No. 7–10972)

Navistar International Corporation Holding Company

Common Stock, $.10 Par Value (File No. 7–10973)
Oak Industries, Inc.
Common Stock, $.05 Par Value (File No. 7–10974)
Samuel Goldwyn Company
Common Stock, $.20 Par Value (File No. 7–10975)
U.S. Home Corporation
Common Stock, $.01 Par Value (File No. 7–10976)
Consolidated Tomoka Land Co.
Common Stock, $1.00 Par Value (File No. 7–10977)
Ziegler Companies, Inc.
Common Stock, $1.00 Par Value (File No. 7–10978)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 6, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–17417 Filed 7–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32640; File No. SR–MSRB–93–05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to Book-Entry Delivery of Municipal Securities for Delivery vs. Payment or Receipt vs. Payment Customer Transactions in Depository Eligible Securities

July 15, 1993.

On April 2, 1993, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commisson") a proposed rule change (File No. SR–MSRB–93–05) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change requires book-entry delivery of municipal securities for delivery vs. payment or receipt vs. payment ("DVP/RVP") customer transactions in depository eligible securities with very limited exceptions. The Commission published notice of the proposed rule change in the **Federal Register** on May 10, 1993.[2] No comments were received as a result of the **Federal Register** notice.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change amends MSRB Rule G–15(d)(iii), which requires the use of book-entry systems for most delivery vs. payment or receipt vs. payment ("DVP/RVP") customer transactions in depository eligible securities. The proposed rule change eliminates the exemption in Rule G–15(d)(iii) which previously allowed transactions in which at least one party was not a direct participant in a depository to be processed outside the automated clearance and settlement system. Those transactions will now settle by book-entry, subject to the exemptions described below.

Under the proposed rule change, there will be two exemptions to the requirement of book-entry settlement for depository eligible transactions. One exemption relates to securities which are eligible at some, but not all, depositories. If the securities are ineligible at the exclusive depository or depositories being used by one of the parties to the transaction, the proposed rule change will not require book-entry settlement. The proposed rule change, therefore, will not require that dealers and DVP/RVP customers have access to all depositories just to accommodate the lack of uniformity in eligibility lists at the various depositories. The second exemption relates to physical delivery of an RVP customer transaction in which an issuer or trustee is purchasing securities in order to retire them.[4] The MSRB believes that such an exemption is sometimes needed so that the issuer or trustee can effectively retire securities prior to maturity by purchasing them on the open market.

II. Written Comments

As noted earlier, the MSRB published for comment the proposed rule change as well as other draft amendments to MSRB Rules G–12(f) and G–15(d) and received sixteen comment letters.[5] Ten commenters generally supported the amendments, noting the proposal would facilitate efforts to reduce systemic risk and enhance settlement efficiencies. One commenter specifically opposed this proposed rule change, stating that certain of its institutional customers

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 32253 (April 30, 1993), 58 FR 27599.

[3] In August 1991, the MSRB published the proposed rule change for comment as well as other draft amendments to Rules G–12(f) and G–15(d). Sixteen comment letters were received. Twelve commenters generally supported the August 1991 draft amendments, two were opposed, and two commenters addressed a possible modification without specifically supporting or opposing the draft amendments. One commenter specifically opposed this proposed rule change. The concerns raised by the commenter and the basis for opposition are discussed in Section II, *Infra*.

[4] For example, an indenture trustee may request physical settlement on a DVP/RVP transaction because the trustee is purchasing securities prior to making a partial call and does not want to call certificates that it has purchased. Similarly, an issuer may purchase its own non-callable securities to retire them. The issuer may need to destroy the physical certificates and may not wish to make payment until the physical certificates are presented.

[5] See letter from Philip Lanz, Managing Director, Bear, Stearns Securities Corp., to Harold L. Johnson, Deputy General Counsel, MSRB (December 16, 1991); letter from Jan Fenty, President, The Cashier's Association of Wall Street, Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 3, 1991); letter from William J. Winter, Vice President, Cashiers Department, A.G. Edwards and Sons, Inc., to Harold J. Johnson, Deputy General Counsel, MSRB (December 13, 1991); letter from Kathleen Graffam, First Chicago Capital Markets, Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 13, 1991); letter from Steve Harris, Executive Vice President, Golden Harris Capital Group, Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (October 7, 1991); letter from John J. Lynch, Jr., Executive Vice President, J.F. Hartfield and Co., Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 3, 1991); letter from John F. Lee, President, New York Clearing House, to Harold L. Johnson, Deputy General Counsel, MSRB (December 18, 1991); letter from Harold Durk, Duke McElroy & Company, to Harold L. Johnson, Deputy General Counsel, MSRB (December 3, 1991); letter from Lawrence Morillo, Senior Vice President, Pershing, to Harold L. Johnson, Deputy General Counsel, MSRB (December 6, 1991); letter from James H. Pyle, Managing Partner, Terry L. McCullough, Partner, Richard E. Whalen, Partner, and Benita I. Simon, Partner, Elmer E. Powell and Company, to Harold L. Johnson, Deputy General Counsel, MSRB (November 27, 1991); letter from George Brakatselos, Vice President, Public Securities Association, to Harold L. Johnson, Deputy General Counsel, MSRB (November 19, 1991); letter from Thomas Sargant, Vice President, The Regional Municipal Operations Association, to Harold L. Johnson, Deputy General Counsel, MSRB (December 12, 1991); letter from George J. Minnig, Chairman, Regulatory and Clearance Committee, Securities Industry Association, to Harold L. Johnson, Deputy General Counsel, MSRB (December 6, 1991); letter from Jerome Clair, Managing Director, and Robert Mattei, Assistant Manager, Smith Barney, Harris Upham & Co., Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 9, 1991); letter from Roger Springate, Jr., Springate and Company, to Harold L. Johnson, Deputy General Counsel, MSRB (December 13, 1991); and letter from Rick Farrell, Assistant Vice President, United Missouri Bank, N.A., to Harold L. Johnson, Deputy General Counsel, MSRB (November 5, 1991).

wish to continue receiving physical delivery of securities certificates on DVP/RVP trades and that the proposed rule change will make clearing more difficult for the smaller institutions and brokerage firms instead of making it more efficient and will put a large added financial burden on smaller firms and institutions.[6] In response, the MSRB noted its belief that the overwhelming majority of institutional customers benefit significantly from the efficiencies inherent in book-entry settlement of municipal securities transactions, and the proposal will facilitate increased automation and compression of the settlement cycle.

III. Discussion

The Commission believes that the MSRB's proposed rule change is consistent with sections 15B and 17A of the Act.[7] Section 15B, among other things, requires that the MSRB's rules be designed to foster cooperation and coordination with persons engaged in clearing, settling, and processing information with respect to, and facilitating transactions in, municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[8] Section 17A mandates the creation of a national system of automated clearance and settlement of securities transactions. While municipal securities are defined generally as exempted securities under the Act,[9] municipal securities are specifically included for purposes of section 17A of the Act.[10]

The settlement of institutional customer transactions in municipal securities is accomplished in large part through the book-entry delivery systems of securities depositories registered with the Commission. Those systems have provided substantial efficiencies and cost savings to the municipal securities market by eliminating much of the time consuming and expensive manual processing associated with deliveries of securities certificates versus payment. The book-entry systems also have helped to ensure timely settlements of transactions and to minimize the operational problems associated with high levels of transaction volume. There continues, however, to be some institutional customer transactions that could be cleared and settled in depository systems, but which are settled through the use of physical delivery of securities.

Currently, MSRB Rule G–15(d)(iii) requires the use of book-entry settlement systems for most DVP/RVP customer transactions eligible for settlement in those systems. When this rule was adopted in 1983, the MSRB considered whether this requirement should apply to all eligible DVP/RVP customer transactions. The MSRB received comment suggesting the need for additional time to adjust to the automated clearance and settlement systems. Based on these comments, the MSRB decided to provide an exemption within Rule G–15(d)(iii) which effectively allowed a transaction to be settled outside of a depository if at least one party to the transaction was not a direct participant in a depository. The MSRB, however, also stated its intention that, ultimately, the rules should apply to all DVP/RVP customer transactions in order for the market to obtain the maximum benefits and efficiencies possible from the book-entry systems.[11]

The MSRB believes that based on the movement of the industry toward book-entry settlement systems, it is now time to bring about more universal use of the systems. The proposed rule change, which will not require, with two limited exceptions, that all DVP/RVP customer transactions in depository eligible securities be settled by book-entry delivery, is part of the second phase of the MSRB's overall plan to complete the transition of the municipal securities market to automated techniques of clearance and settlement.[12] The Commission, therefore, believes that the proposal furthers the goals of Section 17A of the Act by reducing the physical movement of securities certificates in connection with the settlement of transactions in municipal securities. In addition, the Commission believes that the proposed rule change is consistent with Section 15B of the Act because it fosters cooperation and coordination with persons engaged in clearing, settling, and processing information with respect to, and facilitating transactions in, municipal securities, removes impediments to and perfects the mechanism of a free and open market in municipal securities, and, in general, protects investors and the public interest. The Commission also believes that the proposed rule change is consistent with the recommendations of the Group of Thirty which has focused attention on automated clearance and settlement,[13] as well as the Bachmann Task Force,[14] and also is consistent with the trend toward increased automation in the U.S. securities markets.

With regard to the comments received by the MSRB as a result of the publication of the draft amendments to Rules G–12(f) and G–15(d), the Commission recognizes that requiring book-entry settlement may impose some additional costs on certain institutional customers. Nevertheless, the Commission agrees with the MSRB that the benefits of the proposal outweigh any inconvenience to institutional customers. Physical delivery of securities certificates is inefficient and costly and poses the potential risk to the industry that securities certificates will be lost or interest payments will be misdirected. The Commission, therefore, agrees with the MSRB that the proposed rule change, by requiring book-entry delivery of municipal securities for DVP/RVP customer transactions in depository eligible securities, will increase the efficiency of book-entry settlement and/or reduce operational costs in the industry. The depository systems provide a quicker and less expensive means for delivering securities certificates against payment and will facilitate the elimination of time consuming exception processing necessary when a transaction is settled outside the depository under one of the exceptions in Rule G–15(d).

The Commission believes that the exemption from the requirement of

[6] See *supra*, note 5, letter from Elmer E. Powell and Company.

[7] 15 U.S.C. 78o–4 and 78q–1 (1988).

[8] 15 U.S.C. 78o–4(b) (2) (C) (1988).

[9] 15 U.S.C. 78c(a)(12)(A)(ii) (1988).

[10] 15 U.S.C. 78c(a)(12)(B)(ii) (1988).

[11] Securities Exchange Act Release No. 20365 (November 14, 1983), 48 FR 52531.

[12] For further details concerning MSRB's overall plan, see Securities Exchange Act Release No. 31645 (December 23, 1992), 57 FR 62407.

[13] The Group of Thirty is an independent, non-partisan, non-profit organization established in 1978 whose function is to study international economic and financial issues. The Group of Thirty's recommendations are discussed in Group of Thirty, Clearance and Settlement Systems in the World's Securities Markets (March 1989). The recommendations called for, among other things, mandatory participation by indirect market participants in a trade comparison system that achieves positive affirmation of trade details and a rolling settlement cycle with all transactions settled by three business days after trade date ("T+3"). The proposed rule change should facilitate the move to T+3 settlement by requiring most transactions to be settled by book-entry movement in a securities depository. *See* Securities Act Release No. 6976; Securities Exchange Act Release No. 31904; and Investment Company Act Release No. 19282 (February 23, 1993), 58 FR 11806 (proposing new rule 15c6–1 under the Act that would establish three business days instead of five business days as the standard settlement timeframe for broker-dealer transactions).

[14] The Bachmann Task Force was a panel of financial industry leaders formed to study improvements necessary to the clearance and settlement system. For further details concerning the recommendations of the Bachmann Task Force, see Report of the Bachmann Task Force on Clearance and Settlement Reform in U.S. Securities Markets (May 1992).

book-entry settlement for certain transactions in non-uniform depository eligible securities is appropriate at this time and is consistent with a basic tenet of the national clearance and settlement system—one account settlement.[15] Although considerable progress has been made to eliminate disparities among the eligible securities of the three registered securities depositories, differences continue to exist, particularly in regard to bearer securities. Because the Tax Equity and Fiscal Responsibility Act of 1982[16] effectively mandated issuance of securities in registered rather than bearer form, and the overwhelming majority of municipal securities issued in registered form since 1985 are eligible at all securities depositories, the Commission is confident that this exemption will be of declining significance. Nevertheless, the Commission encourages the depositories to continue their efforts to minimize the existence of non-uniform eligible issues.

The Commission also understands the rationale for allowing an exemption for trustees to obtain physical delivery to retire certificates before a call without subjecting the trustee to the lottery that results from the call if book-entry settlement were required but the seller failed to deliver. As the number of outstanding bearer certificates declines, however, the Commission encourages the MSRB to review with the depositories whether facilities can be established in conjunction with book-entry settlement that would assure delivery of physical certificates on a timely basis after settlement.

IV. *Conclusion*

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, and in particular with sections 15B and 17A of the Act, and with the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (File No. SR-MSRB-93-05) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-17354 Filed 7-21-93; 8:45 am]

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[15] One account settlement enables participants to compare, account for, and settle through one entity all trades in securities included in the national clearance and settlement system, regardless of the location of the other party to the trade or the market in which the trade is executed.

[16] Pub. L. 97-248, 96 Stat. 324 (1982).

[17] 15 U.S.C. 78s(b)(2) (1988).

[18] 17 CFR 200.30-3(a)(12).

[Release No. 34-32647; File No. SR-NASD-92-48]

Self-Regulatory Organizations; Order Approving Proposed Rule Change of the National Association of Securities Dealers, Inc., Relating to Establishment of Requirements for Real-Time Reporting of Members' Over-the-Counter Transactions in Certain Equity Securities

July 16, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) (1988), on November 24, 1992, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to establish requirements for real-time trade reporting of NASD members' over-the-counter transactions in equity securities that are not currently reportable on a real-time basis.[1] This proposal concerns those securities for which members now submit, on a daily basis, aggregate volume data and price ranges pursuant to Schedule H to the NASD By-Laws. The proposed reporting requirements are patterned after those established for Nasdaq listed securities.

Notice of the proposal appeared in the **Federal Register** on January 13, 1993.[2] The Commission received five comment letters regarding the proposed rule change.[3] This order approves the proposed rule change.

I. Description of the Proposed Rule Change

Currently, transactions effected by NASD members in securities that are neither included in the National Association of Securities Dealers Automated Quotation system ("Nasdaq") nor traded on any national securities exchange[4] are not required to be reported to the NASD on a "real-time" basis. The NASD By-Laws require only that members report on Schedule H, at the end of each business day, the aggregate volume and price range data for any trades effected in such securities.[5] Moreover, the information submitted to the NASD on the Schedule H reports is not publicly disseminated. Hence, only quotations by market markers in such securities are disseminated to the public. The bid and asked prices in these securities are disseminated either through the NASD's Over-the-Counter Bulletin Board Service ("OTCBB" or "Service") or through the daily publication by the National Quotation Bureau, commonly referred to as the "Pink Sheets."[6]

The rule change will require, beginning in August, 1993, "real-time" reporting of transactions in these securities, and will facilitate the dissemination of price and volume information on those transactions through the OTCBB. Specifically, the rule change will require NASD members to report to the NASD, within 90 seconds after execution, each transaction in an "OTC Equity Security."[7] The term OTC Equity

[1] The NASD submitted two amendments to the proposed rule change. Amendment No. 1 was submitted on December 17, 1992. Amendment No. 2 was submitted on December 23, 1992.

[2] See Securities Exchange Act Release No. 31695 (January 6, 1993), 58 FR 4169.

[3] Letter from Steven J. Nielsen, Assistant Director and Director of Registration, Utah Department of Commerce, Division of Securities, to Jonathan G. Katz, Secretary, SEC (February 3, 1993); Letter from Gary T. O'Neil, Vice-President, Troster Singer, to Jonathan G. Katz, Secretary, SEC (February 8, 1993); Letter from James F. Duffy, Senior Vice-President and General Counsel, Legal and Regulatory Policy Division, American Stock Exchange, to Jonathan G. Katz, Secretary, SEC (February 12, 1993); Letter from John B. Manning, Jr., First Vice President and General Counsel, Merrill Lynch, Pierce, Fenner & Smith Inc., to Jonathan G. Katz, Secretary, SEC (March 10, 1993); Letter from James E. Buck, Senior Vice President and Secretary, New York Stock Exchange, Inc., to Jonathan G. Katz, Secretary, SEC (March 18, 1993).

[4] These securities are defined by Schedule H to the NASD By-Laws as "Non-Nasdaq securities." The By-Laws state that a Non-Nasdaq security is:

"Any equity security that is neither included in * * * [Nasdaq] nor traded on any national securities exchange. For purposes of * * * [the price and volume reporting requirements] of this Schedule, the term "non-Nasdaq security" shall also mean any Nasdaq security, if transactions in the security are effected by market makers that are not registered Nasdaq market makers pursuant to Schedule D of the NASD By-Laws, and any security listed on an exchange, if transactions are not required to be reported, pursuant to Schedule G of the NASD By-Laws."

NASD By-Laws, Schedule H.

[5] The NASD By-Laws required each member to report on all principal transactions in non-Nasdaq securities:

"(i) the highest price at which it sold and the lowest price at which it purchased each non-Nasdaq security; (ii) the total volume of purchases and sales executed by it in each non-Nasdaq security; and (iii) whether the trades establishing the highest price at which the member sold and the lowest price at which the member purchased the security represented an execution with a customer or with another broker-dealer. The price to be reported for principal sales and purchases from customers shall be inclusive of mark-up or mark-down."

NASD By-Laws, Schedule H.

[6] Quotations are published in the Pink Sheets one day after they are submitted. Moreover, a great majority of such quotes are not firm.

[7] The proposed rule change specifically exempts from the reporting requirement the following types of transactions: (1) transactions which are part of a

Securities refers to the same subset of securities currently defined as "Non-Nasdaq Securities."[8]

NASD members must transmit last-sale reports for transactions in OTC Equity Securities through the NASD's Automated Confirmation Transaction service ("ACT").[9] These reports must contain the number of shares, the price of the transaction,[10] and a symbol indicating whether the transaction is a buy, sell, or cross.[11]

In transactions between two "OTC Market Makers,"[12] only the member representing the sell side must report the transaction. If the transaction is between an OTC Market Maker and a party that is not an OTC Market Maker ("Non-Market Maker"), then only the OTC Market Maker must report the transaction. If both of the members in a transaction are Non-Market Makers, only the member representing the sell side must report the transaction.

The NASD plans to begin disseminating last-sale trade information for transactions in OTC Equity Securities in August of 1993. The NASD will disseminate last-sale information on all domestic OTC Equity Securities, regardless of whether they are quoted in the OTCBB. This last-sale information will be made available through customary vendor channels as well as the NASD's communications network. Last-sale information on the subset of OTC Equity Securities consisting of foreign and ADR issues will not be disseminated publicly; it will be used exclusively for regulatory purposes.[13]

The NASD believes that the proposed reporting requirements will enhance its surveillance capabilities by allowing it to construct audit trails reflecting members' daily trading in these securities and by making possible the use of automated surveillance techniques comparable to those used for the Nasdaq Stock Market. The NASD believes that this will result in consistent trade reporting and audit trail requirements "across all market segments for which the NASD has primary self-regulatory responsibility."

The NASD stated further that the proposed rule change is intended to support its application for designation of the OTCBB as a qualified electronic quotation system ("QEQS") for purposes of the penny stock disclosure rules adopted under section 15(g) of the Act. Moreover, the NASD believes that when the facilities for collecting, processing, and disseminating last-sale information on OTC Equity Securities become operational, the OTCBB will be able to qualify as an "automated quotation system" for purposes of section 17B of the Act.

On November 24, 1992, the NASD filed an application with the Commission for interim designation of the Service as an automated quotation system pursuant to section 17B(b) of the Act.[14] On December 30, 1992, the Commission granted QEQS status for the Service for purposes of certain penny stock rules.[15]

II. Comments

Three commentators generally supported the proposed rule change. Two commentators supported real-time reporting requirements and the qualification of the OTCBB as an automated quotation system for penny stocks within the meaning of section 17B of the Act, upon implementation of a last-sale reporting capability.[16] These commentators stated that they believe that the real-time reporting requirements will enhance the regulatory and enforcement efforts of the NASD, SEC, and state securities regulators and foster small business capital formation by attracting broker-dealer interest in small business issues. Similarly, both commentators urged that all penny stock dealers be required to enter quotations reflecting their markets into the OTCBB or some equivalent system that qualifies for Section 17B status.

The Commission believes it is premature to consider mandatory usage of the OTCBB because the NASD and OTCBB market users have limited experience with last-sale reporting in such securities. The Commission expects the NASD will monitor the effectiveness of real-time last-sale reporting in promoting fair and efficient pricing in the penny stock market and in enhancing surveillance efforts. Based on the results, the NASD and the Commission will consider whether additional steps are necessary to accomplish statutory goals.

The New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX") urged that dealers should not be permitted to submit quotes in foreign securities exempt from the registration requirements of the Act pursuant to Rule 12g3–2(b) because the OTCBB should be considered an "automated inter-dealer quotation

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primary distribution by an issuer, a registered secondary distribution (other than "shelf distributions"), or of an unregistered secondary distribution; (2) transactions made in reliance on section 4(2) of the Securities Act of 1933; (3) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security; and (4) purchases or sales or securities effected upon the exercise of an option pursuant to the terms thereof, or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.

[8] The definition of OTC Equity Security makes clear that restricted securities, as defined by Rule 144(a)(3) under the Securities Act of 1933, and any securities designated as PORTAL securities, are not OTC Equity Securities for these purposes.

[9] Data for all transactions in OTC Equity Securities must be submitted through the ACT system, but only trades in securities that are eligible for clearance by the National Securities Clearing Corporation ("NSCC") will be compared and submitted to NSCC as a locked-in trade. Thus, for non-NSCC-eligible securities, the ACT system merely facilitates the collection of information for dissemination and surveillance. See Securities Exchange Act Release No. 28583 (October 26, 1990), 55 FR 46120.

[10] The price at which a transaction is to be reported, is determined by reference to section 2(d) of the rule change.

[11] Transactions in OTC Equity Securities that are executed outside the hours of 9 a.m. and 5:15 p.m. Eastern Time are to be reported to the NASD on a weekly basis.

[12] The term OTC Market Maker is limited to those firms that hold themselves out as market makers in some inter-dealer system, including a system qualified by the Commission under section 17B of the Act. This status attaches on a security-by-security basis. A firm's status as a Non-Market Maker is similarly determined on a security-by security basis

[13] One commentator expressed concern about timing aspects associated with reporting trades in foreign securities. The commentator noted that because its foreign offices are supported by systems that are different from those used for the U.S. domestic market and are not linked to the domestic systems or the NASD, real-time reporting of transactions in foreign securities will require costly system enhancements. See Letter from John B. Manning, Jr., First Vice President and General Counsel, Merrill Lynch, Pierce, Fenner & Smith Inc., to Jonathan G. Katz, Secretary, SEC (March 10, 1993).

In response, the NASD has determined that it will permit firms to report all foreign securities transactions on a T+1 basis, through computer-to-computer interfaces with the NASD's central processor, if substantially all of the trades in question are executed outside the hours during which the proposed rule change would require real-time reporting for OTC Equity Securities. The trade reports must be submitted daily between 9 and 9:30 a.m. Eastern Time, and will contain the same data elements as those captured for trades reported real-time during normal business hours. The NASD believes this procedure is superior to Form T reporting because it would eliminate hardcopy submission of trade reports and permit the NASD to integrate the reported data into its electronic audit trail file. Letter from Michael J. Kulczak, Associate General Counsel, NASD, to Elizabeth H. MacGregor, Branch Chief, Division of Market Regulation, SEC (May 4, 1993).

[14] Letter from Richard Ketchum, Executive Vice President, NASD, to William H. Heyman, Director, Division of Market Regulation, SEC (November 24, 1992).

[15] Letter from Margaret H. McFarland, Deputy Secretary, SEC, to Richard Ketchum, Executive Vice President, NASD (December 30, 1992).

[16] Letter from Steven J. Nielsen, Assistant Director and Director of Registration, Utah Department of Commerce, Division of Securities, to Jonathan G. Katz, Secretary, SEC (February 3, 1993); Letter from Gary T. O'Neil, Vice-President, Troster Singer, to Jonathan G. Katz, Secretary, SEC (February 8, 1993).

system" under Rule 12g3-2(d).[17] The Commission is deferring consideration of this issue until it considers permanent approval of the OTCBB, which is currently pending with the Commission.[18] As noted above, the current proposal does not provide for public dissemination of last-sale information for foreign securities (which are of specific concern to these commentators), and, as discussed below, furthers specific statutory goals under the Act.

III. Discussion

Sections 11A(a)(1), 15A(b)(6), and 17B of the Act

The Commission believes that approval of this proposed rule change is consistent with the provisions of the Act and the rules and regulations thereunder, and, in particular, with the requirements of sections 11A(a)(1), 15A(b)(6) and 17B of the Act. Recognizing the benefits of transparent markets, Congress found, in section 11A(a)(1) of the Act that "it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure * * * the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities."[19]

The Commission believes that by providing greater transparency, the proposed rule change will bring to the market for securities that are neither listed on a national securities exchange nor quoted on an automated inter-dealer quotation system a number of the benefits envisaged by Congress. Experience with the introduction of real-time trade reporting for Nasdaq/National Market System Securities[20] and Nasdaq securities[21] supports this belief.

Currently, at best, quotations for these securities are available to the investing public—either, through the OTCBB, or on a next day basis, through the "Pink Sheets." The proposed rule change, however, will allow the NASD to provide investors, on a real-time basis, last-sale price and volume information. The availability of this information enhances investor protection by allowing investors to validate, before the fact, dealer and broker quotations, and to assess, after the fact, the quality of the execution they receive.[22] Moreover, the greater transparency this information will provide should increase the integrity of the market and foster investor confidence in that market, thereby encouraging greater participation in that market.

In section 15A(b)(6) of the Act, Congress stated that an association of brokers and dealers, such as the NASD, may not be registered as a national securities association unless the Commission determines that "the rules of the association are designed to prevent fraudulent and manipulative acts and practices, [and] to promote just and equitable principles of trade."[23] The Commission believes that by providing the NASD with real-time reports of transactions in OTC Equity Securities and enabling the construction of audit trails, the proposed rule change significantly will improve the NASD's ability to regulate the market in those securities.

Congress has found that the penny stock market "suffers from a lack of reliable and accurate quotation and last-sale information," that it is in the public interest to "improve significantly" this information, and that "a fully implemented automated quotation system for penny stocks would meet the information needs of investors and market participants and would add visibility and regulatory and surveillance data to that market."[24] Because the proposed rule change will facilitate real-time dissemination of transaction information for securities, many of which are "penny stocks,"[25] the Commission believes the proposed rule change is consistent with the goals expressed by Congress in section 17B of the Act.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with sections 11A(a)(1), 15A(b)(6), and 17B of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-17416 Filed 7-21-93; 8:45 am]

BILLING CODE 8010-01-M

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[17] Letter from James F. Duffy, Senior Vice-President and General Counsel, Legal and Regulatory Policy Division, American Stock Exchange, to Jonathan G. Katz, Secretary, SEC (February 12, 1993); Letter from James E. Buck, Senior Vice President and Secretary, New York Stock Exchange, Inc., to Jonathan G. Katz, Secretary, SEC (March 18, 1993).

[18] The Commission specifically requested comments on whether such foreign securities should continue to be eligible for quotation on the OTCBB in the notice of proposed rule change to obtain permanent approval of the OTCBB. Securities Exchange Act Release No. 30766 (June 1, 1992), 57 FR 24281.

[19] 15 U.S.C. 78k-1(a)(1) (1988); The Conference Report on the Securities Acts Amendments of 1975 stated that "[c]ommunications systems, particularly those designed to provide automated dissemination of last-sale reports and quotation information with respect to securities, will form the heart [of the National Market System]." Committee on Conference, Conference Report to Accompany S. 249: *Securities Acts Amendments of 1975*, H.Conf. Rep. No. 94-229, 94th Cong., 1st Sess. 93, *reprinted in*, [1975] U.S. Code Cong. & Admin. News 321, 32.

[20] Securities Exchange Act Release No. 17549 (February 17, 1981), 46 FR 1992.

[21] See Securities Exchange Act Release No. 30569 (April 10, 1992), 57 FR 13396.

[22] The Commission consistently has held that price quotations merely propose transactions and are not always reliable as a basis for determining the prevailing market price. Particularly when dealing with thinly traded securities, in the absence of last-sale reporting, a market maker's quotation is not usually a reliable basis for determining the actual price at which securities will trade. See In re Bison Securities, Inc., Securities Exchange Act Release No. 32034 (March 23, 1993), 53 SEC Docket 2892, 2895. Experience has shown that even where firm quotes exist, a substantial number of price sensitive transactions may take place between, or outside of, the spread. See In re Alstead & Dempsey, Inc., 47 SEC 1034 (1984).

[23] 15 U.S.C. 78o-3(b)(6) (1988).

[24] 15 U.S.C. 78q-2 (1988). Section 17B(b)(1) requires the Commission to "facilitate the widespread dissemination of reliable and accurate last-sale and quotation information with respect to penny stocks * * * with a view toward establishing, at the earliest feasible time, one or more automated quotation systems that will collect and disseminate information regarding all penny stocks."

The OTCBB is currently designated as a QEQS for purposes of the penny stock disclosure rules adopted under section 15(g) of the Act. The Commission expects the NASD to apply for designation of the OTCBB as an "automated quotation system" for purposes of section 17B of the Act when the facilities for collecting, processing, and disseminating last-sale information on OTC Equity Securities become operational in August of 1993.

[25] See 15 U.S.C. 78c(a)(51)(A).

[Release No. 34-32538; File No. SR-OCC-92-34]

Self-Regulatory Organizations; The Options Clearing Corp.; Order Approving a Proposed Rule Change Relating to the Stock Loan Hedge Program

July 15, 1993.

On October 23, 1992, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change that would permit OCC to administer stock loan and borrow transactions between OCC clearing members. Notice of the proposal was published in the Federal Register on December 15, 1992, to solicit comments from interested persons.[2] On May 13, 1993, OCC filed

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31572 (December 7, 1992), 57 FR 59365.

Amendment No. 1, and on June 3, 1993, OCC withdrew Amendment No. 1 and filed a revised Amendment No. 1.[3] No comments were received. This order approves the proposal.

I. Description

The proposed rule change permits OCC to operate a facility, referred to as the "Stock Loan/Hedge Program,"[4] to administer stock loan and borrow transactions between participating clearing members and to allow certain stock loan and borrow positions resulting from such transactions to constitute hedges against stock option positions overlying the same stocks for purposes of OCC's margin calculation. OCC will have a lien and right of set off against stock loan and borrow positions, and the clearing members' margin requirements will reflect the increase or decrease in risk to OCC associated with stock loan and borrow positions.

Prospective stock lenders and borrowers will identify each other and will agree on the terms of the stock loan without OCC involvement.[5] OCC will have no role in matching lending and borrowing hedge clearing members.[6] After the two clearing members have agreed to the terms of the stock loan, the lending clearing member will transfer the stock[7] by book-entry transfer[8] to OCC's account at a correspondent depository.[9] The transfer instructions will identify the borrowing clearing member and will specify the collateral to be received by the lending clearing member. Upon receiving notice from the correspondent depository of its receipt of the stock, OCC will instruct the depository to redeliver the stock to the borrowing clearing member against payment of the required collateral amount.[10]

Money settlement of stock loans will take place through the correspondent depository's facilities. When a borrowing clearing member pays the required collateral amount to the correspondent depository, the stock loan transaction will become final at the depository (i.e., will constitute "an entry on the books" of the depository). If a borrowing clearing member fails to make money settlement with the correspondent depository for the day on which the stock transfer takes place, the correspondent depository will reverse the transfer.[11]

OCC's rules define "stock loan" as a matched pair of securities contracts for the loan of eligible stock made through the Stock Loan/Hedge Program with one securities contract being between the lending clearing member and OCC as borrower and the second securities contract being between OCC as lender and the borrowing clearing member.[12] OCC's rules provide that OCC will be deemed to have accepted a stock loan and to have become a party to the stock loan at the time that a transfer of the eligible stock that is the subject of a stock loan from OCC to the borrowing clearing member constitutes a final entry on the books of the correspondent depository (i.e., when the borrowing clearing member has completed money settlement with the correspondent depository). OCC's rules further provide that commencing at the time that OCC is deemed to have accepted a stock loan, the role of OCC with respect to the stock loan transaction shall be that of principal with OCC being the borrower to the lending clearing member and the lender to the borrowing clearing member. Thereafter, the rights and obligations of the lending and borrowing clearing members shall be against and to OCC.

OCC will require each participating clearing member to instruct OCC as to which accounts the stock loan and borrow positions are to be carried.[13] Subject to certain conditions, hedge clearing members may maintain stock loan positions in a customers' account, a market maker's (specialist's) account, or a firm account.[14] An instruction from

[3] The purpose of the amendment was to incorporate changes approved by the Commission in Securities Exchange Act Release Nos. 31682 (December 31, 1992), 58 FR 3318 [File Nos. SR-OCC-91-12 and SR-ICC-92-03] and 31631 (December 22, 1992), 57 FR 62411 [File Nos. SR-OCC-92-21 and SR-ICC-92-04]. The Commission did not publish notice of the amendment because it did not substantially affect the proposed rule change.

[4] A clearing member that is approved to participate in the Stock Loan/Hedge Program is referred to as a "hedge clearing member." A hedge clearing member that lends stock through the Stock Loan/Hedge Program is referred to as a "lending clearing member," and a hedge clearing member that borrows stock is referred to as a "borrowing clearing member." Stocks that are eligible for the program are referred to as "eligible stocks."

[5] The terms of the transactions will include, among other things, the amount of stock to be borrowed, the value of the collateral to be paid by the borrowing clearing member, and the fee to be paid by the borrowing clearing member to the lending clearing member. This fee will be paid by the borrowing clearing member to the lending clearing member outside of the Stock Loan/Hedge Program, and OCC will have no responsibility as to its payment.

[6] OCC states in the filing that if the Stock Loan/Hedge Program is successful, it may be modified so that OCC has a role in the matching process. OCC will file a proposed rule change under section 19(b)(2) of the Act before modifying the program to involve OCC in the matching of lending and borrowing hedge clearing members.

[7] To be an eligible stock, (1) the stock must underlie a stock option contract issued by OCC, (2) the stock must be eligible for deposit at a correspondent depository (see *infra* note 9), and (3) OCC must not have made a determination to terminate all outstanding stock loans relating to the security.

[8] All transfers in the Stock Loan/Hedge Program will be book-entry transfers.

[9] A correspondent depository is a securities depository at which OCC has an account for processing Stock Loan/Hedge Program activity. Initially, Midwest Securities Trust Company ("MSTC") will act as the only correspondent depository, but OCC may establish correspondent relationships with other depositories in the future. OCC will inform the Commission in writing should it decide to establish any additional correspondent relationships.

[10] Regulation T of the Board of Governors of the Federal Reserve System specifies that the value of the collateral for a stock loan cannot be less than 100% of the market value of the stock at the close on the preceding day, and OCC's proposed rules reflect this requirement. [12 CFR 220.16] Initially, OCC will allow only cash to be used as collateral. As OCC develops experience with the Stock Loan/Hedge Program, it may consider allowing some of the other acceptable forms of collateral permitted by Regulation T to be used as collateral in the Stock Loan/Hedge Program. Prior to any such change, OCC will file a proposed rule change under section 19(b)(2) of the Act.

[11] *E.g.*, MSTC Article III, Rule 1, Section 2 ("Right to Reverse Book-Entry Movements").

[12] New Section 1.S. (9) of Article I of OCC's By-Laws. The term "securities contract" is used in the definition of "stock loan," among other reasons, to make clear that the contracts between OCC and a lending clearing member and between OCC and a borrowing clearing member are each a securities contract for purposes of the Bankruptcy Code. (Under 741(7) of the Bankruptcy Code, 11 U.S.C. 741(7), a securities contract includes a contract for the loan of a security.) OCC's ability to make the Stock Loan/Hedge Program available in the manner described in this filing is contingent upon the applicability to stock loans of the special provisions of the Bankruptcy Code that protect the close-out activities of securities clearing agencies from attack by the trustee for a bankrupt clearing member. The proposed definition of the term stock loan is intended to make clear that the Stock Loan/Hedge Program is within the purview of these special provisions.

[13] Hedge clearing members may submit standing instructions stating the account or accounts in which all of the clearing member's stock loan or borrow positions are to be carried.

[14] Stock loan positions for which the loaned stock is held for the account of a customer other than a market-maker or specialist must be carried in the lending clearing member's customers' account. Stock loan positions for which the loaned stock is held for the account of a market-maker or specialist may be carried in the lending clearing member's customers' account or market-maker's (specialist's) account. Because OCC's market-maker's (specialist's) account agreement does not accommodate stock loans, stock loan and borrow positions may not be maintained in a market-maker's (specialist's) account unless the market-maker or specialist has entered into a market-maker's (specialist's) account agreement that authorizes stock loan and borrow positions to be maintained in the account or in the case of a combined market-makers' (specialists') account unless each market-maker (specialist) that is a participant in the account has entered into an account agreement that authorizes stock loan and

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a lending clearing member to OCC designating a customers' account or a market-maker's (specialist's) account as the account in which a stock loan position is to be carried will constitute a representation that the loaned securities to which the stock loan position relates (1) are carried for the account of a customer and that the hypothecation of such loaned stock to OCC does not contravene any provision of Commission Rules 8c–1 and 15c2–1,[15] and (2) are neither fully-paid securities nor excess margin securities within the meaning of Commission Rule 15c3–3.[16]

Margin Treatment

Stock loan positions and stock borrow positions will be subject to two types of margin. First, hedge clearing members will be required to pay and will be entitled to receive daily mark-to-market payments. As a result of these payments, the collateral values held by the lending clearing members will be adjusted daily so that the collateral values are always equal to the loaned securities' closing market prices from the preceding trading day. Second, OCC will require lending clearing members and borrowing clearing members to deposit margin (referred to as "additional margin") with OCC to cover OCC's risk that (1) the market will move against a stock loan or borrow position during the day and (2) the clearing member carrying the position will be unable to make the required mark-to-market payment on the next business day.[17]

OCC will compute additional margin with respect to stock loan and borrow positions as follows. Stock loan and borrow positions will be treated as being in the same class group[18] as stock options overlying the same eligible stock. Stock loan and borrow positions in each account that relate to the same eligible stock will be netted to produce a net stock loan or net stock borrow position for the account. Additional margin will be determined on a combined basis on the net stock loan or net stock borrow position along with any stock option positions in the same class group in the account. Additional margin on the remaining stock loan and stock borrow positions in the account will be determined by (1) multiplying the applicable margin interval[19] times the number of shares in the remaining stock loan positions times the closing prices from the prior trading day ("marking price"), (2) multiplying the applicable margin interval times the number of shares in the remaining stock borrow positions times the marking price, and (3) adding the resulting margin requirements for the remaining stock loan and stock borrow positions together. This additional margin requirement will then be added to the additional margin requirement for the combined stock option positions and net stock loan or borrow positions to determine the total additional margin requirement for the class group.[20] OCC will make the first collection of additional margin with respect to a stock loan on the morning of the first business day after the stock loan is initiated.

Clearing Fund Provisions

Open stock loan positions of hedge clearing members will be taken into account in calculating their stock clearing fund obligations.[21] OCC's stock clearing fund will be available to cover any losses suffered by OCC as a result of the failure of a hedge clearing member to perform any of its obligations to OCC with respect to stock loans and borrows.

OCC anticipates that borrowing clearing members will use the Stock Loan/Hedge Program in an effort to reduce their margin requirements on reversal positions.[22] OCC also anticipates that lending clearing members will not be hedged (i.e., will have no corresponding option position) with respect to their reversal positions. Given these assumptions, the Stock Loan/Hedge Program should result in a slight reduction to the stock clearing fund in cases where the securities that are the subject of a stock loan or borrow transaction have an equity margin interval of greater than five percent.[23] If the securities being loaned or borrowed through the program have an equity margin interval of less than five percent, the result should be a slight increase to the clearing fund.[24]

Suspension of Hedge Clearing Members

If OCC suspends a hedge clearing member, OCC will not accept any new stock loan transactions to which the suspended clearing member is a party after the time of the suspension. After assessing the open stock loan and borrow positions of a suspended clearing member, OCC will (1) close-out the positions by terminating the stock loans and stock borrows, (2) close-out the positions by offsetting the positions against each other, or (3) keep the positions open and establish additional hedges for them.[25] With respect to stock loans that are in the process of being terminated at the time that the clearing member is suspended, OCC will instruct the non-suspended counterparty to buy-in or sell-out the loaned stock for the

borrow positions to be maintained in the account. Stock loan positions for which the loaned stock is held for the account of a non-customer must be maintained in a firm account.

[15] This provision is intended to allow lending clearing members to satisfy the notice and certification requirements of Rules 8c–1 and 15c2–1 (17 CFR 240.8c–1 and 240.15c2–1) as these requirements apply to the Stock Loan/Hedge Program. Rules 8c–1 and 15c2–1, in pertinent part, prohibit the hypothecation and commingling of customer securities without first obtaining the written consent of each customer whose securities are to be hypothecated or commingled.

[16] Rule 15c3–3 (17 CFR 240.15c3–3) requires that a borker-dealer maintain possession or control of all customer full-paid and excess margin securities, so such securities can not be the subject of a stock loan. Nevertheless, customer securities that the broker-dealer clearing member is permitted to lend may be the subject of a stock loan conducted through the Stock Loan/Hedge Program.

[17] The margin required to be deposited with OCC with respect to stock loan and borrow positions is analogous to additional margin on short stock option positions; therefore, it is referred to in OCC's rules and in this release as "additional margin."

[18] A "class group" consists of all put and call options relating to the same underlying interest.

[19] The margin interval is the maximum one-day price move, upwards or downwards, of the underlying security against which OCC chooses to protect. If in an account in which a hedge clearing member is carrying stock loan or stock borrow positions there are no long or short option positions in the same class group as the stock loan or stock borrow positions, OCC will assign a margin interval of five percent to the stock underlying the stock loan or borrow positions. If the clearing member is carrying any long or short options in the same class group in the account, OCC will assign the margin interval for that class group to the stock loan or borrow positions.

[20] OCC also will take into account stock loan and borrow positions in calculating the alternative "minimum additional margin requirement" described in OCC Rule 601(c)(1)(C)(6).

[21] OCC will determine the total number of shares of stock underlying each stock loan position and each stock borrow position and divide each such number by the unit of trading applicable to options contracts overlying the same stock to arrive at "options contract equivalent" numbers that can be used for clearing fund calculation purposes.

[22] A reversal is a trading strategy whereby one holds a short stock position and a short put option and a long call option on the same stock.

[23] While both the lending and borrowing clearing members will increase their average daily gross contract quantity, the lender's daily average equity margin requirement will increase, and the borrower's equity margin requirement will decrease but to a greater extent than the corresponding increase to the lender's margin requirement. Letter from Stuart C. Harvey, Jr., Staff Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation ("Division"), Commission (April 6, 1993).

[24] While both the lending and borrowing clearing members will increase their average daily gross contract quantity, the lender's daily average equity margin requirement will increase, and the borrower's equity margin requirements will decrease but to a lesser extent than the corresponding increase to the lender's margin requirement. *Id.*

[25] In general, OCC's proposed rules applicable to the Stock Loan/Hedge Program are designed to make the actions available to OCC with respect to open option positions available with respect to stock loan and borrow positions.

account of OCC unless OCC concludes that the buy-in or sell-out may be deferred because other arrangements adequate for the protection of OCC and the counterparty have been made.

Termination of Stock Loans

A stock loan may be terminated by OCC, the borrowing clearing member, or the lending clearing member.[26] A borrowing clearing member will be able to terminate a stock loan by delivering the loaned stock to OCC's account at a correspondent depository with instructions identifying the lending clearing member to which the stock is to be redelivered. Upon receiving notice of the delivery, OCC will instruct the correspondent depository to redeliver the loaned stock to the lending clearing member against payment by the lending clearing member of the current value of the collateral, which will be equal to the preceding trading day's closing value for the stock. A lending clearing member will be required to give notice of termination to OCC five business days in advance of the day on which it wishes the termination to be settled in order to give the borrowing clearing member time to obtain the stock that it will be required to deliver. OCC will notify the borrowing clearing member of the termination on the day that it receives the notice from the lending clearing member. On the scheduled settlement day, the lending clearing member will have the right to buy-in the loaned stock if the borrowing clearing member fails to make delivery. OCC will continue to require the parties to a stock loan to make and receive mark-to-market payments and will continue to require additional margin with respect to both the stock loan position and the stock borrow position until the stock loan is terminated.

II. Discussion

The Commission believes OCC's proposal is consistent with the Act and particularly with Sections 17A(b)(3) (A) and (F)[27] and with section 17A(a)(2)(A) of the Act.[28] Sections 17A(b)(3) (A) and (F) require that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds in the custody or control of the clearing agency or for which it is responsible. Section 17A(b)(3)(F) further requires the rules of a clearing agency to be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest. Finally, section 17A(a)(2)(A) directs the Commission to use its authority under the Act to facilitate the establishment of link or coordinated facilities for the clearance and settlement of transactions in securities, securities options, and futures. As discussed below, the Commission believes the proposed rule change is consistent with these provisions.

Under the proposal, clearing member exposure to counterparty default in a stock loan transaction should be minimal. Hedge clearing members will be required to pay or will be entitled to receive daily mark-to-market payments. As a result of these payments, the value of the collateral held by the lending clearing member should always be equal to the loaned securities' closing market price from the preceding trading day. Furthermore, because OCC becomes a principal in stock loan and borrow transactions, the proposal centralizes the administration of stock loan and borrow transactions. As principal, OCC will act as the borrower to the lending clearing member and as the lender to the borrowing clearing member, and the rights and obligations of the two clearing members will be against and to OCC.

OCC will continue to employ its monitoring and risk reduction procedures, which were subject to Commission review and were approved by the Commission in previous rule filings, in the Stock Loan/Hedge Program.[29] Applying these procedures, which have performed well in the past, to the Stock Loan/Hedge Program should enable OCC to continue to safeguard securities and funds in its custody and control or for which it is responsible in fulfillment of its statutory obligation and should help improve the efficiency and safety of stock lending transactions. Accordingly, the Commission believes the proposal is a significant step in removing impediments to and perfecting the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

The Commission notes that OCC has included provisions for the buying-in, selling-out, and closing-out of stock loan and borrow positions. OCC's proposed rules relating to open stock loan and borrow positions of a suspended clearing member are designed to make the remedial actions that are currently available to OCC with respect to open options positions also available to OCC with respect to stock loan and borrow positions. The Commission believes it is prudent for OCC to include these measures in its Stock Loan/Hedge Program and that these procedures will help prevent financial loss to OCC and its clearing members in the event of a major participant default.

OCC will first collect additional margin for a stock loan transaction from the lending and the borrowing clearing members on the morning of the first business day after the stock loan is initiated. Therefore, OCC will not have margin on deposit with respect to the stock loan if a lending clearing member or a borrowing clearing member defaults after a stock loan becomes final but before margin is collected on the next business day. OCC believes that its ability to collect margin on an intraday basis and its recourse to the clearing fund deposits of clearing members will be adequate to protect it against this risk.

OCC also has the authority to terminate outstanding stock loans relating to one or more particular eligible stocks upon a determination that circumstances warrant such action.[30] The Commission believes that

[26] OCC has the authority to terminate the outstanding stock loans relating to one or more particular eligible stocks upon a determination that circumstances warrant such action. OCC anticipates that this authority will rarely, if ever, be needed. However, stock loans, unlike options, will have an indefinite duration, and this authority will allow OCC to terminate the Stock Loan/Hedge Program.

[27] 15 U.S.C. 78q-1(b)(3) (A) and (F).

[28] 15 U.S.C. 78q-1(a)(2) (A) (1993).

[29] Among others, these safeguards include (1) the Theoretical Intermarket Margining System ("TIMS") which employs option price theory to identify and measure market risk and to calculate margin requirements (Securities Exchange Act Release No. 32388 (May 28, 1993), 58 FR 31969 [File No. SR-OCC-93-06]); (2) the Concentration Monitoring System which enables OCC to analyze and address risks resulting from concentrated, undiversified options portfolios (Division, Commission, Market Analysis of October 13 and 16, 1989, at 137-42 (December 1990); (3) the Risk Management System which generally allows OCC to evaluate the risks associated with the entire stock, options, and futures portfolios held by its clearing members (Securities Exchange Act Release No. 30346 (February 6, 1992), 57 FR 5195 [File No. SR-OCC 91-17]); (4) the valued securities program eligibility standards for stock and corporate debt which help to ensure that a clearing members' stocks deposited as margin will have an active, liquid market to permit their sale or pledge in the event of a member default (Securities Exchange Act Release No. 29576 (August 16, 1991), 56 FR 41873 [File No. SR-OCC-88-03]) and (5) the valued securities program concentration ratio which limits the amount of stock of any one issuer that can be held in an account to ten percent of the margin requirement for the account (*Id.*).

[30] For example, OCC has represented that with respect to a security that is both the subject of a stock loan through the Stock Loan/Hedge Program and is the subject of a two tiered tender offer, OCC will use its authority under Article XXI, Section 2(c) of its By-Laws to terminate a borrowing clearing member's stock loan positions and to return the securities to the lending clearing

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OCC's ability to terminate a stock loan position if that position exposes OCC and its membership to undue financial risk add safety to OCC's operation of the Stock Loan/Hedge Program and, therefore, is consistent with OCC's obligations under sections 17(b)(3)(A) and (F) of the Act.

The Commission also believes OCC's proposal is consistent with section 17A(a)(2)(A) of the Act. The proposal extends the availability of intermarket clearing facilities by further linking and coordinating the clearance and settlement of securities and securities options.

III. Conclusion

For the reasons stated above, the Commission finds that OCC's proposal is consistent with section 17A of the Act.[31]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[32] that OCCs' proposed rule change (File No. SR-OCC-92-34) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-17355 Filed 7-21-93; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Incorporated

July 16, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Continental Airlines, Inc.
  Class A Common Stock, $.01 Par Value (File No. 7-10966)
Continental Airlines, Inc.
  Clas B Common Stock, $.01 Par Value (File No. 7-10967)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 6, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-17419 Filed 7-21-93; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 16, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Comdisco, Inc.
  8.34 Pc. Cum. Pfd Stock (File No. 7-10979)
Magma Copper Company
  Cum. Cv. Pfd Stock, $.01 Par Value (File No. 7-10980)
Rhone Poulence Overseas Ltd.
  8 1/8 Pc. Cum. Guaranteed Pfd Shares Series A, $25 Par Value (File No. 7-10981)
Stone Energy Corporation
  Common Stock, $.01 Par Value (File No. 7-10982)
Lasmo Plc
  American Depositary Shares Series A (Each Rep. One Cum. Dollar Preference Share) (File No. 7-10983)
Grancare, Inc.
  Common Stock, No Par Value (File No. 7-10984)
Grupo Simec S.A. de C.V.
  American Depositary Shares (File No. 7-10985)
Espirto Santo Financial Holdings S.A.
  American Depositary Shares $10 Par Value (File No. 7-10986)
Aztar Corporation
  Common Stock, $.01 Par Value (File No. 7-10987)
Continental Airlines, Inc.
  Class A Common Stock, "When Issued", $0.01 Par Value (File No. 7-10988)
Continential Airlines, Inc.
  Class B Common Stock, "When Issued", $0.01 Par Value (File No. 7-10989)
Bank of Boston Corporation
  Depositary Shares (Each Representing 1/10 of a Share of 7 7/8 Pc. Cum. Pfd. Stock Series F (File No. 7-10990)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 6, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-17418 Filed 7-21-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25855]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 16, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 9, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified

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member. Letter from James C. Yong, Vice President and Deputy General Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (July 12, 1993).

[31] 15 U.S.C. 78q-1(b)(3)(A).

[32] 15 U.S.C. 78s(b)(2).

[33] 15 C.F.R. 200.30-3(a)(12).

below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Connecticut Light and Power Company et al. (70–8088)

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, both wholly-owned electric utility subsidiaries of Northeast Utilities, a registered holding company, have filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder in connection with their proposal to refinance a portion of each company's cost of acquiring, constructing and installing certain pollution control and/or sewage or solid waste disposal facilities.

The declarants propose that the Connecticut Development Authority ("CDA") issue through September 30, 1995 one or more series of pollution control revenue refunding bonds (1) on behalf of CL&P in the aggregate principal amount of not more than $315,516,500 and (2) on behalf of WMECO in the aggregate principal amount of not more than $53,853,500 (collectively, "New Bonds") for the purpose of refunding certain pollution control revenue bonds that were previously issued by the CDA on behalf of the declarants ("Old Bonds").

The New Bonds will be issued, and the proceeds thereof will be loaned to the declarants to cause the refunding of the Old Bonds, pursuant to indentures of trust, loan agreements and promissory notes (collectively, "Bond Documents"). Under the Bond Documents, the declarants will agree to make payments corresponding to the amounts needed to pay the principal, interest, and premium, if any, on the New Bonds as they become due, and will be obligated to pay the fees and charges of the CDA and trustees. The monies receivable from the declarants by the CDA will be pledged and assigned to the trustees as security for the New Bonds.

The New Bonds will mature not later than 30 years from the date of issuance and may bear interest at commercial paper rates, weekly rates, or multiannual rates and may be converted for their remaining term to bear interest at a fixed rate. Such rates will be determined by remarketing agents for each interest rate period (or, if the New Bonds are converted for their remaining term to bear interest at a fixed rate, for such remaining term) at that rate which results in the market value of the New Bonds on the date of such determination being 100 percent of the principal amount thereof, subject to a maximum interest rate of 12% per annum. Each company will pay its remarketing agent(s) an annual fee not to exceed 0.125% of the principal amount of its New Bonds outstanding. Taking into account all the fees, charges and other costs in connection with the proposed transactions, the effective annual interest cost will not exceed the interest rate on the New Bonds by more than one percent.

It is anticipated that the New Bonds will initially bear interest at weekly rates, payable monthly in arrears. While the New Bonds bear interest at weekly rates (and at certain other times as well), each transaction will be structured so that the company's loan payment obligations shall be satisfied by drawings under an irrevocable letter of credit ("Letter of Credit"). Under each Letter of Credit, while the New Bonds bear interest at weekly rates, the applicable paying agent on the New Bonds would be entitled to draw up to (i) an amount equal to the principal amount of the outstanding New Bonds and (ii) an amount equal to approximately 45 days' interest on the New Bonds at the maximum interest rate of 12% per annum.

Each Letter of Credit is expected to be issued by a bank to be determined ("Bank") pursuant to a letter of credit and reimbursement agreement ("Reimbursement Agreement"). Under each Reimbursement Agreement, the company would be obligated to pay an annual letter of credit commission at a rate not to exceed 0.75% per annum of the total amount available to be drawn under the applicable Letter of Credit. Each Reimbursement Agreement would also require the company to pay certain transfer, drawing, cancellation, and other fees, to comply with certain business covenants, and to reimburse the Bank for any amounts drawn under the Letter of Credit, with interest thereon until paid. Each Letter of Credit will expire three to five years after its date of issuance, unless earlier terminated or extended in accordance with its terms. The declarants seek authority to obtain extensions of and replacements for the Letters of Credit and the Reimbursement Agreements (and any previous extensions thereof and replacements therefore) from time to time during the term of the New Bonds, provided that (i) the annual letter of credit commission applicable to any such extension or replacement does not exceed 0.75% per annum of the total amount available to be drawn under the extended or replacement Letter of Credit and (ii) such extension or replacement is otherwise on terms that are substantially similar in all material respects to those applicable to the Letter of Credit and the Reimbursement Agreement (or previous extension thereof or replacement therefore) being extended or replaced.

The Bond Documents will provide that, while the New Bonds bear interest at weekly rates, they are subject to tender for purchase from time to time at the option of the holders, at a price equal to par plus accrued interest. The remarketing agents will be obligated to use their best efforts to remarket such tendered New Bonds upon such optional tender, and the principal portion of the purchase price for such tendered bonds will be paid to tendering holders from remarketing proceeds. To the extent that the remarketing agents are unable to remarket tendered New Bonds, the paying agent for such New Bonds will be required to pay such principal portion to tendering holders from the proceeds of drawings made on the applicable Letter of Credit and such tendered New Bonds not remarketed would be pledged as security for such declarant's obligations to reimburse the Bank for any Letter of Credit drawings made to purchase such New Bonds.

The Reimbursement Agreements will provide that all Letter of Credit drawings (other than drawings to pay the principal portion of the purchase price for unremarketed tendered bonds) are immediately reimbursable to the Bank. Drawings to pay the principal portion of the purchase price for unremarketed tendered New Bonds will be treated as advances or loans bearing interest until paid. Such interest rate will be equal to the higher of the prime rate or the federal funds rate plus 50 basis points. The New Bonds and the loans from the CDA to the declarants will be subject to optional and mandatory redemption provisions, in some cases at a premium.

The New Bonds will be initially marketed and sold pursuant to underwriting arrangements reflected in bond purchase agreements. Each company will pay an underwriting fee not to exceed 0.50% of the principal amount of the New Bonds to be

purchased by the underwriter and will reimburse the underwriter for certain expenses.

All or some of the declarants' payment obligations under the Bond Documents, together with all or some of the declarants' reimbursement obligations under the Reimbursement Agreements, may be secured, equally and ratably, by second mortgages on their interests in the Millstone 1 nuclear electric generating facility located in Waterford, Connecticut.

The declarants request an exemption from the competitive bidding requirements of Rule 50 pursuant to subsection (a)(5) thereunder with respect to the proposed transactions. The declarants also request authorization to begin negotiations with potential underwriters. It may do so.

Northeast Nuclear Energy Company (70–8092)

Northeast Nuclear Energy Corporation ("NNEC"), 107 Selden Street, Berlin, Connecticut 06037, an electric public-utility subsidiary company of Northeast Utilities ("Northeast Utilities"), a registered holding company, has filed a declaration under sections 6(a), 7, 13 (b) and (f) of the Act and Rules 50(a)(5), 86 through 91, 93 and 94 thereunder.

NNEC operates three nuclear power generating stations, Millstone Units Nos. 1, 2 & 3 (each a "Unit") on the site of the Units on behalf of the owners of the Units. Two affiliates, Connecticut Light & Power ("CL&P") and Western Massachusetts Electric Power Company, own an 81% and a 19% interest, respectively, in Units Nos. 1 and 2. CL&P and WMEC own approximately a 53% and a 12% interest, respectively, in Unit No. 3 and a third affiliate, Public Service Company of New Hampshire ("PSNH"), owns approximately a 3% interest in Unit No. 3 as well. The balance of the ownership interests in Unit No. 3 are held by non-affiliates ("Non-Affiliate Owners"). The Units are operated by NNEC pursuant to the Amended and Restated Millstone Plant Agreement dated as of December 1, 1984 among NNEC, CL&P and WMECO ("Plant Agreement") and the Sharing Agreement—1979 Connecticut Nuclear Unit dated as of September 1, 1973, as amended, among CL&P, WMECO, PSNH and the Non-Affiliate Owners ("Sharing Agreement"). NNEC requests a finding under Rule 88(b) that it is so organized and conducted as to meet the requirements of section 13(b) of the Act with respect to subsidiary service companies.

The costs to be charged by NNEC pursuant to its service contracts will be equal to its actual cost for those services, including a reasonable return on capital. NNEC will keep its accounts, cost accounting procedures, correspondence, memoranda, papers, books and other records in the manner prescribed by Rule 93 and consistent with the uniform system of accounts. Also, NNEC will file reports in the forms and at the times prescribed by Rule 94.

NNEC's costs in operating the Units are allocated among the owners of the Units, either (a) equally to each unit (or equally to Units Nos. 1 and 2 if Unit No. 3 is not involved), (b) on the basis of employees per unit, or (c) on the basis of capacity per unit. The choice of allocation will depend upon which cost control center is responsible for the cost. After costs are allocated to the correct Unit, those costs for each Unit are then billed to the owners of that Unit according to ownership share.

NNEC finances certain of the assets related to the Units in order to avoid having those assets become subject to the liens in the first mortgage indentures of the owners of the Units. In order to satisfy the lenders in these financings, NNEC currently maintains a paid-in capital of approximately $15.4 million. NNEC would not increase this level of paid-in capital without the prior approval of the Commission. CL&P and WMECO (under the Plant Agreement) and PSNH and the Non-Affiliate Owners (indirectly through CL&P and WMECO under the Sharing Agreement) pay a rate of return to NNEC on its equity capital. This rate is set at the weighted average of the most recent rates of return approved for CL&P and WMECO in their most recent retail rate cases.

NNEC also requests authority through July 31, 1995 to issue one or more series of unsecured floating rate notes in an amount not to exceed $30 million ("Commitment") to a bank at any time or from time to time to finance the construction of a new building ("Facility"). The Facility will be located on the site of the Millstone Units and is being built to accommodate certain enhancements in the operation of the Millstone Units agreed to among NU, NNEC and the Nuclear Regulatory Agency.

The Construction Notes would mature on a date no later than the earlier of the completion of construction or ten years following the date of issue. The interest rate on the Construction Notes would equal LIBOR plus a margin not to exceed 125 basis points. In addition, NNEC would incur a commitment fee not to exceed 2% of the unused portion of the Commitment.

Additionally, NNEC seeks authority through July 31, 1995 to issue one or more series of unsecured fixed rate notes at any time or from time to time in an amount not to exceed $30 million to finance the construction of the facility on a long-term basis ("Permanent Notes"). If NNEC issues Construction Notes, the Permanent Notes would be used to refund the Construction Notes and any other short-term borrowing made in connection with the construction of the Facility.

The principal amount of each Permanent Notes would be amortized over the life of such Permanent Note and would be fully amortized no later than thirty years following the date of issue. Each Permanent Note would bear an interest rate equal to the rate for a U.S. Treasury obligation bearing a term equal to the "average life" of such Permanent Note ("Base Rate"), plus a margin not to exceed 175 basis points. For the purpose of this paragraph, the "average life" of a Permanent Note approximates the average period of time during which the original principal amount of such Permanent Note is outstanding. If no U.S. Treasury obligation has such a term, the Base Rate for such Permanent Note would be set at a rate interpolated from the two rates for U.S. Treasury obligations with the next shortest and the next longest terms relative to the average life of such Permanent Note. In no case would the average life of a Permanent Note exceed thirty years. Additionally, NNEC would incur placement and origination fees in connection with the issuance of the Permanent Notes in amounts not to aggregate more than $300,000.

NNEC requests authority to issue the Permanent Notes pursuant to an exception from the competitive bidding requirement of Rule 50 under subsection (a)(5). NNEC further requests authority to begin negotiations with underwriters with respect to the issuance and sale of the Permanent Notes. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–17414 Filed 7–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25856]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 16, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules

promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 9, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Georgia Power Company (70–8129)

Notice of Proposal to Amend Charter, or Alternatively, to Waive Charter Provision; Order Authorizing Solicitation of Proxies

Georgia Power Company ("Georgia Power"), 333 Piedmont Avenue NE., Atlanta, Georgia 30308, a public-utility subsidiary company of The Southern Company ("Southern"), a registered holding company, has filed a declaration under sections 6(a)(2), 7(e), and 12(e) of the Act and Rules 62 and 65 thereunder.

Georgia Power's charter currently provides that, without the affirmative vote of a majority of the total number of shares of preferred stock at the time outstanding, Georgia Power shall not issue or assume any securities representing unsecured debt (other than for the purpose of refunding or renewing outstanding unsecured securities resulting in equal or longer maturities or redeeming or otherwise retiring all outstanding shares of preferred stock or of any senior or equally ranking stock) if immediately after such issue or assumption (1) the total outstanding principal amount of all securities representing unsecured debt will thereby exceed 20% of the aggregate of all existing secured debt and the capital stock, premiums thereon, and surplus, as stated on the books, or (2) the total outstanding principal amount of all securities representing unsecured debt of maturities of less than ten years will thereby exceed 10% of such aggregate.

Georgia Power proposes to submit to its preferred stock shareholders and to its sole common stock shareholder, Southern, at a special meeting of such holders to be held on or about September 23, 1993, a proposal to amend Georgia Power's charter as follows. Georgia Power, without the affirmative vote of a majority of the total number of shares of preferred stock at the time outstanding, shall not issue or assume any securities representing unsecured debt (other than for the purpose of refunding or renewing outstanding unsecured securities resulting in equal or longer maturities or redeeming or otherwise retiring all outstanding shares of preferred stock or of any senior or equally ranking stock) if immediately after such issue or assumption the total outstanding principal amount of all securities representing unsecured debt will thereby exceed 20% of the aggregate of all existing secured debt and the capital stock, premiums thereon, and surplus, as stated on the books ("Proposal 1").

Should Proposal 1 fail to receive the necessary 66⅔% vote of the total number of shares of preferred stock outstanding, and 66⅔% vote from Southern as the owner of all outstanding shares of common stock, Georgia Power proposes to seek authority from its preferred shareholders to issue or assume, until July 1, 2003, additional unsecured debt. This unsecured debt will have maturities of less than ten years, and will exceed 10% of capital, surplus, and secured debt, provided that the amount of securities representing unsecured debt having maturities of less than ten years outstanding on January 1, 2004, shall not exceed such 10% limitation, and Georgia Power's total indebtedness represented by unsecured securities shall not exceed 20% of capital, surplus, and secured debt ("Proposal 2"). Proposal 2 requires the affirmative vote of a majority of the total number the shares of preferred stock outstanding.

Georgia Power intends to solicit proxies from its preferred to approve the alternative proposals. Georgia Power has filed its proxy solicitation material and requests that its declaration with respect to the solicitation of proxies for voting by its preferred shareholders to approve the alternative proposals be permitted to become effective forthwith as provided in Rule 62(d).

It appearing to the Commission that Georgia Power's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to Rule 62:

It is ordered, That the declaration regarding the proposed solicitation of proxies, be, and it hereby is, permitted to become effective forthwith, under Rule 62, and subject to the terms and conditions as prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–17415 Filed 7–21–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended July 2, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49003.
Date filed: June 29, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC1 Reso/C 0248 dated May 18, 1993; TC1 Except to/from US/UST r–1 to r–5.
Proposed Effective Date: October 1, 1993.

Docket Number: 49008.
Date filed: July 1, 1993.
Parties: Members of the International Air Transport Association.
Subject: Comp Telex Reso 024f—Iceland.
Proposed Effective Date: July 1, 1993.

Docket Number: 49009.
Date filed: July 1, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/C 0369 dated May 21, 1993; Areawide Resos (Acct 3819) R–1 to r–3; TC2 Reso/C 0375 dated May 21, 1993, r–4 to r–9; TC2 Reso/C 0376 dated May 21, 1993, r–10.
Proposed Effective Date: October 1, 1993.

Docket Number: 49010.
Date filed: July 1, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/C 0374 dated May 21, 1993; Europe-Mideast Resos r–1 to r–7.
Proposed Effective Date: October 1, 1993.

Docket Number: 49011.

Date filed: July 1, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/C 0372 dated May 21, 1993; Middle East-Africa Resos r–1 to r–3.
Proposed Effective Date: October 1, 1993.

Docket Number: 49012.
Date filed: July 1, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/C 0371 dated May 21, 1993; Middle East Resos 552 (r–1) & 590 (r–2).
Proposed Effective Date: October 1, 1993.

Docket Number: 49013.
Date filed: July 1, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/C 0373 dated May 21, 1993; Europe-Africa Resos r–1 to r–9.
Proposed Effective Date: October 1, 1993.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 93–17368 Filed 7–21–93; 8:45 am]
BILLING CODE 4910–62–P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended July 2, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49004.
Date filed: June 29, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 27, 1993.
Description: Application of United Parcel Service Co., pursuant to section 401 of the Act and subpart Q of the Regulations requests that its Certificate of Public Convenience and Necessity for Route 633 be amended to: add authority for UPS to engage in the scheduled foreign air transportation of property and mail between the terminal point Louisville, Kentucky and the terminal point Montreal, Quebec, Canada (to be served through Mirabel Airport); and, delete the authority now contained in that certificate authorizing service between Manchester, New Hampshire and Montreal, Canada (Mirabel). The effect of these amendments would be to enable UPS to substitute Louisville, Kentucky for Manchester, New Hampshire, as the U.S. gateway for its Montreal service.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 93–17367 Filed 7–21–93; 8:45 am]
BILLING CODE 4910–62–P

Coast Guard

[CGD 93–008]

Response Exercise Workshops; Additional Meeting Date

AGENCY: Coast Guard, DOT.
ACTION: Notice of meeting.

SUMMARY: The Coast Guard is announcing the addition of a second day to the Response Exercise Workshop scheduled for August 5, 1993. The original schedule listed the meeting date as August 5 only. The workshop will be held on August 5 and 6, 1993, at the Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Crystal City, Virginia.

FOR FURTHER INFORMATION CONTACT: LCDR Rhae Giacoma, Office of Marine Safety, Security and Environmental Protection (G–MEP–4), (202) 267–2616.

SUPPLEMENTARY INFORMATION: In the March 5, 1993 **Federal Register** (58 FR 12624), the Coast Guard announced that it would conduct a series of four workshops covering various topics to solicit comments from the public and to serve as an open forum for the discussion of response exercises for Area Contingency Plans and vessel and facility response plans. The announced schedule of the last workshop has been amended to include an additional day.

The updated public workshop schedule is as follows:

August 5, 1993; 8 a.m. to 6 p.m.; and August 6, 1993; 8 a.m. to 3 p.m.; Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Crystal City, Virginia, (703) 418–6800.

Dated: July 14, 1993.

Joseph J. Angelo,
Acting Chief, Office of Marine Safety, Security and Environmental Protection.
[FR Doc. 93–17446 Filed 7–21–93; 8:45 am]
BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–93–31]

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 August 10, 1993.

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. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on July 8, 1993.

Joseph A. Conte,
Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 21780

Petitioner: Civil Air Patrol, Inc.
Sections of the FAR Affected: 14 CFR 61.118
Description of Relief Sought: To extend the termination date of Exemption No. 4042 to allow the Civil Air Patrol, Inc. (CAP), to continue to be reimbursed for fuel, oil, and maintenance expenses while serving on official CAP missions.

Docket No.: 27283
Petitioner: Northwest Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.356
Description of Relief Sought: To allow Northwest Airlines, Inc., to operate its 6 dc–9–10's until June 30, 1994, without the traffic alert and collision avoidance system installed.

Docket No.: 27289
Petitioner: Zachariah Ray Bowers
Sections of the FAR Affected: 14 CFR 61.31(a)
Description of Relief Sought: To allow Mr. Bowers to become eligible for a flight engineer certificate without meeting the minimum age requirement of 21 years.

Docket No.: 27321
Petitioner: Lynn D. Rudrud
Sections of the FAR Affected: 14 CFR 121.383
Description of Relief Sought: To allow Lynn D. Rudrud to continue to serve as a pilot in part 121 air carrier operations after reaching 60 years of age.

Docket No.: 27324
Petitioner: Guenther H. Koerner
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow Mr. Koerner to serve as a pilot in part 121 air carrier operations after reaching his 60th birthday.

Docket No.: 27326
Petitioner: O.C. Haworth
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow Mr. Haworth to serve as a pilot in part 121 air carrier operations after reaching his 60th birthday.

Dispositions Of Petitions

Docket No.: 22872
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 61.157(a), Item I(b) of part 61, 121.424(a) and (b), Item I(a) of appendix E of part 121, 121.424(d)(1) and Item I(b) of appendix F of part 121 Description of Relief Sought/ Disposition:
To extend the termination date of Exemption No. 4416, and to amend the exemption to allow the required training to proficiency on preflight visual inspections to be completed prior to the completion of operating experience rather than prior to the first flight of operating experience. Grant, July 1, 1993, Exemption No. 4416E

Docket No.: 23921
Petitioner: Flight Safety International
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(c)(2) and (d)(2) and (3), 61.67(d)(2), 61.157(d)(1) and (2) and (e)(1) and (2), and appendix A of part 61
Description of Relief Sought/ Disposition: To amend Exemption No. 5317 to allow Flight Safety International to employ flight simulator instructors who do not hold an FAA flight instructor certificate. Grant, July 6, 1993, Exemption No. 5317A

Docket No.: 24427
Petitioner: United States Ultralight Association, Inc.
Sections of the FAR Affected: 14 CFR 103.1(a), (e)(1), (e)(2), (e)(3), and (e)(4)
Description of Relief Sought/ Disposition: To allow individuals authorized by the United States Ultralight Association to give instruction in powered ultralight vehicles that have a maximum fuel capacity of not more than 496 pounds, have a maximum fuel capacity of not more than 10 U.S. gallons, are not capable of more than 75 knots calibrated airspeed at full power in level flight, and have a power-off stall speed that does not exceed 35 knots calibrated airspeed. Grant, July 1, 1993, Exemption No. 4274E

Docket No.: 26169
Petitioner: Clackamas County Sheriff's Department
Sections of the FAR Affected: 14 CFR 61.118(a)
Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 5321, which allows private pilots who perform search and location services for the Clackamas County Sheriff's Department to be reimbursed for their fuel, oil, and maintenance expenses. Grant, June 30, 1993, Exemption No. 5321A

Docket No.: 26898
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 121.343(c)
Description of Relief Sought/ Disposition: To amend Exemption No. 5593, to clarify condition Nos. 3 and 7, and to change the dates in condition Nos. 3, 9, and 10. Grant, June 30, 1993, Exemption No. 5593A

Docket No.: 27112
Petitioner: Mr. Rex D. Bentley
Sections of the FAR Affected: 14 CFR 65.91(c)(1)
Description of Relief Sought/ Disposition: To allow Mr. Bentley to become eligible for an Inspection Authorization without having held a currently effective Airframe and Powerplant Mechanic certificate for at least three years. Denial, June 30, 1993, Exemption No. 5671

Docket No.: 27302
Petitioner: Bighorn Airways
Sections of the FAR Affected: 14 CFR 135.379(a)
Description of Relief Sought/ Disposition: To allow the use of the Casa 212–200 aircraft, for cargo operations only, at a takeoff weight greater than would allow the aircraft to maintain a 2.4 gradient during the second segment climb and a 1.2 percent gradient during the final climb segment. Denial, July 1, 1993, Exemption No. 5670

[FR Doc. 93–17364 Filed 7–21–93; 8:45 am]
BILLING CODE 4910–13–M

Implementation of 1,000 Foot Vertical Separation Minimum Between Flight Level (FL) 290 and FL 410

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA is considering the initiation of rulemaking to support the implementation of a 1,000 foot vertical separation minimum between FL 290 and FL 410 in certain areas or on certain routes. An informal meeting will be held to provide the opportunity to gather facts relevant to the effects of adopting rules for implementation and to provide interested persons an opportunity to present their views. All comments received will be considered prior to any issuance of a Notice of Proposed Rulemaking (NPRM).

TIME AND DATE: The public meeting will be held on August 17, 1993, starting at 10 a.m. Written comments are also invited and must be received on or before August 31, 1993.

PLACE: The public meeting will be held in the Auditorium of the Federal Aviation Administration, located on the third floor of FOB 10A, 800 Independence Ave., SW., Washington, DC, 20591.

COMMENTS: Send or deliver comments in triplicate to: Federal Aviation Administration, Flight Standards Service, Technical Programs Branch, (AFS–407), 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Requests to make a presentation at the meeting or questions regarding the logistics of the meeting should be directed to Mr. Lawrence Buehler, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9677; telefax (202) 267–5075.

Questions concerning the subject matter of the meeting should be directed to Mr. Roy Grimes, Federal Aviation Administration, Technical Programs Division, AFS–407, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3722; telefax (202) 267–5086.

SUPPLEMENTARY INFORMATION:

Participation at the Meeting

Requests from persons who wish to present oral statements at the public meetings should be received by the FAA no later than August 9, 1993. Such requests should be submitted to FAA, Office of Rulemaking, as listed above in the section titled "**FOR FURTHER INFORMATION CONTACT**" and should include a written summary of oral remarks to be presented, and an estimate of time needed for the presentation. Requests received after the date specified above will be scheduled if there is time available during the meeting; however, the names of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers that will be available at the meeting. In order to accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested.

Background

The FAA, along with other international authorities, conducted studies of aircraft height-keeping to determine feasibility of implementating reduced vertical separation minima (RVSM). In the early 1980's the International Civil Aviation Organization (ICAO) Review of the General Concept of Separation Panel (RGCSP) encouraged member states to investigate reducing the vertical separation minimum between aircraft operating above FL 290, and member states initiated programs to study the feasibility of reducing the vertical separation.

At the sixth meeting of the RGCSP, the results of the studies were considered. The results confirmed that a 1,000 foot vertical separation minimum was technically feasible without imposing unreasonably demanding technical requirements.

At the seventh meeting of the RGCSP, the panel developed guidance material for the implementation of a 1,000 ft vertical separation minimum between FL 290 and FL 410 inclusive (ICAO Doc. 9574). The material presents guidelines for airspace planners to consider in developing implementation plans and programs. It includes issues to be studied during the implementation steps including the effect on overall system safety and cost/benefit factors. The document also contains guidance on the requirements for airplane height-keeping in terms of altimetry system error and automatic altitude keeping (autopilot) performance. Basic elements of and processes for the airplane and operator approval are suggested.

ICAO North Atlantic Systems Planning Group (NATSPG) is utilizing ICAO Doc. 9574 for guidance in developing plans and programs to implement RVSM in the North Atlantic. NATSPG has developed a methodology for airplane and operator approval based on this document. NATSPG has forecast implementation of operational trials for the North Atlantic airspace to begin in January 1997 with final implementation in January 1998. As the ICAO guidance material for a 1,000 ft vertical separation minimum was developed on a global basis, the FAA believes that the ICAO Doc. 9574 may also be useful in the study of implementation in other airspace such as the Pacific.

The FAA is considering rulemaking to support the implementation of RVSM in certain areas or on certain routes. This process will involve careful consideration of the needs of the various users of the airspace. Because of the complexity of planning for RVSM implementation, the FAA is seeking comments from the public before proposing rulemaking.

The purposes of the meeting include, but are not limited to, gathering information and soliciting views and written comments on RVSM implementation and planning, as well as, airworthiness, maintenance, and operations programs related to flight in RVSM airspace.

Meeting Procedures

The following procedures are established to facilitate the meeting:

(a) The meeting will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend or to participate in the meeting.

(b) The meeting will be informal and conducted by representatives of the FAA. Representatives of the FAA will preside over the meeting and present a formal briefing on the elements related to RVSM implementation and any proposals that have been received from the public. All participants will be given an opportunity to make a presentation as time allows.

(c) Any person wishing to make a presentation at the meeting must notify the FAA prior to the meeting and provide an estimate of the time needed for the presentation. This procedure will permit allocation of an appropriate amount of time for each presenter. The FAA may allocate the time available for each presentation to accommodate all speakers. Everyone who has provided advance notice will have the opportunity to address the panel. Time will also be set aside for brief, unscheduled comments. The meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Any person who wishes to present a position paper to the FAA, pertinent to RVSM implementation, may do so. Persons wishing to distribute pertinent position papers or other handout material to the attendees should present 5 copies of all materials to the panel members. Additional copies of each handout should be available for other attendees.

(e) Materials relating to implementation of RVSM will be accepted at the meeting. Every reasonable effort will be made to hear every request for presentation consistent with a reasonable closing time for the meeting.

Persons are encouraged to submit written comments on or before August 31, 1993 on RVSM implementation and planning, as well as airworthiness, maintenance, and operations programs related to flight in RVSM airspace.

(f) The meeting will be recorded by a court reporter. Any person who is interested in purchasing a copy of the transcript should contract the court reporter after the meeting.

(g) Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a member of the panel is not intended to be, and should not be construed as, a position of the FAA.

(h) The meeting is designed to solicit public views and more complete information on the possible promulgation of rules to support implementation of RVSM in selected areas or routes. The meeting will be conducted in an informal and nonadversarial manner. No individual will be subject to cross-examination by any other participant; however, panel members may ask questions to clarify a

statement and to ensure a complete and accurate record. The proposed agenda will be: Opening remarks and discussion of the meeting procedures, a short briefing on RVSM implementation, public presentations, and closing remarks.

Issued in Washington, DC on July 15, 1993.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 93-17366 Filed 7-21-93; 8:45 am]

BILLING CODE 4910-13-M

Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Johnstown-Cambria County Airport, Johnstown, PA

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 Johnstown-Cambria County 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 August 23, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Mr. L. W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1, Camp Hill, Pennsylvania 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. William L. Santoro, Airport Manager of the Johnstown-Cambria County Airport Authority at the following address:

Johnstown-Cambria County Airport Authority, Johnstown-Cambria County Airport, RD #2, Johnstown, Pennsylvania 16662.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Johnstown-Cambria County Airport County Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. L. W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1, Camp Hill, Pennsylvania 17011 (Tel (717) 975-3423). 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 Johnstown-Cambria County 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 May 26, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Johnstown-Cambria County Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 31, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: October 1, 1993

Proposed charge expiration date: May 31, 1998

Total estimated PFC revenue: $337,500

Brief description of proposed projects:

—Overlay Runway 10-28

—Perimeter Security Fence

—Expand Terminal Building

—Overlay/Rehabilitate Runway 15-33

—Widen Taxiway A

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800-31.

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: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Johnstown-Cambria County Airport Authority.

Issued in Jamaica, New York on July 14, 1993.

Thomas O. Felix,

Manager, Grant-In-Aid Program, Eastern Region.

[FR Doc. 93-17365 Filed 7-21-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 16, 1993.

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.

Internal Revenue Service

OMB Number: 1545-0128.

Form Number: IRS Form 1120-L.

Type of Review: Revision.

Title: U.S. Life Insurance Company Income Tax Return.

Description: Life insurance companies are required to file an annual return of income and compute and pay the tax due. The data is used to insure that companies have correctly reported taxable income and paid the correct tax.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/Recordkeepers: 2,440.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—85 hours, 51 minutes

Learning about the law or the form—24 hours, 55 minutes

Preparing the form—40 hours, 27 minutes

Copying, assembling, and sending the form to the IRS—3 hours, 45 minutes

Frequency of Response: Annually

Estimated Total Reporting/Recordkeeping Burden: 378,127 hours

OMB Number: 1545-0954

Form Number: IRS Form 1120-ND

Type of Review: Extension

Title: Return for Nuclear Decommissioning Funds and Certain Related Persons

Description: A nuclear utility files Form 1120-ND to report the income and taxes of a fund set up by the public utility to provide cash for the dismantling of the nuclear power plant. The IRS uses Form 1120-ND to determine if the fund income taxes are correctly computed and if a person related to the fund or the

nuclear utility must pay taxes on self-dealing.

Respondents: Businesses or other for-profit

Estimated Number of Respondents/Recordkeeper: 100

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—23 hours, 26 minutes

Learning about the law or the form—3 hours, 12 minutes

Preparing the form—5 hours, 23 minutes

Copying, assembling, and sending the form to the IRS—32 minutes

Frequency of Response: Annually

Estimated Total Reporting/Recordkeeping Burden: 3,239 hours

Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 93-17356 Filed 7-21-93; 8:45 am]

BILLING CODE 4830-01-P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 139
Thursday, July 22, 1993

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).

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-93-20]

TIME AND DATE: July 27, 1993 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Invs. Nos. 701-TA-319-332, 334, 336-342, 344, 347-353; and 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (Final) (Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom)—briefing and vote.
5. Outstanding action jackets—
   1. GC-93-068; APO breach in an investigation under Title VII of the Tariff Act of 1930.
   2. GC-93-070; Notice Procedures under the Sunshine Act.
   3. OUII-93-012; Genentech, Inc.'s requests to participate as a party, serve discovery requests, and review discovery obtained from others in Inv. No. 603-TA-11.
6. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205-2000.

Issued: July 15, 1993

Donna R. Koehnke,

Secretary.

[FR Doc. 93-17503 Filed 7-19-93; 4:19 pm]

BILLING CODE 7020-02-P

federal register

Thursday
July 22, 1993

Part II

Department of State

Bureau of Politico-Military Affairs

22 CFR Part 120, et al.
Amendments to the International Traffic in Arms Regulations; Final Rule

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

[Public Notice 1832]

22 CFR Parts 120, 121, 122, 123, 124, 125, 126, 127, 128, and 130

Amendments to the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the regulations implementing section 38 of the Arms Export Control Act, which governs the import and export of defense articles and services. The rule clarifies existing regulations and reduces the regulatory burden on exporters of defense articles and services. Although this is a final rule public comment is welcome and will be taken into account to the extent possible.

EFFECTIVE DATE: This final rule is effective July 22, 1993.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice may be obtained from James Andrew Lewis, U.S. Department of State, Bureau of Politico-Military Affairs (202–647–4231), Mal Zerden or Allan Suchinsky, U.S. Department of State, Office of Defense Trade Controls (703–875–6644).

SUPPLEMENTARY INFORMATION: The regulations implementing section 38 of the Arms Export Control Act were last revised substantially in November 1984. A proposed rule was published on May 7, 1992 (57 FR 19666), for public comment. This Final Rule clarifies and simplifies the current regulations. Certain sections are consolidated while others are revised in the interests of clarity and consistency. To the extent possible, related sections are cross-referenced. In amending the regulations, public comments and suggestions from industry and other U.S. agencies have been considered and in many cases incorporated into the regulations.

The most significant changes are an increase in the validity period of a license from three to four years and a revision of the policy used by the Department for designating defense articles that takes into account civil application and functional equivalence. Several new exemptions from licensing requirements are also established. These exemptions will cover exports under approved manufacturing or technical assistance agreements; spare parts valued at $500 or less; intra-company transfers of components being sent abroad for assembly; temporary imports for repair and servicing; and items which were previously licensed for temporary export to trade shows.

Other changes include a clarification of the commodity jurisdiction process, which establishes a review period and specifies the appeal process. The definition of public domain is expanded and clarified. An exception allows for the re-export of certain U.S.-origin components to the Governments of NATO countries, and the Governments of Japan and Australia without prior U.S. approval for components which are not significant military equipment or controlled for purposes of the Missile Technology Control Regime and do not require Congressional notification.

Specific Changes

The Office of Munitions Control was renamed the Office of Defense Trade Controls on January 8, 1990. All references to the Office of Munitions Control are now referred to as the Office of Defense Trade Controls. For clarification, all references to the Assistant Secretary for Politico-Military Affairs are replaced by Assistant Secretary of State for Politico-Military Affairs. Due to a change in office designation, all references to the Under Secretary of State for Security Assistance, Science and Technology are replaced by Under Secretary of State for International Security Affairs.

There has been extensive renumbering due to the deletion, consolidation and addition of sections in the regulations. Sections in which there are substantive changes are noted below. These section designations refer to the new section numbers.

Section 120.1 General

Section 120.1(b) adds reference to retransfer approvals for clarification and lists the Department officials authorized to exercise the authorities of the subchapter. Section 120.1(c) adds a new section which specifies that exemptions in this subchapter do not apply to exporters who have been convicted of violating certain U.S. criminal statutes or are debarred.

Section 120.3 Policy for Designating and Determining Defense Articles and Services

The policy on designating defense articles and services in the future has been amended to take into consideration civil application, functional equivalence, and the significance of the military or intelligence applicability of articles and services.

Section 120.4 Commodity Jurisdiction

The title is changed from Commodity jurisdiction and redesignated § 120.4 (previously § 120.5). Establishes criteria used by State for determination of export licensing jurisdiction. Establishes a review period and specifies the appeal process, with a fixed review period, for commodity jurisdiction determinations.

Section 120.5 Relation to Regulations of Other Agencies

Redesignates section number (previously 120.4). Clarifies the licensing roles and responsibilities of other U.S. Government agencies.

Section 120.6 Defense Article

Clarifies the definition to specify the inclusion of components, parts, accessories, attachments and associated equipment. Clarifies the definition of models and mockups.

Section 120.8 Major Defense Equipment

This is a new section which defines major defense equipment.

Section 120.9 Defense Service

Modifies the definition to be consistent with the revised definition of technical data.

Section 120.10 Technical Data

Modifies the definition to include certain types of software. Clarifies the definition by explicitly identifying assembly and reconstruction of defense articles.

Section 120.11 Public Domain

Adds methods by which technical data may be considered to be in the public domain and includes a definition of fundamental research.

Section 120.12 Office of Defense Trade Controls

Identifies the name and address of the subject office.

Section 120.16 Foreign Person

Modifies the definition to fit 8 U.S.C. 1324 (a)(3) and address the term protected individual, consistent with the Immigration and Nationality Act, as amended.

Section 120.17 Export

Modifies the definition to include transfers in the United States of defense articles to embassies or other agencies of foreign governments.

Section 120.18 Import—Temporary

Changes title from In-transit shipment and clarifies the definition.

Section 120.19 Reexport or Retransfer

This is a new section which defines reexport and retransfer as the transfer to an end use or end user or destination not previously defined.

Section 120.20 License

Changes wording referring to temporary import to agree with Section 120.18, and specifies that licenses are for items controlled by this subchapter.

Section 120.22 Technical Assistance Agreement

Clarifies the services covered under this type of agreement.

Section 120.23 Distribution Agreement

Adds a definition of distribution agreement.

Section 120.28 Listing of Forms Referred to in This Subchapter

Lists the specific office within each agency from which forms are available.

Section 120.29 Missile Technology Control Regime

This is a new section which defines the Missile Technology Control Regime consistent with section 71(a) of the Arms Export Control Act.

Part 121 The United States Munitions List

Federal Register Notices modifying the U.S. munitions list have recently been published. Under these proposals, technical data is included as a subcategory under each munitions list category.

Section 121.12 Military Explosives

Provides a definition of military explosives and more specifically indicates the types of explosives covered under category V.

Section 121.15 Vessels of War and Special Naval Equipment

Provides a definition of vessels of war and special naval equipment.

Section 121.16 Missile Technology Control Regime Annex

This new section lists the defense articles on the MTCR annex.

Section 122.4 Notification of Changes in Information Furnished By Registrants

Provides that mergers and acquisitions of registrants must be notified to the Office of Defense Trade Controls.

Section 122.5 Maintenance of Records By Registrants

Clarifies what records are to be maintained during the mandatory period for record maintenance. Changes the maintenance period from seven to five years.

Section 123.1 Requirement for Export or Temporary Import Licenses

Enumerates licensing and documentation requirements including those previously specified under § 123.22.

Section 123.2 Import Jurisdiction

Clarifies the regulatory authority over temporary and permanent import of defense articles into the U.S.

Section 123.3 Temporary Import Licenses

Clarifies the requirements for temporary import licenses and associated exemptions.

Section 123.4 Temporary Import License Exemptions

Establishes a licensing exemption for defense articles temporarily imported into the U.S. for servicing and return to the country from which they were imported. Establishes criteria and procedures for use of the exemption.

Section 123.5 Temporary Export Licenses

Establishes criteria and procedures for temporary export of defense articles. References the new four year validity period for licenses.

Section 123.6 Foreign Trade Zones and U.S. Customs Bonded Warehouses

Clarifies the procedure for handling classified defense articles including technical data.

Section 123.7 Exports to Warehouses or Distribution Points Outside the United States

Clarifies that certain exemptions may apply to exports under this subchapter.

Section 123.9 Country of Ultimate Destination and Approval of Reexports or Retransfers

Establishes procedures for obtaining approval for the reexport or retransfer or change in end use of a defense article. Provides for an exemption for the reexport of defense articles to the Governments of NATO countries, and the Governments of Japan and Australia for the reexport of articles which are not significant military equipment or controlled for purposes of the Missile Technology Control Regime and which do not require Congressional notification.

Section 123.10 Non-transfer and Use Assurances

Modifies the section to move congressional notification. A new section (123.15) is created to address congressional notifications. Clarifies the assurances requirement by explicitly addressing usage assurances.

Section 123.11 Movements of Vessels and Aircraft Covered By the U.S. Munitions List Outside the United States

Changes section title.

Section 123.12 Shipments Between U.S. Possessions

Clarifies that licensing requirements under this section do not apply to direct shipment of defense articles under this section.

Section 123.14 Import Certificate/ Delivery Verification Procedure

Eliminates specific identification of countries subject to this procedure.

Section 123.15 Congressional Notification for Licenses

Previously covered by § 123.10(e). Provides additional information to clarify the Department's requirement.

Section 123.16 Exemptions of General Applicability

Provides for additional licensing exemptions for the export of unclassified defense articles and procedures for utilizing these exemptions. The exemption for obsolete nonautomatic firearms (§ 123.16(a)) has been moved to § 123.17. This section creates exemptions for: The export of unclassified defense articles in furtherance of approved agreements; spare parts valued at $500 or less; components, tools or test equipment being sent abroad for assembly and return by the same company; and unclassified defense articles being temporarily exported to trade shows when the article has previously been licensed for this purpose.

Section 123.17 Exports of Firearms and Ammunition

Moves § 123.16(a) to § 123.17(a).

Section 123.21 Duration, Renewal and Disposition of Licenses

Modifies title to add the word duration. Changes the validity period for licenses from three to four years. Clarifies that a license expires when the total value authorized has been shipped.

Section 123.22 Filing of Export Licenses and Shipper's Export Declarations With District Directors of Customs

Modifies the title to omit the word and in-transit. Clarifies the procedures for filing of export licenses and Shipper's Export Declarations with

District Directors of Customs. Explains procedures for self-endorsement of licenses when appropriate. Establishes a new procedure for exports of unclassified technical data.

Section 123.23 Monetary Value of Shipments

New title. Section incorporates the provisions of previous § 123.25(d) and clarifies the dollar thresholds for Congressional Notification.

Section 123.24 Shipments by Mail

Allows self-endorsement of license.

Section 123.25 Amendments to Licenses

Creates new section to address the amendment process.

Section 124.1 Manufacturing License Agreements and Technical Assistance Agreements

Divides previous § 124.1(b) into two sections, one addressing substantive amendments, the other addressing minor amendments.

Section 124.7 Information Required in All Manufacturing License Agreements and Technical Assistance Agreements

New title combining previous titles of §§ 124.7 and 124.8. Consolidates information in § 124.7.

Section 124.10 Nontransfer and Use Assurances

Eliminates reference to General Security of Information Agreements and other foreign government security assurances.

Section 124.11 Congressional Notification for Agreements

Creates a new section which explains the requirements under the Arms Export Control Act that certain agreements are subject to Congressional notification prior to approval.

Section 124.12 Required Information in Letters of Transmittal

Revises the reporting requirement threshold pursuant to section 130 to $500,000 or more. Adds a clause relating to sublicensing arrangements.

Section 124.13 Procurement by U.S. Persons (Offshore Procurement)

Allows technical data which discloses details of design or production necessary for bid purposes.

Section 124.14 Exports to Warehouses or Distribution Points Outside the United States

Specifies that the exemption under § 123.16(b)(1) may be applicable for the export of unclassified defense articles in furtherance of approved agreements. Corrects misnumbered paragraphs.

Section 125.1 Exports Subject to This Part

Clarifies that technical data authorized for export may not be retransferred from the authorized end-user without prior approval.

Section 125.2 Exports of Unclassified Technical Data

Clarifies the licensing procedure for export (and return to the U.S.) of unclassified technical data. Specifies the number of copies of technical data required for submission. Incorporates requirements previously contained in § 125.7(b).

Section 125.4 Exemptions of General Applicability

Clarifies that if prior approval or prior notification are necessary, those requirements must first be met before any exemption under this section may be used.

Section 125.6 Exemptions—Certification Requirements

Title change to include the word Exemptions. Specifies that certifications must be in written form and retained by the exporter for a period of five years. Clarifies the procedure for certification in the absence of Customs or Postal officials.

Section 125.7 Procedures for the Export of Classified Technical Data and Other Classified Defense Articles

Title change and specifies that only one copy of data or descriptive literature is required for license renewals.

Section 125.8 Filing of Licenses for Exports of Unclassified Technical Data

Clarifies the procedure for self-endorsement of licenses.

Section 126.1 Prohibited Exports and Sales to Certain Countries

Revises list of prohibited countries to reflect current policy and country identifications.

Section 126.4 Shipments by or for United States Government Agencies

Clarifies that this section also applies to temporary imports and temporary exports and that certain transfers that result in incorporating U.S.-origin defense articles into foreign-owned launches or satellites to be launched overseas are permanent exports requiring the prior approval of the Department.

Section 126.5 Canadian Exemptions

Clarifies that a license is not required for the permanent or temporary import from Canada of certain defense articles.

Section 126.10 Disclosure of Information to the Public

Reference to the Under Secretary for Security Assistance, Science, and Technology is replaced by Under Secretary of State for International Security Affairs.

Section 126.13 Required Information

Advises the provision of a Technology Transfer Control Plan in cases when foreign nationals are employed at or assigned to security cleared facilities.

Section 127.4 Authority of U.S. Customs Service Officers

Specifies the authority of the Customs Service Officers.

Section 127.5 Authority of Defense Investigative Service

Specifies the authority of the Defense Investigative Service in the case of exports of classified defense articles, including technical data.

Section 127.10 Past Violations

Clarifies the authority of the Office of Defense Trade Controls with respect to making exceptions to cases that have been denied and addresses consultation with other offices and agencies.

Section 127.12 Voluntary Disclosures

Includes a provision encouraging exporters to voluntarily disclose in writing information regarding possible violations.

Part 130 Political Contributions, Fees and Commissions

The reporting requirement threshold is increased from $250,000 to $500,000.

This amendment involves a foreign affairs function of the United States, and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of the Administrative Procedure Act (5 U.S.C. 553 and 554). In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1405–0013.

List of Subjects

22 CFR Parts 120 and 125

Arms and munitions, Classified information, Exports.

22 CFR Part 121

Arms and munitions, Exports, U.S. munitions list.

22 CFR Part 122

Arms and munitions, Exports, Reporting and recordkeeping requirements.

22 CFR Parts 123 and 126

Arms and munitions, Exports.

22 CFR Part 124

Arms and munitions, Exports, Technical assistance.

22 CFR Part 127

Arms and munitions, Crime, Exports, Penalties, Seizures and forfeitures.

22 CFR Part 128

Administrative procedures, Arms and munitions, Exports.

22 CFR Part 130

Arms and munitions, Campaign funds, Confidential business information, Exports, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 22 CFR subchapter M is amended by revising parts 120, 121, 122, 123, 124, 125, 126, 127, 128 and 130 to read as follows:

SUBCHAPTER M—INTERNATIONAL TRAFFIC IN ARMS REGULATIONS

PART 120—PURPOSE AND DEFINITIONS

Sec.
120.1 General authorities and eligibility.
120.2 Designation of defense articles and defense services.
120.3 Policy on designating and determining defense articles and services.
120.4 Commodity jurisdiction.
120.5 Relation to regulations of other agencies.
120.6 Defense article.
120.7 Significant military equipment.
120.8 Major defense equipment.
120.9 Defense service.
120.10 Technical data.
120.11 Public domain.
120.12 Office of Defense Trade Controls.
120.13 United States.
120.14 Person.
120.15 U.S. person.
120.16 Foreign person.
120.17 Export.
120.18 Temporary import.
120.19 Reexport or retransfer.
120.20 License.
120.21 Manufacturing license agreement.
120.22 Technical assistance agreement.
120.23 Distribution agreement.
120.24 District Director of Customs.
120.25 Empowered Official.
120.26 Presiding Official.
120.27 U.S. criminal statutes.
Sec.
120.28 Listing of forms referred to in this subchapter.
120.29 Missile Technology Control Regime.

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2658.

§ 120.1 General authorities and eligibility.

(a) Section 38 of the Arms Export Control Act (22 U.S.C. 2778) authorizes the President to control the export and import of defense articles and defense services. The statutory authority of the President to promulgate regulations with respect to exports of defense articles and defense services was delegated to the Secretary of State by Executive Order 11958, as amended (42 FR 4311). This subchapter implements that authority. By virtue of delegations of authority by the Secretary of State, these regulations are primarily administered by the Director of the Office of Defense Trade Controls, Bureau of Politico-Military Affairs, Department of State.

(b) Authorized Officials. All authorities conferred upon the Director of the Office of Defense Trade Controls by this subchapter may be exercised at any time by the Under Secretary of State for International Security Affairs, the Assistant Secretary of State for Politico-Military Affairs, or the Deputy Assistant Secretary of State for Politico-Military Affairs responsible for supervising the Office of Defense Trade Controls unless the Legal Adviser or the Assistant Legal Adviser for Politico-Military Affairs of the Department of State determines that any specific exercise of this authority under this subsection may be inappropriate.

(c) Eligibility. Only U.S. persons (as defined in § 120.15) and foreign governmental entities in the United States may be granted licenses or other approvals (other than retransfer approvals sought pursuant to this subchapter). Foreign persons (as defined in § 120.16) other than governments are not eligible. U.S. persons who have been convicted of violating the criminal statutes enumerated in § 120.27, who have been debarred pursuant to part 127 or 128 of this subchapter, who are the subject of an indictment involving the criminal statutes enumerated in § 120.27, who are ineligible to contract with, or to receive a license or other form of authorization to import defense articles or defense services from any agency of the U.S. Government, who are ineligible to receive export licenses (or other forms of authorization to export) from any agency of the U.S. Government, who are subject to Department of State Suspension/Revocation under § 126.7 (a)(1)–(a)(7) of this subchapter, or who are ineligible under § 127.6(c) of this subchapter are generally ineligible. Applications for licenses or other approvals will be considered only if the applicant has registered with the Office of Defense Trade Controls pursuant to part 122 of this subchapter. All applications and requests for approval must be signed by a U.S. person who has been empowered by the registrant to sign such documents.

(d) The exemptions provided in this subchapter do not apply to transactions in which the exporter or any party to the export (as defined in § 126.7(e) of this subchapter) is generally ineligible as set forth above in paragraph (c) of this section, unless an exception has been granted pursuant to § 126.7(c) of this subchapter.

§ 120.2 Designation of defense articles and defense services.

The Arms Export Control Act (22 U.S.C. 2778(a) and 2794(7)) provides that the President shall designate the articles and services deemed to be defense articles and defense services for purposes of this subchapter. The items so designated constitute the United States Munitions List and are specified in part 121 of this subchapter. Such designations are made by the Department of State with the concurrence of the Department of Defense. For a determination on whether a particular item is included on the U.S. Munitions List *see* § 120.4(a).

§ 120.3 Policy on designating and determining defense articles and services.

An article or service may be designated or determined in the future to be a defense article (see § 120.6) or defense service (see § 120.9) if it:

(a) Is specifically designed, developed, configured, adapted, or modified for a military application, and

(i) Does not have predominant civil applications, and

(ii) Does not have performance equivalent (defined by form, fit and function) to those of an article or service used for civil applications; or

(b) Is specifically designed, developed, configured, adapted, or modified for a military application, and has significant military or intelligence applicability such that control under this subchapter is necessary.

The intended use of the article or service after its export (i.e., for a military or civilian purpose) is not relevant in determining whether the article or service is subject to the controls of this subchapter. Any item covered by the U.S. Munitions List must

be within the categories of the U.S. Munitions List. The scope of the U.S. Munitions List shall be changed only by amendments made pursuant to section 38 of the Arms Export Control Act (22 U.S.C. 2778).

§ 120.4 Commodity jurisdiction.

(a) The commodity jurisdiction procedure is used with the U.S. Government if doubt exists as to whether an article or service is covered by the U.S. Munitions List. It may also be used for consideration of a redesignation of an article or service currently covered by the U.S. Munitions List. The Department must submit a report to Congress at least 30 days before any item is removed from the U.S. Munitions List. Upon written request, the Office of Defense Trade Controls shall provide a determination of whether a particular article or service is covered by the U.S. Munitions List. The determination, consistent with §§ 120.2, 120.3, and 120.4, entails consultation among the Departments of State, Defense, Commerce and other U.S. Government agencies and industry in appropriate cases.

(b) Registration with the Office of Defense Trade Controls as defined in part 122 of this subchapter is not required prior to submission of a commodity jurisdiction request. If it is determined that the commodity is a defense article or service covered by the U.S. Munitions List, registration is required for exporters, manufacturers, and furnishers of defense articles and defense services (see part 122 of this subchapter).

(c) Requests shall identify the article or service, and include a history of the product's design, development and use. Brochures, specifications and any other documentation related to the article or service shall be submitted in seven collated sets.

(d)(1) A determination that an article or service does not have predominant civil applications shall be made by the Department of State, in accordance with this subchapter, on a case-by-case basis, taking into account:

(i) The number, variety and predominance of civil applications;

(ii) The nature, function and capability of the civil applications; and

(iii) The nature, function and capability of the military applications.

(2) A determination that an article does not have the performance equivalent, defined by form, fit and function, to those used for civil applications shall be made by the Department of State, in accordance with this subchapter, on a case-by-case basis, taking into account:

(i) The nature, function, and capability of the article;

(ii) Whether the components used in the defense article are identical to those components originally developed for civil use.

Note: The form of the item is its defined configuration, including the geometrically measured configuration, density, and weight or other visual parameters which uniquely characterize the item, component or assembly. For software, form denotes language, language level and media. The fit of the item is its ability to physically interface or interconnect with or become an integral part of another item. The function of the item is the action or actions it is designed to perform.

(3) A determination that an article has significant military or intelligence applications such that it is necessary to control its export as a defense article shall be made, in accordance with this subchapter, on a case-by-case basis, taking into account: (i) The nature, function, and capability of the article;

(ii) The nature of controls imposed by other nations on such items (including COCOM and other multilateral controls), and

(iii) That items described on the COCOM Industrial List shall not be designated defense articles or defense services unless the failure to control such items on the U.S. Munitions List would jeopardize significant national security or foreign policy interests.

(e) The Office of Defense Trade Controls will provide a preliminary response within 10 working days of receipt of a complete request for commodity jurisdiction. If after 45 days the Office of Defense Trade Controls has not provided a final commodity jurisdiction determination, the applicant may request in writing to the Director, Center for Defense Trade that this determination be given expedited processing.

(f) State, Defense and Commerce will resolve commodity jurisdiction disputes in accordance with established procedures. State shall notify Defense and Commerce of the initiation and conclusion of each case.

(g) A person may appeal a commodity jurisdiction determination by submitting a written request for reconsideration to the Director of the Center for Defense Trade. The Center for Defense Trade will provide a written response of the Director's determination within 30 days of receipt of the appeal. If desired, an appeal of the Director's decision can then be made directly to the Assistant Secretary for Politico-Military Affairs.

§ 120.5 Relation to regulations of other agencies.

If an article or service is covered by the U.S. Munitions List, its export is regulated by the Department of State, except as indicated otherwise in this subchapter. For the relationship of this subchapter to regulations of the Department of Commerce, the Department of Energy and the Nuclear Regulatory Commission, see § 123.20 of this subchapter. The Treasury Department controls permanent imports of articles and services covered by the U.S. Munitions Import List from foreign countries by persons subject to U.S. jurisdiction (31 CFR part 505). The Department of Commerce regulates the export of items on the Commerce Control List (CCL) under the Export Administration Regulations (15 CFR parts 768–799).

§ 120.6 Defense article.

Defense article means any item or technical data designated in § 121.1 of this subchapter. The policy described in § 120.3 is applicable to designations of additional items. This term includes technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly relating to items designated in § 121.1 of this subchapter. It does not include basic marketing information on function or purpose or general system descriptions.

§ 120.7 Significant military equipment.

(a) *Significant military equipment* means articles for which special export controls are warranted because of their capacity for substantial military utility or capability. Section 47(6) of the Arms Export Control Act (22 U.S.C. 2794(6) note) refers to significant combat equipment on the U.S. Munitions List. The terms significant military equipment and significant combat equipment are equivalent for purposes of that section of the Arms Export Control Act and this subchapter.

(b) Significant military equipment includes:

(1) Items in § 121.1 of this subchapter which are preceded by an asterisk; and

(2) All classified articles enumerated in § 121.1 of this subchapter.

§ 120.8 Major defense equipment.

Pursuant to section 47(6) of the Arms Export Control Act (22 U.S.C. 2794(6) note), *major defense equipment* means any item of significant military equipment (as defined in § 120.7) on the U.S. Munitions List having a nonrecurring research and development cost of more than $50,000,000 or a total

production cost of more than $200,000,000.

§ 120.9 Defense service.

Defense service means:

(1) The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles; or

(2) The furnishing to foreign persons of any technical data controlled under this subchapter (see § 120.10), whether in the United States or abroad.

§ 120.10 Technical data.

Technical data means, for purposes of this subchapter:

(1) Information, other than software as defined in § 120.10(d), which is required for the design development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation.

(2) Classified information relating to defense articles and defense services;

(3) Information covered by an invention secrecy order;

(4) Software as defined in § 121.8(f) of this subchapter directly related to defense articles;

(5) This definition does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain as defined in § 120.11. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

§ 120.11 Public domain.

Public domain means information which is published and which is generally accessible or available to the public:

(1) Through sales at newsstands and bookstores;

(2) Through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;

(3) Through second class mailing privileges granted by the U.S. Government;

(4) At libraries open to the public or from which the public can obtain documents;

(5) Through patents available at any patent office;

(6) Through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States;

(7) Through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency (see also § 125.4(b)(13) of this subchapter);

(8) Through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. University research will not be considered fundamental research if:

(i) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or

(ii) The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

§ 120.12 Office of Defense Trade Controls.

Office of Defense Trade Controls, Bureau of Politico-Military Affairs, Department of State, Washington, D.C. 20522–0602.

§ 120.13 United States.

United States, when used in the geographical sense, includes the several states, the Commonwealth of Puerto Rico, the insular possessions of the United States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, any territory or possession of the United States, and any territory or possession over which the United States exercises any powers of administration, legislation, and jurisdiction.

§ 120.14 Person.

Person means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities. If a provision in this subchapter does not refer exclusively to a foreign person (§ 120.16) or U.S. person (§ 120.15), then it refers to both.

§ 120.15 U.S. person.

U.S. person means a person (as defined in § 120.14 of this part) who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any corporation, business association, partnership, society, trust or any other entity, organization or group that is incorporated to do business in the United States. It also includes any governmental (federal, state or local) entity. It does not include any foreign person as defined in § 120.16 of this part.

§ 120.16 Foreign person.

Foreign person means any natural person who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g diplomatic missions).

§ 120.17 Export.

Export means:

(1) Sending or taking a defense article out of the United States in any manner, except by mere travel outside of the United States by a person whose personal knowledge includes technical data; or

(2) Transferring registration, control or ownership to a foreign person of any aircraft, vessel, or satellite covered by the U.S. Munitions List, whether in the United States or abroad; or

(3) Disclosing (including oral or visual disclosure) or transferring in the United States any defense article to an embassy, any agency or subdivision of a foreign government (e.g., diplomatic missions); or

(4) Disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad; or

(5) Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad.

(6) A launch vehicle or payload shall not, by reason of the launching of such vehicle, be considered an export for purposes of this subchapter. However, for certain limited purposes (see § 126.1 of this subchapter), the controls of this subchapter may apply to any sale, transfer or proposal to sell or transfer defense articles or defense services.

§ 120.18 Temporary import.

Temporary import means bringing into the United States from a foreign country any defense article that is to be returned to the country from which it was shipped or taken, or any defense

article that is in transit to another foreign destination. Temporary import includes withdrawal of a defense article from a customs bonded warehouse or foreign trade zone for the purpose of returning it to the country of origin or country from which it was shipped or for shipment to another foreign destination. Permanent imports are regulated by the Department of the Treasury (see 27 CFR parts 47, 178 and 179).

§ 120.19 Reexport or retransfer.

Reexport or retransfer means the transfer of defense articles or defense services to an end use, end user or destination not previously authorized.

§ 120.20 License.

License means a document bearing the word license issued by the Director, Office of Defense Trade Controls or his authorized designee which permits the export or temporary import of a specific defense article or defense service controlled by this subchapter.

§ 120.21 Manufacturing license agreement.

An agreement (e.g., contract) whereby a U.S. person grants a foreign person an authorization to manufacture defense articles abroad and which involves or contemplates:

(a) The export of technical data (as defined in § 120.10) or defense articles or the performance of a defense service; or

(b) The use by the foreign person of technical data or defense articles previously exported by the U.S. person. (See part 124 of this subchapter).

§ 120.22 Technical assistance agreement.

An agreement (e.g., contract) for the performance of a defense service(s) or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles. Assembly of defense articles is included under this section, provided production rights or manufacturing know-how are not conveyed. Should such rights be transferred, § 120.21 is applicable. (See part 124 of this subchapter).

§ 120.23 Distribution agreement.

An agreement (e.g., a contract) to establish a warehouse or distribution point abroad for defense articles exported from the United States for subsequent distribution to entities in an approved sales territory (see part 124 of this subchapter).

§ 120.24 District Director of Customs.

District Director of Customs means the District Directors of Customs at Customs Headquarters Ports (other than the port of New York City, New York, where it is the Area Director of Customs); the Regional Commissioners of Customs, the Deputy and Assistant Regional Commissioners of Customs for Customs Region II at the Port of New York, New York; and Port Directors at Customs ports not designated as Headquarters Ports.

§ 120.25 Empowered official.

Empowered Official means a U.S. person who:

(1) Is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization; and

(2) Is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and

(3) Understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations; and

(4) Has the independent authority to:

(i) Enquire into any aspect of a proposed export or temporary import by the applicant, and

(ii) Verify the legality of the transaction and the accuracy of the information to be submitted; and

(iii) Refuse to sign any license application or other request for approval without prejudice or other adverse recourse.

§ 120.26 Presiding official.

Presiding official means a person authorized by the U.S. Government to conduct hearings in administrative proceedings.

§ 120.27 U.S. criminal statutes.

For purposes of this subchapter, the phrase *U.S. criminal statutes* means:

(1) Section 38 of the Arms Export Control Act (22 U.S.C. 2778);

(2) Section 11 of the Export Administration Act of 1979 (50 U.S.C. App. 2410);

(3) Sections 793, 794, or 798 of title 18, United States Code (relating to espionage involving defense or classified information);

(4) Section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16);

(5) Section 206 of the International Emergency Economic Powers Act (relating to foreign assets controls; 50 U.S.C. 1705);

(6) Section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd–1) or section 104 of the Foreign Corrupt Practices Act (15 U.S.C. 78dd–2);

(7) Chapter 105 of title 18, United States Code (relating to sabotage);

(8) Section 4(b) of the Internal Security Act of 1950 (relating to communication of classified information; 50 U.S.C. 783(b));

(9) Sections 57, 92, 101, 104, 222, 224, 225, or 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2077, 2122, 2131, 2134, 2272, 2274, 2275, and 2276);

(10) Section 601 of the National Security Act of 1947 (relating to intelligence identities protection; 50 U.S.C. 421);

(11) Section 603(b) or (c) of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5113(b) and (c)); and

(12) Section 371 of title 18, United States Code (when it involves conspiracy to violate any of the above statutes).

§ 120.28 Listing of forms referred to in this subchapter.

The forms referred to in this subchapter are available from the following government agencies:

(a) Department of State, Bureau of Politico-Military Affairs, Office of Defense Trade Controls, Washington, DC. 20522–0602.

(1) Application/License for permanent export of unclassified defense articles and related technical data (Form DSP–5).

(2) Application for registration (Form DSP–9).

(3) Application/License for temporary import of unclassified defense articles (Form DSP–61).

(4) Application/License for temporary export of unclassified defense articles (Form DSP–73).

(5) Non-transfer and use certificate (Form DSP–83).

(6) Application/License for permanent/temporary export or temporary import of classified defense articles and related classified technical data (Form DSP–85).

(7) Authority to Export Defense Articles and Defense Services sold under the Foreign Military Sales program (Form DSP–94).

(b) Department of Commerce, Bureau of Export Administration:

(1) International Import Certificate (Form BXA–645P/ATF–4522/DSP–53).

(2) Shipper's Export Declaration (Form No. 7525–V).

(3) Department of Defense, Defense Security Assistance Agency: Letter of Offer and Acceptance (DD Form 1513).

§ 120.29 Missile technology control regime.

(a) For purposes of this subchapter, Missile Technology Control Regime (MTCR) means the policy statement

between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto;

(b) The term *MTCR Annex* means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto;

(c) List of all items on the MTCR Annex. Section 71(a) of the Arms Export Control Act (22 U.S.C. § 2797) refers to the establishment as part of the U.S. Munitions List of a list of all items on the MTCR Annex, the export of which is not controlled under section 6(l) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(l)), as amended. In accordance with this provision, the list of MTCR Annex items shall constitute all items on the U.S. Munitions List in § 121 16 of this subchapter.

PART 121—THE UNITED STATES MUNITIONS LIST

Enumeration of Articles

Sec.

121.1 General. The United States Munitions List.
121.2 Interpretations of the United States Munitions List and the Missile Technology Control Regime Annex.
121.3 Aircraft and related articles.
121.4 Amphibious vehicles.
121.5 Apparatus and devices under Category IV(c).
121.6 Cartridge and shell casings.
121.7 Chemical agents.
121.8 End-items, components, accessories, attachments, parts, firmware, software and systems.
121.9 Firearms.
121.10 Forgings, castings and machined bodies.
121.11 Military demolition blocks and blasting caps.
121.12 Military explosives.
121.13 Military fuel thickeners.
121.14 Propellants.
121.15 Vessels of war and special naval equipment.
121.16 Missile Technology Control Regime Annex.

Authority: Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2658.

Enumeration of Articles

§ 121.1 General. The United States munitions list.

(a) The following articles, services and related technical data are designated as defense articles and defense services pursuant to sections 38 and 47(7) of the Arms Export Control Act (22 U.S.C. 2778 and 2794(7)). Changes in designations will be published in the **Federal Register**. Information and clarifications on whether specific items are defense articles and services under this subchapter may appear periodically in the Defense Trade News published by the Center for Defense Trade.

(b) Significant military equipment: An asterisk precedes certain defense articles in the following list. The asterisk means that the article is deemed to be "significant military equipment" to the extent specified in § 120.19. The asterisk is placed as a convenience to help identify such articles.

(c) Certain items in the following list are placed in brackets. The brackets mean that the item is (1) scheduled to be moved to the licensing jurisdiction of the Department of Commerce upon establishment of a foreign policy control or (2) in the case of spacecraft and related equipment, the item is under review by an interagency space technical working group. The interagency review will result in a recommendation as to whether an item should be moved to the jurisdiction of the Department of Commerce or to USML category XV which was established for this purpose.

(d) Missile Technology Control Regime Annex (MTCR). Certain defense articles and services are identified in § 121.16 as being on the list of MTCR Annex items on the United States Munitions List. These are articles as specified in § 120.29 of this subchapter and appear on the list at § 121.16.

Category I—Firearms

*(a) Nonautomatic, semi-automatic and fully automatic firearms to caliber .50 inclusive, and all components and parts for such firearms. (See § 121.9 and §§ 123.16–123.19 of this subchapter.)

(b) Riflescopes manufactured to military specifications, and specifically designed or modified components therefor; firearm silencers and suppressors, including flash suppressors.

*(c) Insurgency-counterinsurgency type firearms or other weapons having a special military application (e.g. close assault weapons systems) regardless of caliber and all components and parts therefor.

(d) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (c) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

Category II—Artillery Projectors

*(a) Guns over caliber .50, howitzers, mortars, and recoilless rifles.

*(b) Military flamethrowers and projectors.

(c) Components, parts, accessories and attachments for the articles in paragraphs (a) and (b) of this category, including but not limited to mounts and carriages for these articles.

(d) Technical data (as defined in 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (c) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

Category III—Ammunition

*(a) Ammunition for the arms in Categories I and II of this section. (See § 121.6.)

(b) Components, parts, accessories, and attachments for articles in paragraph (a) of this category, including but not limited to cartridge cases, powder bags, bullets, jackets, cores, shells (excluding shotgun shells), projectiles, boosters, fuzes and components therefor, primers, and other detonating devices for such ammunition. (See § 121.6.)

(c) Ammunition belting and linking machines.

*(d) Ammunition manufacturing machines and ammunition loading machines (except handloading ones).

(e) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (d) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

Category IV—Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines

*(a) Rockets (including but not limited to meteorological and other sounding rockets), bombs, grenades, torpedoes, depth charges, land and naval mines, as well as launchers for such defense articles, and demolition blocks and blasting caps. (See § 121.11.)

*(b) Launch vehicles and missile and anti-missile systems including but not limited to guided, tactical and strategic missiles, launchers, and systems.

(c) Apparatus, devices, and materials for the handling, control, activation, monitoring, detection, protection, discharge, or detonation of the articles in paragraphs (a) and (b) of this category. (See § 121.5.)

*(d) Missile and space launch vehicle powerplants.

*(e) Military explosive excavating devices.

*(f) Ablative materials fabricated or semi-fabricated from advanced composites (e.g., silica, graphite, carbon, carbon/carbon, and boron filaments) for the articles in this category that are derived directly from or specifically developed or modified for defense articles.

*(g) Non/nuclear warheads for rockets and guided missiles.

(h) All specifically designed or modified components, parts, accessories, attachments, and associated equipment for the articles in this category.

(i) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (h) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

Category V—Explosives, Propellants, Incendiary Agents, and Their Constituents

*(a) Military explosives. (See § 121.12.)

*(b) Military fuel thickeners. (See § 121.13.)

(c) Propellants for the articles in Categories III and IV of this section. (See § 121.14.)

(d) Military pyrotechnics, except pyrotechnic materials having dual military and commercial use.

(e) All compounds specifically formulated for the articles in this category.

(f) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (e) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

Category VI—Vessels of War and Special Naval Equipment

*(a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels and service craft, experimental types of naval ships and any vessels specifically designed or modified for military purposes. (See § 121.15.)

*(b) Turrets and gun mounts, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults and other components, parts, attachments, and accessories specifically designed or modified for combatant vessels.

(c) Mine sweeping equipment, components, parts, attachments and accessories specifically designed or modified therefor.

(d) Harbor entrance detection devices, (magnetic, pressure, and acoustic ones) and controls and components therefor.

*(e) Naval nuclear propulsion plants, their land prototypes, and special facilities for their construction, support, and maintenance. This includes any machinery, device, component, or equipment specifically developed, designed or modified for use in such plants or facilities. (See § 123.21 of this subchapter)

(f) All specifically designed or modified components, parts, accessories, attachments, and associated equipment for the articles in this category.

(g) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8) directly related to the defense articles enumerated in paragraphs (a) through (f) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

Category VII—Tanks and Military Vehicles

*(a) Military type armed or armored vehicles, military railway trains, and vehicles specifically designed or modified to accommodate mountings for arms or other specialized military equipment or fitted with such items.

*(b) Military tanks, combat engineer vehicles, bridge launching vehicles, half-tracks and gun carriers.

*(c) Self-propelled guns and howitzers.

(d) Military trucks, trailers, hoists, and skids specifically designed, modified, or equipped to mount or carry weapons of Categories I, II and IV or for carrying and handling the articles in paragraph (a) of Categories III and IV.

*(e) Military recovery vehicles.

*(f) Amphibious vehicles. (See § 121.4)

*(g) Engines specifically designed or modified for the vehicles in paragraphs (a), (b), (c), and (f) of this category.

(h) All specifically designed or modified components and parts, accessories, attachments, and associated equipment for the articles in this category, including but not limited to military bridging and deep water fording kits.

(i) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (h) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

Category VIII—Aircraft, [Spacecraft] and Associated Equipment

*(a) Aircraft, including but not limited to helicopters, non-expansive balloons, drones, and lighter-than-air aircraft, which are specifically designed, modified, or equipped for military purposes. This includes but is not limited to the following military purposes: Gunnery, bombing, rocket or missile launching, electronic and other surveillance, reconnaissance, refueling, aerial mapping, military liaison, cargo carrying or dropping, personnel dropping, airborne warning and control, and military training. (See § 121.3.)

*(b) Military aircraft engines, except reciprocating engines, [and spacecraft engines] specifically designed or modified for the aircraft in paragraph (a) of this category.

*(c) Cartridge-actuated devices utilized in emergency escape of personnel and airborne equipment (including but not limited to airborne refueling equipment) specifically designed or modified for use with the aircraft, [spacecraft] and engines of the types in paragraphs (a), (b), [and (h)] of this category.

(d) Launching and recovery equipment for the articles in paragraph (a) [and (i)] of this category, if the equipment is specifically designed or modified for military use [or for use with spacecraft]. Fixed land-based arresting gear is not included in this category.

*(e) Inertial navigation systems, aided or hybrid inertial navigation systems, Inertial Measurement Units (IMUs), and Attitude and Heading Reference Systems (AHRS) specifically designed, modified, or configured for military use and all specifically designed components, parts and accessories. For other inertial reference systems and related components refer to Category XII(d).

*(f) Developmental aircraft and components thereof which have a significant military applicability, excluding such aircraft and components that have been certified by the Federal Aviation Administration and determined through the commodity jurisdiction procedure specified in § 120.4 of this subchapter, to be subject to the export control jurisdiction of the Department of Commerce for purposes of section 17(c) of the Export Administration Act, as amended.

*(g) Ground effect machines (GEMS) specifically designed or modified for military use, including but not limited to surface effect machines and other air cushion vehicles, and all components, parts, and accessories, attachments, and associated equipment specifically designed or modified for use with such machines.

[(h) * Spacecraft, including manned and unmanned, active and passive satellites (except those listed in Category XV).

[(i) Power supplies and energy sources specially designed or modified for spacecraft in paragraph (h).]

(j) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for the articles in paragraphs (a) through (i) of this category, excluding aircraft tires and propellors used with reciprocating engines.

(k) Technical Data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (j) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

[(l) Non-military aircraft inertial navigation systems, except those systems or components that are standard equipment in civil aircraft, including spare parts and spare units to be used exclusively for the maintenance of inertial navigation equipment incorporated in civil aircraft and that are certified by the Federal Aviation Administration (FAA) as being an integral part of such aircraft.]

[(m) Technical data for the design, development, production or manufacture of

inertial navigation equipment or its related parts, components or subsystems which are standard equipment in civil aircraft and which are certified by the Federal Aviation Administration as being an integral part of such aircraft. FAA certified inertial navigation systems and all other technical data associated with such systems is under the licensing jurisdiction of the Department of Commerce.]

Category IX—Military Training Equipment

(a) Military training equipment including but not limited to attack trainers, radar target trainers, radar target generators, gunnery training devices, antisubmarine warfare trainers, target equipment, armament training units, operational flight trainers, air combat training systems, radar trainers, navigation trainers, and simulation devices related to defense articles.

(b) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraph (a) of this category.

(c) Technical Data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) and (b) of this category. (See § 125.4 for exemptions.).

Category X—Protective Personnel Equipment

(a) Body armor specifically designed, modified or equipped for military use; articles, including but not limited to clothing, designed, modified or equipped to protect against or reduce detection by radar, infrared (IR) or other sensors; military helmets equipped with communications hardware, optical sights, slewing devices or mechanisms to protect against thermal flash or lasers, excluding standard military helmets.

(b) Partial pressure suits and liquid oxygen converters used in aircraft in Category VIII(a).

(c) Protective apparel and equipment specifically designed or modified for use with the articles in paragraphs (a) through (d) in Category XIV.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for use with the articles in paragraphs (a), (b), and (c) of this category.

(e) Technical Data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (d) of this category. (See § 125.4 of this subchapter for exemptions.)

Category XI—Military [and Space] Electronics

(a) Electronic equipment not included in Category XII of the U.S. Munitions List which is specifically designed, modified or configured for military application. This equipment includes but is not limited to:

*(1) Underwater sound equipment to include active and passive detection, identification, tracking, and weapons control equipment.

*(2) Underwater acoustic active and passive countermeasures and counter-countermeasures.

(3) Radar systems, with capabilities such as:

*(i) Search,

*(ii) Acquisition,

*(iii) Tracking,

*(iv) Moving target indication,

*(v) Imaging radar systems,

(vi) Any ground air traffic control radar which is specifically designed or modified for military application.

*(4) Electronic combat equipment, such as:

(i) Active and passive countermeasures,

(ii) Active and passive counter-countermeasures, and

(iii) Radios (including transceivers) specifically designed or modified to interfere with other communication devices or transmissions.

*(5) Command, control and communications systems to include radios (transceivers), navigation, and identification equipment.

(6) Computers specifically designed or developed for military application and any computer specifically modified for use with any defense article in any category of the U.S. Munitions List.

(7) Any experimental or developmental electronic equipment specifically designed or modified for military application or specifically designed or modified for use with a military system.

*(b) Electronic systems or equipment specifically designed, modified, or configured for intelligence, security, or military purposes for use in search, reconnaissance, collection, monitoring, direction-finding, display, analysis and production of information from the electromagnetic spectrum and electronic systems or equipment designed or modified to counteract electronic surveillance or monitoring. A system meeting this definition is controlled under this subchapter even in instances where any individual pieces of equipment constituting the system may be subject to the controls of another U.S. Government agency. Such systems or equipment described above include, but are not limited to, those:

(1) Designed or modified to use cryptographic techniques to generate the spreading code for spread spectrum or hopping code for frequency agility. This does not include fixed code techniques for spread spectrum.

(2) Designed or modified using burst techniques (e.g., time compression techniques) for intelligence, security or military purposes.

(3) Designed or modified for the purpose of information security to suppress the compromising emanations of information-bearing signals. This covers TEMPEST suppression technology and equipment meeting or designed to meet government TEMPEST standards. This definition is not intended to include equipment designed to meet Federal Communications Commission (FCC) commercial electro-magnetic interference standards or equipment designed for health and safety.

[(c) Space electronics:

*(1) Electronic equipment specifically designed or modified for spacecraft and spaceflight, and

(2) Electronic equipment specifically designed or modified for use with non-military communications satellites.

(3) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for use with the equipment in subparagraphs (1) and (2).]

(d) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for use with the equipment in paragraphs (a) and (b) of this category, except for such items as are in normal commercial use.

(e) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (d) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

Category XII—Fire Control, Range Finder, Optical and Guidance and Control Equipment

*(a) Fire control systems; gun and missile tracking and guidance systems; gun range, position, height finders, spotting instruments and laying equipment; aiming devices (electronic, optic, and acoustic); bomb sights, bombing computers, military television sighting and viewing units, and periscopes for the articles of this section.

*(b) Lasers specifically designed, modified or configured for military application including those used in military communication devices, target designators and range finders, target detection systems, and directed energy weapons.

*(c) Infrared focal plane array detectors specifically designed, modified or configured for military use; image intensification and other night sighting equipment or systems specifically designed, modified, or configured for military use; second generation and above military image intensification tubes (defined below) specifically designed, developed, modified, or configured for military use, and, infrared, visible, and ultraviolet devices specifically designed, developed, modified, or configured for military application.

Note: *Special Definition.* For purposes of this subparagraph, *second and third generation image intensifier tubes* are defined as having:

A peak response within the 0.4 to 1.05 micron wavelength range and incorporating a microchannel plate for electron image amplification having a hole pitch (center-to-center spacing) of less than 25 microns, and having either:

(a) An S–20, S–25 or multialkali photocathode; or

(b) A semiconductor photocathode;

*(d) Inertial platforms and sensors for weapons or weapon systems; guidance, control and stabilization systems except for those systems covered in category VIII; astro-compasses and star trackers and military and [non-military] accelerometers and gyros. For

aircraft inertial reference systems and related components refer to Category VIII.

[(e) Non-military second generation and above image intensification tubes, non-military infrared focal plane arrays, and image intensification tubes identified in paragraph (c) of this section when a part of a commercial system (i.e. those systems originally designed for commercial use). This does not include military systems comprised of non-military specification components.]

(f) Components, parts, accessories, attachments and associated equipment specifically designed or modified for the articles in paragraphs (a), (b), (c) and (d) of this category, except for such items as are in normal commercial use.

(g) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8) directly related to the defense articles enumerated in paragraphs (a) through (f) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to manufacture and production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

Category XIII—Auxiliary Military Equipment

(a) Cameras [including space cameras] and specialized processing equipment therefor, photointerpretation, stereoscopic plotting, and photogrammetry equipment which are specifically designed or modified for military purposes, and components specifically designed or modified therefor;

(b) Information Security Systems and equipment, cryptographic devices, software, and components specifically designed or modified therefor, including:

(1) Cryptographic (including key management) systems, equipment, assemblies, modules, integrated circuits, components or software with the capability of maintaining secrecy or confidentiality of information or information systems, except cryptographic equipment and software as follows:

(i) Restricted to decryption functions specifically designed to allow the execution of copy protected software, provided the decryption functions are not user-accessible.

(ii) Specially designed, developed or modified for use in machines for banking or money transactions, and restricted to use only in such transactions. Machines for banking or money transactions include automatic teller machines, self-service statement printers, point of sale terminals or equipment for the encryption of interbanking transactions.

(iii) Employing only analog techniques to provide the cryptographic processing that ensures information security in the following applications:

(A) Fixed (defined below) band scrambling not exceeding 8 bands and in which the transpositions change not more frequently than once every second;

(B) Fixed (defined below) band scrambling exceeding 8 bands and in which the transpositions change not more frequently than once every ten seconds;

(C) Fixed (defined below) frequency inversion and in which the transpositions change not more frequently than once every second;

(D) Facsimile equipment;

(E) Restricted audience broadcast equipment;

(F) Civil television equipment.

Note: *Special Definition.* For purposes of this subparagraph, *fixed* means that the coding or compression algorithm cannot accept externally supplied parameters (e.g., cryptographic or key variables) and cannot be modified by the user.

(iv) Personalized smart cards using cryptography restricted for use only in equipment or systems exempted from the controls of the USML.

(v) Limited to access control, such as automatic teller machines, self-service statement printers or point of sale terminals, which protects password or personal identification numbers (PIN) or similar data to prevent unauthorized access to facilities but does not allow for encryption of files or text, except as directly related to the password of PIN protection.

(vi) Limited to data authentication which calculates a Message Authentication Code (MAC) or similar result to ensure no alteration of text has taken place, or to authenticate users, but does not allow for encryption of data, text or other media other than that needed for the authentication.

(vii) Restricted to fixed data compression or coding techniques.

(viii) Limited to receiving for radio broadcast, pay television or similar restricted audience television of the consumer type, without digital encryption and where digital decryption is limited to the video, audio or management functions.

(ix) Software designed or modified to protect against malicious computer damage, (e.g., viruses).

Note: A procedure has been established to facilitate the expeditious transfer to the Commodity Control List of mass market software products with encryption that meet specified criteria regarding encryption for the privacy of data and the associated key management. Requests to transfer commodity jurisdiction of mass market software products designed to meet the specified criteria may be submitted in accordance with the commodity jurisdiction provisions of § 120.4. Questions regarding the specified criteria or the commodity jurisdiction process should be addressed to the Office of Defense Trade Controls. All mass market software products with cryptography that were previously granted transfers of commodity jurisdiction will remain under Department of Commerce control. Mass market software governed by this note is software that is generally available to the public by being sold from stock at retail selling points, without restriction, by means of over the counter transactions, mail order transactions, or telephone call transactions; and designed for installation by the user without further substantial support by the supplier.

(2) Cryptographic (including key management) systems, equipment, assemblies, modules, integrated circuits, components or software which have the capability of generating spreading or hopping codes for spread spectrum systems or equipment.

(3) Cryptanalytic systems, equipment, assemblies, modules, integrated circuits, components or software.

(4) Systems, equipment, assemblies, modules, integrated circuits, components or software providing certified or certifiable multi-level security or user isolation exceeding class B2 of the Trusted Computer System Evaluation Criteria (TCSEC) and software to certify such systems, equipment or software.

(5) Ancillary equipment specifically designed or modified for paragraphs (b) (1), (2), (3), (4) and (5) of this category;

(c) Self-contained diving and underwater breathing apparatus as follows:

(1) Closed and semi-closed circuits (rebreathing) apparatus;

(2) Specially designed components for use in the conversion of open-circuit apparatus to military use; and

(3) Articles exclusively designed for military use with self-contained diving and underwater swimming apparatus.

(d) Carbon/carbon billets and preforms which are reinforced with continuous unidirectional tows, tapes, or woven cloths in three or more dimensional planes (i.e. 3D, 4D, etc.). This is exclusive of carbon/carbon billets and preforms where reinforcement in the third dimension is limited to interlocking of adjacent layers only, and carbon/carbon 3D, 4D, etc. end items which have not been specifically designed or modified for defense articles (e.g., brakes for commercial aircraft or high speed trains). Armor (e.g., organic, ceramic, metallic), and reactive armor which has been specifically designed or modified for defense articles. Structural materials including carbon/carbon and metal matrix composites, plate, forgings, castings, welding consumables and rolled and extruded shapes which have been specifically designed or modified for defense articles.

(e) Concealment and deception equipment, including but not limited to special paints, decoys, and simulators and components, parts and accessories specifically designed or modified therefor.

(f) Energy conversion devices for producing electrical energy from nuclear, thermal, or solar energy, or from chemical reaction which are specifically designed or modified for military application.

(g) Chemiluminescent compounds and solid state devices specifically designed or modified for military application.

(h) Devices embodying particle beam and electromagnetic pulse technology and associated components and subassemblies (e.g., ion beam current injectors, particle accelerators for neutral or charged particles, beam handling and projection equipment, beam steering, fire control, and pointing equipment, test and diagnostic instruments, and targets) which are specifically designed or modified for directed energy weapon applications.

(i) Metal embrittling agents.

*(j) Hardware and equipment, which has been specifically designed or modified for military applications, that is associated with

the measurement or modification of system signatures for detection of defense articles. This includes but is not limited to signature measurement equipment; prediction techniques and codes; signature materials and treatments; and signature control design methodology.

(k) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) related to the defense articles listed in this category. (See § 125.4 of this subchapter for exemptions; see also § 123.21 of this subchapter). Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

Category XIV—Toxicological Agents and Equipment and Radiological Equipment

*(a) Chemical agents, including but not limited to lung irritants, vesicants, lachrymators, tear gases (except tear gas formulations containing 1% or less CN or CS), sternutators and irritant smoke, and nerve gases and incapacitating agents. (See § 121.7.)

*(b) Biological agents.

*(c) Equipment for dissemination, detection, and identification of, and defense against, the articles in paragraphs (a) and (b) of this category.

*(d) Nuclear radiation detection and measuring devices, manufactured to military specification.

(e) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (c) and (d) of this category.

(f) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) related to the defense articles enumerated in paragraphs (a) through (e) of this category. (See § 125.4 of this subchapter for exemptions; see also § 123.21 of this subchapter). Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

Category XV—Spacecraft Systems and Associated Equipment

*(a) Spacecraft and associated hardware, including ground support equipment, specifically designed or modified for military use.

(b)(1) [Reserved]

(2) Communications satellites (excluding ground stations and their associated equipment and technical data not enumerated elsewhere in § 121.1 of this subchapter; for controls on such ground stations, see the Commerce Control List) with any of the following characteristics:

(i) Anti-jam capability. Antennas and/or antenna systems with ability to respond to incoming interference by adaptively reducing antenna gain in the direction of the interference.

(ii) Antennas:

(A). With aperture (overall dimension of the radiating portions of the antenna) greater than 30 feet; or

(B). With sidelobes less than or equal to −35dB; or

(C). Designed, modified, or configured to provide coverage area on the surface of the earth less than 200 nm in diameter, where "coverage area" is defined as that area on the surface of the earth that is illuminated by the main beam width of the antenna (which is the angular distance between half power points of the beam).

(iii) Designed, modified or configured for intersatellite data relay links that do not involve a ground relay terminal ("cross-links").

(iv) Spaceborne baseband processing equipment that uses any technique other than frequency translation which can be changed several times a day on a channel by channel basis among previously assigned fixed frequencies.

(v) Employing any of the cryptographic items controlled under Category XIII (b) of this subchapter.

(vi) Employing radiation-hardened devices controlled elsewhere in § 121.1 that are not "embedded in the satellite in such a way as to deny physical access. (Here "embedded" means that the device either cannot feasibly be removed from the satellite or be used for other purposes.)

(vii) Having propulsion systems which permit acceleration of the satellite on-orbit (i.e., after mission orbit injection) at rates greater than 0.1g.

(viii) Having attitude control and determination systems designed to provide spacecraft pointing determination and control better than 0.02 degrees azimuth and elevation.

(ix) Having orbit transfer engines ("kick-motors") which remain permanently with the spacecraft and are capable of being restarted after achievement of mission orbit and providing acceleration greater than 1g. (Orbit transfer engines which are not designed, built, and shipped as an integral part of the satellite are controlled under Category IV of this subchapter.)

(c) Global Positioning System (GPS) receiving equipment specifically designed, modified or configured for military use; or GPS receiving equipment with any of the following characteristics:

(1) Designed for encryption or decryption (e.g., Y-Code) of GPS precise positioning service (PPS) signals;

(2) Designed for producing navigation results above 60,000 feet altitude and at 1,000 knots velocity or greater;

(3) Specifically designed or modified for use with a null steering antenna or including a null steering antenna designed to reduce or avoid jamming signals;

(4) Designed or modified for use with unmanned air vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km.

Note: GPS receivers designed or modified for use with military unmanned air vehicle systems with less capability are considered to be specifically designed, modified or configured for military use and therefore covered under this subparagraph.

Any GPS equipment not meeting this definition is subject to the jurisdiction of the Department of Commerce (DOC). Manufacturers or exporters of equipment under DOC jurisdiction are advised that the U.S. Government does not assure the availability of the GPS P-Code for civil navigation. It is the policy of the Department of Defense (DOD) that GPS receivers using P-Code without clarification as to whether or not those receivers were designed or modified to use Y-Code will be presumed to be Y-Code capable and covered under this subparagraph. The DOD policy further requires that a notice be attached to all P-Code receivers presented for export. The notice must state the following: "ADVISORY NOTICE: This receiver uses the GPS P-Code signal, which by U.S. policy, may be switched off without notice."

(d) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed, modified or configured for the articles in paragraphs (a) through (c) of this category, as well as for any satellites under the export licensing jurisdiction of the Department of Commerce, except as noted below.

Explanatory Note

This language is not intended to preclude a license application of a complete satellite that is under the jurisdiction of the Department of Commerce from including in that license application any directly associated components, parts, accessories, attachments and associated equipment (including ground support equipment) unless such items are specifically identified for control in paragraph (a) or (b) of this category or any other category of § 121.1 of this subchapter. It is understood that spares, replacement parts, ground support and test equipment, payload adapter/interface hardware, etc. are typically provided as part of a satellite launch campaign; however, such items are only exempt from USML licensing when their intended use is directly related to supporting the Commerce-licensed satellite launch campaign. Once the satellite has been successfully launched, it is understood that such items remaining unlaunched will be returned to the United States.

(e) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (d) of this category. (See § 125.4 of this subchapter for exceptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME. In addition, detailed design, development, production or manufacturing data for all spacecraft systems and specifically designed or modified components thereof, regardless of which U.S. Government agency has jurisdiction for export of the hardware. (See § 125.4 of this subchapter for exceptions.) This restriction does not include that level of technical data (including marketing data) necessary and reasonable for a purchaser to have assurance

that a U.S.-built item intended to operate in space has been designed, manufactured and tested in conformance with specified contract requirements (e.g., operational performance, reliability, lifetime, product quality, or delivery expectations) and data necessary to evaluate in-orbit anomalies and to operate and maintain associated ground equipment.

Category XVI—Nuclear Weapons Design and Test Equipment

*(a) Any article, material, equipment, or device which is specifically designed or modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices. (See § 123.21 of this subchapter and Department of Commerce Export Regulations, 15 CFR part 778).

*(b) Any article, material, equipment, or device which is specifically designed or modified for use in the devising, carrying out, or evaluating of nuclear weapons tests or any other nuclear explosions, except such items as are in normal commercial use for other purposes.

(c) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (b) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

Category XVII—Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated

*(a) All articles, technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) relating thereto which are classified in the interests of national security and which are not otherwise enumerated in the U.S. Munitions List.

Category XVIII—[Reserved]

Category XIX—[Reserved]

Category XX—Submersible Vessels, Oceanographic and Associated Equipment

*(a) Submersible vessels, manned or unmanned, tethered or untethered, designed or modified for military purposes, or powered by nuclear propulsion plants.

*(b) Swimmer delivery vehicles designed or modified for military purposes.

(c) Equipment, components, parts, accessories, and attachments specifically designed or modified for any of the articles in paragraphs (a) and (b) of this category.

(d) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (c) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

Category XXI—Miscellaneous Articles

(a) Any article not specifically enumerated in the other categories of the U.S. Munitions List which has substantial military applicability and which has been specifically designed or modified for military purposes. The decision on whether any article may be included in this category shall be made by the Director of the Office of Defense Trade Controls.

(b) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) of this category.

§ 121.2 Interpretations of the U.S. Munitions List and the Missile Technology Control Regime Annex.

The following interpretations (listed alphabetically) explain and amplify the terms used in § 121.1. These interpretations have the same force as if they were a part of the U.S. Munitions List (USML) category to which they refer. In addition, all the items listed in § 121.16 shall constitute all items on the United States Munitions List which are Missile Technology Control Regime Annex items in accordance with section 71(a) of the Arms Export Control Act.

§ 121.3 Aircraft and related articles.

In Category VIII, "aircraft" means aircraft designed, modified, or equipped for a military purpose, including aircraft described as "demilitarized." All aircraft bearing an original military designation are included in Category VIII. However, the following aircraft are not included so long as they have not been specifically equipped, re-equipped, or modified for military operations:

(a) Cargo aircraft bearing "C" designations and numbered C–45 through C–118 inclusive, C–121 through C–125 inclusive, and C–131, using reciprocating engines only.

(b) Trainer aircraft bearing "T" designations and using reciprocating engines or turboprop engines with less than 600 horsepower (s.h.p.)

(c) Utility aircraft bearing "U" designations and using reciprocating engines only.

(d) All liaison aircraft bearing an "L" designation.

(e) All observation aircraft bearing "O" designations and using reciprocating engines.

§ 121.4 Amphibious vehicles.

An *amphibious vehicle* in Category VII(f) is an automotive vehicle or chassis which embodies all-wheel drive, is equipped to meet special military requirements, and which has sealed electrical systems or adaptation features for deep water fording.

§ 121.5 Apparatus and devices under Category IV(c).

Category IV includes but is not limited to the following: Fuzes and components specifically designed, modified or configured for items listed in that category, bomb racks and shackles, bomb shackle release units, bomb ejectors, torpedo tubes, torpedo and guided missile boosters, guidance systems equipment and parts, launching racks and projectors, pistols (exploders), ignitors, fuze arming devices, intervalometers, thermal batteries, hardened missile launching facilities, guided missile launchers and specialized handling equipment, including transporters, cranes and lifts designed to handle articles in paragraphs (a) and (b) of this category for preparation and launch from fixed and mobile sites. The equipment in this category includes robots, robot controllers and robot end-effectors specially designed or modified for military applications.

§ 121.6 Cartridge and shell casings.

Cartridge and shell casings are included in Category III unless, prior to export, they have been rendered useless beyond the possibility of restoration for use as a cartridge or shell casing by means of heating, flame treatment, mangling, crushing, cutting, or popping.

§ 121.7 Chemical agents.

A *chemical agent* in Category XIV(a) is a substance having military application which by its ordinary and direct chemical action produces a powerful physiological effect. The term "chemical agent" includes, but is not limited to, the following chemical compounds:

(a) Lung irritants:

(1) Diphenylcyanoarsine (DC).

(2) Fluorine (but not fluorene).

(3) Trichloronitro methane (chloropicrin PS).

(b) Vesicants:

(1) B-Chlorovinyldichloroarsine (Lewisite, L).

(2) Bis(dichloroethyl)sulphide (Mustard Gas, HD or H).

(3) Ethyldichloroarsine (ED).

(4) Methyldichloroarsine (MD).

(c) Lachrymators and tear gases:

(1) A-Bromobenzyl cyanide (BBC).

(2) Chloroacetophenone (CN).

(3) Dibromodimethyl ether.

(4) Dichlorodimethyl ether (ClCi).

(5) Ethyldibromoarsine.

(6) Phenylcarbylamine chloride.

(7) Tear gas solutions (CNB and CNS).

(8) Tear gas orthochlorobenzalmalononitrile (CS).

(d) Sternutators and irritant smokes:

(1) Diphenylamine chloroarsine (Adamsite, DM).

(2) Diphenylchloroarsine (BA).
(3) Liquid pepper.
(e) Nerve agents, gases and aerosols. These are toxic compounds which affect the nervous system, such as:
(1) Dimethylaminoethoxycyanophosphine oxide (GA).
(2) Methylisopropoxyfluorophosphine oxide (GB).
(3) Methylpinacolyloxyfluoriphosphine oxide (GD).
(f) Antiplant chemicals, such as: Butyl 2-chloro-4-fluorophenoxyacetate (LNF).

§ 121.8 End-items, components, accessories, attachments parts, firmware, software and systems.

(a) An *end-item* is an assembled article ready for its intended use. Only ammunition, fuel or another energy source is required to place it in an operating state.

(b) A *component* is an item which is useful only when used in conjunction with an end-item. A major component includes any assembled element which forms a portion of an end-item without which the end-item is inoperable. (**Example:** Airframes, tail sections, transmissions, tank treads, hulls, etc.) A minor component includes any assembled element of a major component.

(c) *Accessories* and *attachments* are associated equipment for any component, end-item or system, and which are not necessary for their operation, but which enhance their usefulness or effectiveness. (**Examples:** Military riflescopes, special paints, etc.)

(d) A *part* is any single unassembled element of a major or a minor component, accessory, or attachment which is not normally subject to disassembly without the destruction or the impairment of design use. (**Examples:** Rivets, wire, bolts, etc.)

(e) Firmware and any related unique support tools (such as computers, linkers, editors, test case generators, diagnostic checkers, library of functions and system test diagnostics) specifically designed for equipment or systems covered under any category of the U.S. Munitions List are considered as part of the end-item or component. *Firmware* includes but is not limited to circuits into which software has been programmed.

(f) *Software* includes but is not limited to the system functional design, logic flow, algorithms, application programs, operating systems and support software for design, implementation, test, operation, diagnosis and repair. A person who intends to export software only should, unless it is specifically enumerated in § 121.1 (e.g., XIII(b)), apply for a technical data license pursuant to part 125 of this subchapter.

(g) A *system* is a combination of end-items, components, parts, accessories, attachments, firmware or software, specifically designed, modified or adapted to operate together to perform a specialized military function.

§ 121.9 Firearms.

(a) Category I includes revolvers, pistols, rifles, carbines, fully automatic rifles, submachine guns, machine pistols and machine guns to caliber .50, inclusive. It includes combat shotguns. It excludes other shotguns with barrels 18" or longer, BB, pellet, and muzzle loading (black powder) firearms.

(b) A *firearm* is a weapon not over .50 caliber which is designed to expel a projectile by the action of an explosive or which may be readily converted to do so.

(c) A *rifle* is a shoulder firearm which can discharge a bullet through a rifled barrel 16 inches or longer.

(d) A *carbine* is a lightweight shoulder firearm with a barrel under 16 inches in length.

(e) A *pistol* is a hand-operated firearm having a chamber integral with or permanently aligned with the bore.

(f) A *revolver* is a hand-operated firearm with a revolving cylinder containing chambers for individual cartridges.

(g) A *submachine gun*, "machine pistol" or "machine gun" is a firearm originally designed to fire, or capable of being fired, fully automatically by a single pull of the trigger.

§ 121.10 Forgings, castings and machined bodies.

Articles on the U.S. Munitions List include articles in a partially completed state (such as forgings, castings, extrusions and machined bodies) which have reached a stage in manufacture where they are clearly identifiable as defense articles. If the end-item is an article on the U.S. Munitions List (including components, accessories, attachments and parts as defined in § 121.8), then the particular forging, casting, extrusion, machined body, etc., is considered a defense article subject to the controls of this subchapter, except for such items as are in normal commercial use.

§ 121.11 Military demolition blocks and blasting caps.

Military demolition blocks and blasting caps referred to in Category IV(a) do not include the following articles:

(a) Electric squibs.
(b) No. 6 and No. 8 blasting caps, including electric ones.
(c) Delay electric blasting caps (including No. 6 and No. 8 millisecond ones).
(d) Seismograph electric blasting caps (including SSS, Static-Master, Vibrocap SR, and SEISMO SR).
(e) Oil well perforating devices.

§ 121.12 Military explosives.

(a) Military Explosives in Category V are military explosives or energetic materials consisting of high explosives, propellants or low explosives, pyrotechnics and high energy solid or liquid fuels, including aircraft fuels specially formulated for military purposes. Military explosives are solid, liquid or gaseous substances or mixtures of substances which, in their application as primary, booster or main charges in warheads, demolition and other military applications, are required to detonate. Military explosives, military propellants and military pyrotechnics in Category V include substances or mixtures containing any of the following:

(1) Spherical aluminium powder of particle size 60 micrometres or less manufactured from material with an aluminum content of 99% or more;

(2) Metal fuels in particle sizes less than 60 micrometres whether spherical, atomized, spheroidal, flaked or ground, consisting of 99% or more of any of the following: Zirconium, boron, magnesium and alloys of these; beryllium; fine iron powder with average particle size of 3 micrometres or less produced by reduction of iron oxide with hydrogen;

(3) Any of the foregoing metals or alloys listed in (a) (1) and (2) of this section, whether or not encapsulated in aluminum, magnesium, zirconium or beryllium;

(4) Perchlorates, chlorates and chromates composited with powdered metal or other high energy fuel components;

(5) Nitroglycerin;

(6) Trinitrophenylmenthylnitramine (TETRYL);

(7) Trinitrotoluene (TNT);

(8) Nitroguanidine (NQ);

(9) With the exception of chlorinetrifluoride, compounds composed of fluorine and one or more of the following: other halogens, oxygen, nitrogen;

(10) Carboranes; decaborane; pentaborane and derivatives;

(11) Cyclotetramethylenetetranitramine (HMX); octahydro-1, 3,5,7-tetranitro-1,3,5,7-tetrazine; 1,3,5,7-tetranitro-

1,3,5,7-tetraza-cyclooctane; (octogen, octogene);

(12) Hexanitrostilbene (HNS);

(13) Diaminotrinitrobenzene (DATB);

(14) Triaminotrinitrobenzene (TATB);

(15) Triaminoguanidinenitrate (TAGN);

(16) Titanium subhydride of stiochiometry $TiH_{0.65-1.68}$;

(17) Dinitroglycoluril (DNGU, DINGU); tetranitroglycoluril TNGU, SORGUYL);

(18) Tetranitrobenzotriazolobenzotriazole (TACOT);

(19) Diaminohexanitrobiphenyl (DIPAM);

(20) Picrylaminodinitropyridine (PYX);

(21) 3-nitro-1,2,4-triazol-5-one (NTO or ONTA);

(22) Hydrazine in concentrations of 70% or more; hydrazine nitrate; hydrazine perchlorates; unsymmetrical dimethyl hydrazine; monomethyl hydrazine; symmetrical dimethyl hydrazine;

(23) Ammonium perchlorate;

(24) 2-(5-cyanotetrazolato) penta amminecobalt (III) perchlorate (CP);

(25) cis-bis (5-nitrotetrazolato) penta amminecobalt (III) perchlorate (or BNCP);

(26) 7-amino 4,6-dinitrobenzofurazane-1-oxide (ADNBF); amino dinitrobenzofuroxan;

(27) 5,7-diamino-4,6-dinitrobenzofurazane-1-oxide, (CL–14 or diaminodinitrobenzofuroxan);

(28) 2,4,6-trinitro-2,4,6-triaza-cyclohexanone (K–6 or keto-RDX);

(29) 2,4,6,8-tetranitro-2,4,6,8-tetraaza-bicyclo (3,3,0)-octanone-3(tetranitrosemiglycoluril, K–55, or keto-bicyclic HMX);

(30) 1,1,3-trinitroazetidine (TNAZ);

(31) 1,4,5,8-tetranitro-1,4,5,8-tetraazadecalin (TNAD);

(32) Hexanitrohexaazaisowurtzitane (CL–20 or HNIW; and clathrates of CL–20);

(33) Polynitrocubane with more than four nitro groups;

(34) Ammonium dinitramide (ADN or SR–12);

(35) Cyclotrimethylentrinitramine (RDX); cyclonite; T4; hexahydro-1,3,5-trinitro-1,3,5-triazine; 1,3,5-trinitro-1,3,5-triaza-cyclohexane; hexogen, hexogene;

(36) Hydroxylammonium nitrate (HAN); hydroxylammonium perchlorate (HAP);

(37) Pentaerythritol Tetranitrate (PETN);

(38) Hydroxy terminated Polybutadiene (HTPB) with a hydroxyl functionality of 2.28, a hydroxyl value of less than 0.77 meq/g, and a viscosity at 30 degrees C of less than 47 poise;

(b) "Additives" include the following:

(1) Glycidylazide Polymer (GAP) and its derivatives;

(2) Polycyanodifluoroaminoethyleneoxide (PCDE);

(3) Butanetrioltrinitrate (BTTN);

(4) Bis-2-fluoro-2,2-dinitroethylformal (FEFO);

(5) Catocene, N-butyl-ferrocene and other ferrocene derivatives;

(6) Bis(2, 2-dinitropropyl) formal and acetal;

(7) Energetic monomers, plasticisers and polymers containing nitro, azido, nitrate, nitraza or difluroamino groups;

(8) 1,2,3–Tris [1,2-bis(difluoroamino)ethoxy] propane; Tris vinoxy propane adduct, (TVOPA);

(9) Bisazidomethyloxetane (BAMO) and its polymers;

(10) Nitratomethylmethyloxetane (NMMO) Azidomethylmethyloxetane (AMMO);

(11) Tetraethylenepentamine-acrylonitrile (TEPAN); cyanoethylated polyamine and its salts;

(12) Tetraethylenepentamineacrylonitrileglycidol (TEPANOL); cyanoethylated polyamine adducted with glycidol and its salts;

(13) Polyfunctional aziridine amides with isophthalic, trimesic (BITA or butylene imine trimesamide isoyanuric), or trimethyladipic backbone structures and 2-methyl or 2-ethyl substitutions on the aziridine ring;

(14) Basic copper salicylate; lead salicylate;

(15) Lead beta resorcylate;

(16) Lead stannate, lead maleate, lead citrate;

(17) Tris-1-(2-methyl)aziridinyl phosphine oxide (MAPO) and its derivatives;

(18) Organo-metallic coupling agents, specifically:

(i) Neopentyl (diallyl) oxy, tri [dioctyl] phosphato titanate or titanium IV, 2,2[bis 2-propenolatomethyl, butanolato or tris [dioctyl] phosphato-O], or LICA 12;

(ii) Titanium IV, [(2-propenolato-1)methyl, N-propanolatomethyl] butanolato-1; or tris(dioctyl)pyrophosphato, or KR3538;

(iii) Titanium IV, [(2-propenolato-1)methyl, N-propanolatomethyl] butanolato-1; or tris(dioyctyl) phosphate;

(19) FPF–1 (poly-[2,2,3,3,4,4-hexafluoro pentane-1,5-diolformal]);

(20) FPF–3 (poly-[2,4,4,5,5,6,6-heptafluoro-2- trifluoromethyl-3-oxaheptane-1,7-diolformal]);

(21) Polyglycidylnitrate (PGN);

(22) Lead-copper chelates of beta-resorcylate and/or salicylates;

(23) Triphenyl bismuth (TPB);

(24) bis-2-hydroxyethylglycolamide (BHEGA);

(25) Superfine iron oxide with a specific surface area greater than 250 m^2/g and an average particle size of 0.0003 micrometres or less;

(c) "Precursors" include the following:

(1) 1,2,4-trihydroxybutane (1,2,4-butanetriol);

(2) 1,3,5-trichlorobenzene;

(3) Bischloromethyloxetane (BCMO);

(4) Low (less than 10,000) molecular weight, alcohol-functionalised, poly(ephichlorohydrin); poly(ephichlorhydrindiol); diol and triol;

(5) Propyleneimide, 2-methylaziridine;

(6) 1,3,5,7,-tetraacetyl-1,3,5,7-tetraaza-cyclooctane (TAT);

(7) Dinitroazetidine-t-butyl salt;

(8) Hexabenzylhexaazaisowurtzitane (HBIW);

(9) Tetraacetyldi- benzyl- hexaazaisowurtzitane (TAIW);

(10) 1,4,5,8-tetraazadecaline.

(d) Stabilisers include the following:

(1) N-Methyl-p-nitroaniline;

(2) Protech.

(e) Any substance or mixture meeting the following performance requirements:

(1) Any explosive with a detonation velocity greater than 8,700 m/s or a detonation pressure greater than 340 kilobars;

(2) Other organic high explosives yielding detonation pressures of 250 kilobars or greater that will remain stable at temperatures of 523 K (250 degrees C) or higher for periods of 5 minutes or longer;

(3) Any other UN Class 1.1 solid propellant with a theoretical specific impulse (under standard conditions) greater than 250 seconds for non-metallized, or greater than 270 seconds for aluminized compositions;

(4) Any UN Class 1.3 solid propellant with a theoretical specific impulse greater than 230 seconds for non-halogenized, 250 seconds for non-metallized and 266 seconds for metallized compositions;

(5) Any other explosive, propellant or pyrotechnic that can sustain a steady-state burning rate greater than 38mm (1.5 in) per second under standard conditions of 68.9 bar (1,000 PSI) pressure and 294K (21 degrees C);

(6) Any other gun propellants having a force constant greater than 1,200 kJ/kg;

(7) Elastomer modified cast double based propellants (EMCDB) with extensibility at maximum stress greater than 5% at 233 K or (−40 degrees C).

(f) Liquid oxidizers, as follows:

(1) Enriched nitric acid (inhibited red fuming nitric acid (IRFNA));

(2) Oxyfluoride.

§ 121.13 Military fuel thickeners.

Military fuel thickeners in Category V include compounds (e.g., octal) or mixtures of such compounds (e.g., napalm) specifically formulated for the purpose of producing materials which, when added to petroleum products, provide a gel-type incendiary material for use in bombs, projectiles, flame throwers, or other defense articles.

§ 121.14 Propellants.

Propellants in Category V include, but are not limited to, the following:

(a) Propellant powders, including smokeless shotgun powder.

(b) Hydrazine (including Monomethyl hydrazine and symmetrical dimethyl hydrazine, but excluding hydrazine hydrate).

(c) Unsymmetrical dimethyl hydrazine.

(d) Hydrogen peroxide of over 85 percent concentration.

(e) Nitroguanidine or picrite.

(f) Nitrocellulose with nitrogen content of over 12.20 percent.

(g) Nitrogen tetroxide (nitrogen dioxide, dinitrogen tetroxide).

(h) Other solid propellant compositions, including but not limited to, the following:

(1) Single base (nitrocellulose).

(2) Double base (nitrocellulose, nitroglycerin).

(3) Triple base (nitrocellulose, nitroglycerin, nitroguanidine).

(4) Composite of nitroglycerin, ammonium perchlorate, potassium perchlorate, nitronium perchlorate, guanidine (guanidinium) perchlorate, nitrogen tetroxide, ammonium nitrite or nitrocellulose with plastics, metal fuels, or rubbers added; and compounds composed only of fluorine and halogens, oxygen, or nitrogen.

(5) Special purpose high energy solid military fuels with a chemical base.

(i) Other liquid propellant compositions, including but not limited to, the following:

(1) Monopropellants (hydrazine, hydrazine nitrate, and water).

(2) Bipropellants (hydrazine, fuming nitric acid HNO(3)).

(3) Special purpose chemical base high energy liquid military fuels and oxidizers.

§ 121.15 Vessels of war and special naval equipment.

Vessels of war means vessels, waterborne or submersible, designed, modified, or equipped for military purposes, including vessels described as developmental, "demilitarized" or decommissioned. Vessels of war in Category VI, whether developmental, "demilitarized" and/or decommissioned or not, include, but are not limited to, the following:

(a) Combatant vessels.

(1) Warships (including nuclear-powered versions):

(i) Aircraft carriers.

(ii) Battleships.

(iii) Cruisers.

(iv) Destroyers.

(v) Frigates.

(vi) Submarines.

(2) Other Combatants.

(i) Patrol Combatants (e.g., including but not limited to PHM).

(ii) Amphibious Aircraft/Landing Craft Carriers.

(iii) Amphibious Materiel/Landing Craft Carriers.

(iv) Amphibious Command Ships.

(v) Mine Warfare Ships.

(vi) Coast Guard Cutters (i.e. WHEC's and WMEC's).

(b) Auxiliaries.

(1) Combat Logistics Support.

(i) Underway Replenishment Ships.

(ii) Surface Vessel and Submarine Tender/Repair Ships.

(2) Support Ships.

(i) Submarine Rescue Ships.

(ii) Other Auxiliaries (e.g., including but not limited to: AGDS, AGF, AGM, AGOR, AGOS, AGS, AH, AP, ARC, ARL, AVB, AVM, AVT).

(c) Combatant Craft.

(1) Patrol Craft.

(i) Coastal Patrol Combatants.

(ii) River, Roadstead Craft (including swimmer delivery craft).

(iii) Coast Guard Patrol Craft.

(2) Amphibious Warfare Craft.

(i) Landing Craft (e.g., including but not limited to: LCAC, LCM, LCPL, LCU, LWT, SLWT).

(ii) Special Warfare Craft (e.g., including but not limited to: LSSC, MSSC, SDV, SWCL, SWCM).

(3) Mine Warfare Craft.

(i) Mine Countermeasures Craft (e.g., including but not limited to: MCT, MSB).

(d) Support and Service Vessels.

(1) Miscellaneous (e.g., including but not limited to: APL, DSRV, DSV, IX, WIX, NR, YFRT, YHLC, YP, YR, YRB, YRDH, YRDM, YRR, YSD).

§ 121.16 Missile Technology Control Regime Annex.

Some of the items on the Missile Technology Control Regime Annex are controlled by both the Department of Commerce on the Commodity Control List and by the Department of State on the United States Munitions List. To the extent an article is on the United States Munitions List, a reference appears in parentheses listing the U.S. Munitions List category in which it appears. The following items constitute all items on the Missile Technology Control Regime Annex which are covered by the U.S. Munitions List:

Item 1—Category I

Complete rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets (see § 121.1, Cat. IV(a) and (b)) and unmanned air vehicle systems (including cruise missile systems see § 121.1, Cat. VIII (a), target drones and reconnaisance drones (see § 121.1, Cat. VIII (a)) capable of delivering at least a 500 kg payload to a range of at least 300 km.

Item 2—Cateogry I

Complete subsystems usable in the systems in Item 1 as follows:

(a) Individual rocket stages (see § 121.1, Cat. IV(h));

(b) Reentry vehicles (see § 121.1, Cat. IV(g)), and equipment designed or modified therefor, as follows, except as provided in Note (1) below for those designed for non-weapon payloads;

(1) Heat shields and components thereof fabricated of ceramic or ablative materials (see § 121.1, Cat. IV(f));

(2) Heat sinks and components thereof fabricated of light-weight, high heat capacity materials;

(3) Electronic equipment specially designed for reentry vehicles (see § 121.1, Cat. XI(a)(7));

(c) Solid or liquid propellant rocket engines, having a total impulse capacity of 1.1 x 10 N-sec (2.5 x 10 lb-sec) or greater (see § 121.1, Cat. IV, (h)).

(d) "Guidance sets" capable of achieving system accuracy of 3.33 percent or less of the range (e.g., a CEP of 1 j,. or less at a range of 300 km), except as provided in Note (1) below for those designed for missiles with a range under 300 km or manned aircraft (see § 121.1, Cat. XII(d));

(e) Thrust vector control sub-systems, except as provided in Note (1) below for those designed for rocket systems that do not exceed the range/payload capability of Item 1 (see § 121.1, Cat. IV);

(f) Warhead safing, arming, fuzing, and firing mechanisms, except as provided in Note (1) below for those designed for systems other than those in Item 1 (see § 121.1, Cat. IV(h)).

Notes to Item 2

(1) The exceptions in (b), (d), (e), and (f) above may be treated as Category II if the subsystem is exported subject to end use statements and quantity limits appropriate for the excepted end use stated above.

(2) CEP (circle of equal probability) is a measure of accuracy, and defined as the radius of the circle centered at the target, at a specific range, in which 50 percent of the payloads impact.

(3) A "guidance set" integrates the process of measuring and computing a vehicle's position and velocity (i.e. navigation) with that of computing and sending commands to the vehicle's flight control systems to correct the trajectory.

(4) Examples of methods of achieving thrust vector control which are covered by (e) include:

(i) Flexible nozzle;

(ii) Fluid or secondary gas injection;

(iii) Movable engine or nozzle;

(iv) Deflection of exhaust gas stream (jet vanes or probes); or

(v) Use of thrust tabs.

Item 3—Category II

Propulsion components and equipment usable in the systems in Item 1, as follows:

(a) Lightweight turbojet and turbofan engines (including) turbocompound engines) that are small and fuel efficient (see § 121.1, both Cat. IV(h) and VIII(b));

(b) Ramjet/Scramjet/pulse jet/combined cycle engines, including devices to regulate combustion, and specially designed components therefor (see § 121.1, both Cat. IV(h) and Cat. VIII(b));

(c) Rocket motor cases, "interior lining", "insulation" and nozzles therefor (see § 121.1, Cat. IV(h) and Cat. V(c));

(d) Staging mechanisms, separation mechanisms, and interstages therefor (see § 121.1, Cat. IV(c) and (h));

(e) Liquid and slurry propellant (including oxidizers) control systems, and specially designed components therefor, designed or modified to operate in vibration environments of more than 100 g RMS between 20 Hz and,000 Hz (see § 121.1, Cat. IV(c) and (h));

(f) Hybrid rocket motors and specially designed components therefor (see § 121.1, Cat. IV(h)).

Notes to Item 3

(1) Item 3(a) engines may be exported as part of a manned aircraft or in quantities appropriate for replacement parts for manned aircraft.

(2) In Item 3(C), "interior lining" suited for the bond interface between the solid propellant and the case or insulating liner is usually a liquid polymer based dispersion of refractory or insulating materials, e.g., carbon filled HTPB or other polymer with added curing agents to be sprayed or screeded over a case interior (see § 121.1, Cat. V(c)).

(3) In Item 3(c), "insulation" intended to be applied to the components of a rocket motor, i.e., the case, nozzle inlets, case closures, includes cured or semi-cured compounded rubber sheet stock containing an insulating or refractory material. It may also be incorporated as stress relief boots or flaps.

(4) The only servo valves and pumps covered in (e) above, are the following:

(i) Servo valves designed for flow rates of 24 liters per minute or greater, at an absolute pressure of 7,000 kPa (1,000 psi) or greater, that have an actuator response time of less than 100 msec;

(ii) Pumps, for liquid propellants, with shaft speeds equal to or greater than 8,000 RPM or with discharge pressures equal to or greater than 7,000 kPa (1,000 psi).

(5) Item 3(e) systems and components may be exports as part of a satellite.

Item 4—Category II

Propellants and constituent chemicals for propellants as follows: (see § 121.1, Cat. V(c) and § 121.12 and § 121.14).

(a) Propulsive substances:

(1) Hydrazine with a concentration of more than 70 percent and its derivatives including monomethylhydrazine (MMH) (see § 121.12(a)(22));

(2) Unsymmetric dimethylhydrazine (UDHM) (see § 121.12(a)(22));

(3) Ammonium perchlorate (see § 121.12(a)(23));

(4) Spherical aluminum powder with particle of uniform diameter of less than 500 x 10-m (500 micrometer) and an aluminum content of 97 percent or greater (see § 121.12(a)(1));

(5) Metal fuels in particle sizes less than 500 x 10-m (500 Microns), whether spherical, atomized, spheroidal, flaked or ground, consisting of 97 percent or more of any of the following: zirconium, beryllium, boron, magnesium, zinc, and alloys of these (see § 121.12(a)(2));

(6) Nitro-amines (cyclotetramethylene-tetranitramene (HMX) (see § 121.12(a)(11)), cyclotrimethylene-trinitramine (RDX)) (see 121.12(a)(35));

(7) Perchlorates, chlorates or chromates mixed with powdered metals or other high energy fuel components (see § 121.12(a)(4);

(8) Carboranes, decaboranes, pentaboranes and derivatives thereof (see § 121.12(a)(10);

(9) Liquid oxidizers, as follows:

(i) Nitrogen dioxide/dinitrogen tetroxide (see § 121.14.(g));

(ii) Inhibited Red Fuming Nitric Acid (IRFNA) (see § 121.12(f)(1);

(iii) Compounds composed of flourine and one or more of other halogens, oxygen or nitrogen (see § 121.12(a)(9).

(b) Polymeric substances:

(2) Hydroxy-terminated polybutadiene (HTPB) (see § 121.12(a)(38);

(3) Glycidyl azide polymer (GAP) (see § 121.12(b)(1)).

(c) Other high energy density propellants such as, Boron Slurry, having an energy density of 40 x 10 joules/kg or greater (see § 121.12(a)(3)).

(d) Other propellant additives and agents:

(1) Bonding agents as follows:

(i) tris(1-(2-methyl)aziridinyl phosphine oxide (MAPO) (see § 121.12(b)(17));

(ii) trimesol-1(2-ethyl)aziridine (HX–868, BITA) (see § 121.12(b)(13));

(iii) "Tepanol" (HX–878), reaction product of tetraethylenepentamine, acrylonitrile and glycidol (see § 121.12.(b)(11));

(iv) "Tepan" (HX–879), Reaction product of tet enepentamine and acrylonitrile (see § 121.12(b)(11));

(v) Polyfunctional aziridene amides with isophthalic, trimesic, isocyanuric, or trimethyladipic backbone also having a 2-methyl or 2-ethyl aziridine group (HX–752, HX–872 and HX–877). (see § 121.12(b)(13)).

(2) Curing agents and catalysts as follows:

(i) Triphenyl bismuth (TPB) (see § 121.12(b)(23));

(3) Burning rate modifiers as follows:

(i) Catocene (see § 121.12(b)(5));

(ii) N-butyl-ferrocene (see § 121.12(b)(5));

(iii) Other ferrocene derivatives (see § 121.12(b)).

(4) Nitrate esters and nitrato plasticizers as follows:

(i) 1,2,4-butanetriol trinitrate (BTTN) (see § 121.12(b)(3));

(5) Stabilizers as follows:

(i) N-methyl-p-nitroaniline (see § 121.12(d)(1)).

Item 8—Category II

Structural materials usable in the systems in Item 1, as follows:

(a) Composite structures, laminates, and manufactures thereof, including resin impregnated fibre prepregs and metal coated fibre preforms therefor, specially designed for use in the systems in Item 1 and the subsystems in Item 2 made either with organix matrix or metal matrix utilizing fibrous or filamentary reinforcements having a specific tensile strength greater than 7.62 x 10^4 m (3 x 10^6 inches) and a specific modules greater than 3.18 x 10^6 m (1.25 x 10^8 inches), (see § 121.1, Category IV (f), and Category XIII (d));

(b) Resaturated pyrolized (i.e. carbon-carbon) materials designed for rocket systems, (see § 121.1 Category IV (f));

(c) Fine grain recrystallized bulk graphites (with a bulk density of at least 1.72 g/cc measured at 15 degrees C), pyrolytic, or fibrous reinforced graphites useable for rocket nozzles and reentry vehicle nose tips (see § 121.1, Category IV (f) and Category XIII;

(d) Ceramic composites materials (dielectric constant less than 6 at frequencies from 100 Hz to 10,000 MHz) for use in missile radomes, and bulk machinable silicon-carbide reinforced unfired ceramic useable for nose tips (see § 121.1, Category IV (f));

Item 9—Category II

Instrumentation, navigation and direction finding equipment and systems, and associated production and test equipment as follows; and specially designed components and software therefor:

(a) Integrated flight instrument systems, which include gyrostabilizers or automatic pilots and integration software therefor; designed or modified for use in the systems in Item 1 (See § 121.1, Category XII(d));

(b) Gyro-astro compasses and other devices which derive position or orientation by means of automatically tracking celestrial bodies or satellites (see § 121.1, Category XV(d));

(c) Accelerometers with a threshold of 0.05 g or less, or a linearity error within 0.25 percent of full scale output, or both, which are designed for use in inertial navigation systems or in guidance systems of all types (see § 121.1, Category VIII(e) and Category XII (d));

(d) All types of gyros usable in the systems in Item 1, with a rated drift rate stability of less than 0.5 degree (1 sigma or rms) per hour in a 1 q environment (see § 121.1, Category VIII(e) and Category XII(d));

(e) Continuous output accelerometers or gyros of any type, specified to function at acceleration levels greater than 100 g (see § 121.1, Category XII(d));

(f) Inertial or other equipment using accelerometers described by subitems (c) and (e) above, and systems incorporating such equipment, and specially designed integration software therefor (see § 121.1, Category VIII (e) and Category XII(d));

Notes to Item 9

(1) Items (a) through (f) may be exported as part of a manned aircraft or satellite or in quantities appropriate for replacement parts for manned aircraft.

(2) In subitem (d):

(i) Drift rate is defined as the time rate of output deviation from the desired output. It consists of random and systematic components and is expressed as an equivalent angular displacement per unit time with respect to inertial space.

(ii) Stability is defined as standard deviation (1 sigma) of the variation of a particular parameter from its calibrated value measured under stable temperature conditions. This can be expressed as a function of time.

Item 10—Category II

Flight control systems and "technology" as follows; designed or modified for the systems in Item 1.

(a) Hydraulic, mechanical, electro-optical, or electro-mechanical flight control systems (including fly-by-wire systems), (see § 121.1, Category IV (h));

(b) Attitude control equipment, (see § 121.1, Category IV, (c) and (h));

(c) Design technology for integration of air vehicle fuselage, propulsion system and lifting control surfaces to optimize aerodynamic performance throughout the flight regime of an unmanned air vehicle, (see § 121.1, Category VIII (k));

(d) Design technology for integration of the flight control, guidance, and propulsion data into a flight management system for optimization of rocket system trajectory, (see § 121.1, Category IV (i)).

Note to Item 10

Items (a) and (b) may be exported as part of a manned aircraft or satellite or in quantities appropriate for replacement parts for manned aircraft.

Item 11—Category II

Avionics equipment, "technology" and components as follows; designed or modified for use in the systems in Item 1, and specially designed software therefor:

(a) Radar and laser radar systems, including altimeters (see § 121.1, Category XI(a)(3));

(b) Passive sensors for determining bearings to specific electromagnetic sources (direction finding equipment) or terrain characteristics (see § 121.1, Category XI(b) and (d));

(c) Global Positioning System (GPS) or similar satellite receivers;

(1) Capable of providing navigation information under the following operational conditions:

(i) At speeds in excess of 515 m/sec (1,000 nautical miles/hours); and

(ii) At altitudes in excess of 18 km (60,000 feet), (see § 121.1, Category XV(d)(2); or

(2) Designed or modified for use with unmanned air vehicles covered by Item 1 (see § 121.1, Category XV(d)(4)).

(d) Electronic assemblies and components specifically designed for military use and operation at temperatures in excess of 125 degrees C, (see § 121.1, Category XI(a)(7)).

(e) Design technology for protection of avionics and electrical subsystems against electromagnetic pulse (EMP) and electromagnetic interference (EMI) hazards from external sources, as follows, (see § 121.1, Category XI (b)).

(1) Design technology for shielding systems;

(2) Design technology for the configuration of hardened electrical circuits and subsystems;

(3) Determination of hardening criteria for the above.

Notes to Item 11

(1) Item 11 equipment may be exported as part of a manned aircraft or satellite or in quantities appropriate for replacement parts for manned aircraft.

(2) Examples of equipment included in this Item:

(i) Terrain contour mapping equipment;

(ii) Scene mapping and correlation (both digital and analog) equipment;

(iii) Doppler navigation radar equipment;

(iv) Passive interferometer equipment;

(v) Imaging sensor equipment (both active and passive);

(3) In subitem (a), laser radar systems embody specialized transmission, scanning, receiving and signal processing techniques for utilization of lasers for echo ranging, direction finding and discrimination of targets by location, radial speed and body reflection characteristics.

Item 12—Category II

Launch support equipment, facilities and software for the systems in Item 1, as follows:

(a) Apparatus and devices designed or modified for the handling, control, activation and launching of the systems in Item 1, (see § 121.1, Category IV(c));

(b) Vehicles designed or modified for the transport, handling, control, activation and launching of the systems in Item 1, (see § 121.1, Category VII(d));

(c) Telemetering and telecontrol equipment usable for unmanned air vehicles or rocket systems, (see § 121.1, Category XI(a));

(d) Precision tracking systems:

(1) Tracking systems which use a translb nv installed on the rocket system or unmanned air vehicle in conjunction with either surface or airborne references or navigation satellite systems to provide real-time measurements of in-flight position and velocity, (see § 121.1, Category XI(a));

(2) Range instrumention radars including associated optical/infrared trackers and the specially designed software therefor with all of the following capabilities (see § 121.1, Category XI(a)(3)):

(i) angular resolution better than 3 milli-radians (0.5 mils);

(ii) range of 30 km or greater with a range resolution better than 10 meters RMS;

(iii) velocity resolution better than 3 meters per second.

(3) Software which processes post-flight, recorded data, enabling determination of vehicle position throughout its flight path (see § 121.1, Category IV(i)).

Item 13—Category II

Analog computers, digital computers, or digital differential analyzers designed or modified for use in the systems in Item 1 (see § 121.1, Category XI (a)(6), having either of the following characteristics:

(a) Rated for continuous operation at temperature from below minus 45 degrees C to above plus 55 degrees C; or

(b) Designed as ruggedized or "radiation hardened".

Note to Item 13

Item 13 equipment may be exported as part of a manned aircraft or satellite or in quantities appropriate for replacement parts for manned aircraft.

Item 14—Category II

Analog-to-digital converters, usable in the system in Item 1, having either of the following characteristics:

(a) Designed to meet military specifications for ruggedized equipment (see § 121.1, Category XI(d)); or,

(b) Designed or modified for military use (see § 121.1, Category XI(d)); and being one of the following types:

(1) Analog-to-digital converter "microcircuits," which are "radiation hardened" or have all of the following characteristics:

(i) Having a resolution of 8 bits or more;

(ii) Rated for operation in the temperature range from below minus 54 degrees C to above plus 125 degrees C; and

(iii) Hermetically sealed.

(2) Electrical input type analog-to-digital converter printed circuit boards or modules, with all of the following characteristics:

(i) Having a resolution of 8 bits or more;

(ii) Rated for operation in the temperature range from below minus 45 degrees C to above plus 55 degrees C; and

(iii) Incorporated "microcircuits" listed in (1), above.

Item 16—Category II

Specially designed software, or specially designed software with related specially designed hybrid (combined analog/digital) computers, for modeling, simulation, or design integration of the systems in Item 1 and Item 2 (see § 121.1, Category IV(i) and Category XI(a)(6)).

Note to Item 16

The modelling includes in particular the aerodynamic and thermodynamic analysis of the system.

Item 17—Category II

Materials, devices, and specially designed software for reduced observables such as radar reflectivity, ultraviolet/infrared signatures on acoustic signatures (i.e. stealth technology), for applications usable for the systems in Item 1 or Item 2 (see § 121.1, Category XIII (e) and (k)), for example:

(a) Structural material and coatings specially designed for reduced radar reflectivity;

(b) Coatings, including paints, specially designed for reduced or tailored reflectivity or emissivity in the microwave, infrared or ultraviolet spectra, except when specially used for thermal control of satellites.

(c) Specially designed software or databases for analysis of signature reduction.

(d) Specially designed radar cross section measurement systems (see § 121.1, Category XI(a)(3)).

Item 18—Category II

Devices for use in protecting rocket systems and unmanned air vehicles against nuclear effects (e.g. Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects), and usable for the systems in Item 1, as follows (see § 121.1, Category IV (c) and (h)):

(a) "Radiation Hardened" "microcircuits" and detectors (see § 121.1, Category XI(c)(3) Note: This commodity has been formally proposed for movement to category XV(e)(2) in the near future).

(b) Radomes designed to withstand a combined thermal shock greater than 1000 cal/sq cm accompanied by a peak over pressure of greater than 50 kPa (7 pounds per square inch) (see § 121.1, Category IV(h)).

Note to Item 18(a)

A detector is defined as a mechanical, electrical, optical or chemical device that automatically identifies and records, or registers a stimulus such as an environmental change in pressure or temperature, an electrical or electromagnetic signal or radiation from a radioactive material. The following pages were removed from the final itar for replacement by DTC's updated version section 6(l) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(l)), as amended. In accordance with this provision, the list of MTCR Annex items shall constitute all items on the U.S. Munitions List in § 121.16.

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

Sec.

122.1 Registration requirements.
122.2 Submission of registration statement.
122.3 Registration fees.
122.4 Notification of changes in information furnished by registrants.
122.5 Maintenance of records by registrants.

Authority: Secs. 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311, 1977 Comp. p. 79; 22 U.S.C. 2658.

§ 122.1 Registration requirements.

(a) Any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services is required to register with the Office of Defense Trade Controls. Manufacturers who do not engage in exporting must nevertheless register.

(b) Exemptions. Registration is not required for:

(1) Officers and employees of the United States Government acting in an official capacity.

(2) Persons whose pertinent business activity is confined to the production of unclassified technical data only.

(3) Persons all of whose manufacturing and export activities are licensed under the Atomic Energy Act of 1954, as amended.

(4) Persons who engage only in the fabrication of articles for experimental or scientific purpose, including research and development.

(c) Purpose. Registration is primarily a means to provide the U.S. Government with necessary information on who is involved in certain manufacturing and exporting activities. Registration does not confer any export rights or privileges. It is generally a precondition to the issuance of any license or other approval under this subchapter.

§ 122.2 Submission of registration statement.

(a) *General.* The Department of State Form DSP–9 (Registration Statement) and the transmittal letter required by paragraph (b) of this section must be submitted by an intended registrant with a payment by check or money order payable to the Department of State of one of the fees prescribed in § 122.3(a) of this subchapter. The Registration Statement and transmittal letter must be signed by a senior officer who has been empowered by the intended registrant to sign such documents. The intended registrant shall also submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the United States. The Office of Defense Trade Controls will return to the sender any Registration Statement that is incomplete, or that is not accompanied by the required letter or payment of the proper registration fee.

(b) *Transmittal letter.* A letter of transmittal, signed by an authorized senior officer of the intended registrant, shall accompany each Registration Statement.

(1) The letter shall state whether the intended registrant, chief executive officer, president, vice-presidents, other senior officers or officials (e.g. comptroller, treasurer, general counsel) or any member of the board of directors:

(i) Has ever been indicted for or convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter; or

(ii) Is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government.

(2) The letter shall also declare whether the intended registrant is owned or controlled by foreign persons (as defined in § 120.16 of this subchapter). If the intended registrant is owned or controlled by foreign persons, the letter shall also state whether the intended registrant is incorporated or otherwise authorized to engage in business in the United States.

(c) *Definition.* For purposes of this section, *ownership* means that more than 50 percent of the outstanding voting securities of the firm are owned by one or more foreign persons. *Control* means that one or more foreign persons have the authority or ability to establish or direct the general policies or day-to-day operations of the firm. Control is presumed to exist where foreign persons own 25 percent or more of the outstanding voting securities if no U.S. persons control an equal or larger percentage. The standards for control specified in 22 CFR 60.2(c) also provide guidance in determining whether control in fact exists.

§ 122.3 Registration fees.

(a) A person who is required to register may do so for a period up to 5 years upon submission of a completed form DSP–9, transmittal letter, and payment of a fee as follows:

1 year	$250
2 years	500
3 years	700
4 years	850
5 years	1,000

(b) Lapse in registration. A registrant who fails to renew a registration and, after an intervening period, seeks to register again must pay registration fees for any part of such intervening period during which the registrant engaged in the business of manufacturing or exporting defense articles or defense services.

(c) Refund of fee. Fees paid in advance for future years of a multiple year registration will be refunded upon request if the registrant ceases to engage in the manufacture or export of defense articles and defense services. A request for a refund must be submitted to the Office of Defense Trade Controls prior to the beginning of any year for which a refund is claimed.

§ 122.4 Notification of changes in information furnished by registrants.

(a) A registrant must, within five days of the event, notify the Office of Defense Trade Controls by registered mail if:

(1) Any of the persons referred to in § 122.2(b) are indicted for or convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter, or become ineligible to contract with, or to receive a license or other approval to export or temporarily import defense articles or defense services from any agency of the U.S. government; or

(2) There is a material change in the information contained in the

Registration Statement, including a change in the senior officers; the establishment, acquisition or divestment of a subsidiary or foreign affiliate; a merger; a change of location; or the dealing in an additional category of defense articles or defense services.

(b) A registrant must notify the Office of Defense Trade Controls by registered mail at least 60 days in advance of any intended sale or transfer to a foreign person of ownership or control of the registrant or any entity thereof. Such notice does not relieve the registrant from obtaining the approval required under this subchapter for the export of defense articles or defense services to a foreign person, including the approval required prior to disclosing technical data. Such notice provides the Office of Defense Trade Controls with the information necessary to determine whether the authority of section 38(g)(6) of the Arms Export Control Act regarding licenses or other approvals for certain sales or transfers of articles or data should be invoked (see §§ 120.10 and 126.1(e) of this subchapter).

(c) The new entity formed when a registrant merges with another company or acquires, or is acquired by, another company or a subsidiary or division of another company shall advise the Office of Defense Trade Controls of the following:

(1) The new firm name and all previous firm names being disclosed;

(2) The registration number that will survive and those that are to be discontinued (if any);

(3) The license numbers of all approvals on which unshipped balances will be shipped under the surviving registration number, since any license not the subject of notification will be considered invalid; and

(4) Amendments to agreements approved by the Office of Defense Trade Controls to change the name of a party to those agreements. The registrant must, within 60 days of this notification, provide to the Office of Defense Trade Controls a signed copy of an amendment to each agreement signed by the new U.S. entity, the former U.S. licensor and the foreign licensee. Any agreements not so amended will be considered invalid.

(d) Prior approval by the Office of Defense Trade Controls is required for any amendment making a substantive change.

§ 122.5 Maintenance of records by registrants.

(a) A person who is required to register must maintain records concerning the manufacture, acquisition and disposition of defense articles; the provision of defense services; and information on political contributions, fees, or commissions furnished or obtained, as required by part 130 of this subchapter. All such records must be maintained for a period of five years from the expiration of the license or other approval. The Director, Office of Defense Trade Controls, may prescribe a longer or shorter period in individual cases.

(b) Records maintained under this section shall be available at all times for inspection and copying by the Director, Office of Defense Trade Controls or a person designated by the Director (the Director of the Diplomatic Security Service or a person designated by the Director of the Diplomatic Security Service or another designee), or the Commissioner of the U.S. Customs Service or a person designated by the Commissioner.

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

Sec.

123.1 Requirement for export or temporary import licenses.
123.2 Import jurisdiction.
123.3 Temporary import licenses.
123.4 Temporary import license exemptions.
123.5 Temporary export licenses.
123.6 Foreign trade zones and U.S. Customs bonded warehouses.
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123.17 Exports of firearms and ammunition.
123.18 Firearms for personal use of members of the U.S. Armed Forces and civilian employees of the U.S. Government.
123.19 Canadian and Mexican border shipments.
123.20 Nuclear materials.
123.21 Duration, renewal and disposition of licenses.
123.22 Filing of export licenses and Shipper's Export Declarations with District Directors of Customs.
123.23 Monetary value of shipments.
123.24 Shipments by mail.
123.25 Amendments to licenses.
123.26 Recordkeeping requirement for exemptions.

Authority: Secs. 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311, 3 CFR 1977 Comp. 79; 22 U.S.C. 2658.

§ 123.1 Requirement for export or temporary import licenses.

(a) Any person who intends to export or to import temporarily a defense article must obtain the approval of the Office of Defense Trade Controls prior to the export or temporary import, unless the export or temporary import qualifies for an exemption under the provisions of this subchapter. Applications for export or temporary import must be made as follows:

(1) Applications for licenses for permanent export must be made on Form DSP–5 (unclassified);

(2) Applications for licenses for temporary export must be made on Form DSP–73 (unclassified);

(3) Applications for licenses for temporary import must be made on Form DSP–61 (unclassified); and

(4) Applications for the export or temporary import of classified defense articles or classified technical data must be made on Form DSP–85.

(b) Applications for Department of State export licenses must be confined to proposed exports of defense articles including technical data.

(c) As a condition to the issuance of a license or other approval, the Office of Defense Trade Controls may require all pertinent documentary information regarding the proposed transaction and proper completion of the application form as follows:

(1) Form DSP–5, DSP–61, DSP–73, and DSP–85 applications must have an entry in each block where space is provided for an entry. All requested information must be provided.

(2) Attachments and supporting technical data or brochures should be submitted in seven collated copies. Two copies of any freight forwarder lists must be submitted. If the request is limited to renewal of a previous license or for the export of spare parts, only two sets of any attachment (including freight forwarder lists) and one copy of the previous license should be submitted.

(3) A certification letter signed by an empowered official must accompany all application submissions (see § 126.13 of this subchapter).

(4) An application for a license under this part for the permanent export of defense articles sold commercially must be accompanied by a copy of a purchase order, letter of intent or other appropriate documentation. In cases involving the U.S. Foreign Military Sales program, three copies of the relevant Department of Defense Form

1513 are required, unless the procedures of § 126.4(c) or § 126.6 of this subchapter are followed.

(5) Form DSP–83, duly executed, must accompany all license applications for the permanent export of significant military equipment, including classified hardware or classified technical data (see §§ 123.10 and 125.3 of this subchapter).

(6) A statement concerning the payment of political contributions, fees and commissions must accompany a permanent export application if the export involves defense articles or defense services valued in an amount of $500,000 or more and is being sold commercially to or for the use of the armed forces of a foreign country or international organization (see part 130 of this subchapter).

(d) Provisions for furnishing the type of defense services described in § 120.9(a) of this subchapter are contained in part 124 of this subchapter. Provisions for the export or temporary import of technical data and classified defense articles are contained in part 125 of this subchapter.

(e) A request for a license for the export of unclassified technical data (DSP–5) related to a classified defense article should specify any classified technical data or material that subsequently will be required for export in the event of a sale.

§ 123.2 Import jurisdiction.

The Department of State regulates the temporary import of defense articles. Permanent imports of defense articles into the United States are regulated by the Department of the Treasury (see 27 CFR parts 47, 178 and 179).

§ 123.3 Temporary import licenses.

(a) A license (DSP–61) issued by the Office of Defense Trade Controls is required for the temporary import and subsequent export of unclassified defense articles, unless exempted from this requirement pursuant to § 123.4. This requirement applies to:

(1) Temporary imports of unclassified defense articles that are to be returned directly to the country from which they were shipped to the United States;

(2) Temporary imports of unclassified defense articles in transit to a third country;

(b) A bond may be required as appropriate (see part 125 of this subchapter for license requirements for technical data and classified defense articles.)

§ 123.4 Temporary import license exemptions.

(a) District Directors of Customs shall permit the temporary import (and subsequent export) without a license, for a period of up to 4 years, of unclassified U.S.-origin defense articles (including any article manufactured abroad pursuant to U.S. Government approval) if the article temporarily imported:

(1) Is serviced (e.g., inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective articles, parts or components, but excluding any modification, enhancement, upgrade or other form of alteration or improvement that changes the basic performance of the article), and is subsequently returned to the country from which it was imported. Shipment may be made by the U.S. importer or a foreign government representative of the country from which the goods were imported; or

(2) Is to be enhanced, upgraded or incorporated into another article which has already been authorized by the Office of Defense Trade Controls for permanent export; or

(3) Is imported for the purpose of exhibition, demonstration or marketing in the United States and is subsequently returned to the country from which it was imported; or

(4) Has been rejected for permanent import by the Department of the Treasury and is being returned to the country from which it was shipped; or

(5) Is approved for such import under the U.S. Foreign Military Sales (FMS) program pursuant to an executed U.S. Department of Defense Letter of Offer and Acceptance (DD Form 1513).

Note: These Exceptions do not apply to shipments that transit the U.S. to or from Canada (see § 123.19 and § 126.5 of this subchapter for exceptions).

(b) District Directors of Customs shall permit the temporary import (but not the subsequent export) without a license of unclassified defense articles that are to be incorporated into another article, or modified, enhanced, upgraded, altered, improved or serviced in any other manner that changes the basic performance or productivity of the article prior to being returned to the country from which they were shipped or prior to being shipped to a third country. A DSP–5 is required for the reexport of such unclassified defense articles after incorporation into another article, modification, enhancement, upgrading, alteration or improvement.

(c) *Requirements.* To use an exemption under § 123.4 (a) or (b), the following criteria must be met:

(1) The importer must meet the eligibility requirements set forth in § 120.1(b) of this subchapter;

(2) At the time of export, the ultimate consignee named on the Shipper's Export Declaration (SED) must be the same as the foreign consignee or end-user of record named at the time of import; and

(3) As stated in § 126.1 of this subchapter, the temporary import must not be from or on behalf of a proscribed country listed in that section unless an exception has been granted in accordance with § 126.3 of this subchapter.

(d) *Procedures.* To the satisfaction of the District Director of Customs, the importer and exporter must comply with the following procedures:

(1) At the time of temporary import—

(i) File and annotate the applicable U.S. Customs document (e.g., Form CF 3461, 7512, 7501, 7523 or 3311) to read: "This shipment is being imported in accordance with and under the authority of 22 CFR 123.4(a) (identify subsection)," and

(ii) Include, on the invoice or other appropriate documentation, a complete list and description of the defense article(s) being imported, including quantity and U.S. dollar value; and

(2) At the time of export, file with the District Director of Customs at the port of exit a Shipper's Export Declaration (Department of Commerce Form 7525–V) and include on the SED or as an attachment the following information:

(i) the U.S. Customs entry document number or a copy of the U.S. Customs documentation under which the article was imported;

(ii) the following statement: "22 CFR (identify section) and 22 CFR 120.1(b) applicable."

§ 123.5 Temporary export licenses.

(a) The Office of Defense Trade Controls may issue a license for the temporary export of unclassified defense articles (DSP–73). Such licenses are valid only if (1) the article will be exported for a period of less than 4 years and will be returned to the United States and (2) transfer of title will not occur during the period of temporary export. Accordingly, articles exported pursuant to a temporary export license may not be sold or otherwise permanently transferred to a foreign person while they are overseas under a temporary export license. A renewal of the license or other written approval must be obtained from the Office of Defense Trade Controls if the article is to remain outside the United States beyond the period for which the license is valid.

(b) *Requirements.* Defense articles authorized for temporary export under this section may be shipped only from

a port in the United States where a District Director of Customs is available, or from a U.S. Post Office (see 39 CFR part 20), as appropriate. The license for temporary export must be presented to the District Director of Customs who, upon verification, will endorse the exit column on the reverse side of the license. In some instances of the temporary export of technical data (e.g postal shipments), self-endorsement will be necessary (see § 123.22(d)). The endorsed license for temporary export is to be retained by the licensee. In the case of a military aircraft or vessel exported under its own power, the endorsed license must be carried on board such vessel or aircraft as evidence that it has been duly authorized by the Department of State to leave the United States temporarily.

(c) Upon the return to the United States of defense articles covered by a license for temporary export, the license will be endorsed in the entry column by the District Director of Customs. This procedure shall be followed for all exits and entries made during the period for which the license is valid. The licensee must send the license to the Office of Defense Trade Controls immediately upon expiration or after the final return of the defense articles approved for export, whichever occurs first.

§ 123.6 Foreign trade zones and U.S. Customs bonded warehouses.

Foreign trade zones and U.S. Customs bonded warehouses are considered integral parts of the United States for the purpose of this subchapter. An export license is therefore not required for shipment between the United States and a foreign trade zone or a Customs bonded warehouse. In the case of classified defense articles, the provisions of the Department of Defense Industrial Security Manual will apply. An export license is required for all shipments of articles on the U.S. Munitions List from foreign trade zones and U.S. Customs bonded warehouses to foreign countries, regardless of how the articles reached the zone or warehouse.

§ 123.7 Exports to warehouses or distribution points outside the United States.

Unless the exemption under § 123.16(b)(1) is used, a license is required to export defense articles to a warehouse or distribution point outside the United States for subsequent resale and will normally be granted only if an agreement has been approved pursuant to § 124.14 of this subchapter.

§ 123.8 Special controls on vessels, aircraft and satellites covered by the U.S. Munitions List.

(a) Transferring registration or control to a foreign person of any aircraft, vessel, or satellite on the U.S. Munitions List is an export for purposes of this subchapter and requires a license or written approval from the Office of Defense Trade Controls. This requirement applies whether the aircraft, vessel, or satellite is physically located in the United States or abroad.

(b) The registration in a foreign country of any aircraft, vessel or satellite covered by the U.S. Munitions List which is not registered in the United States but which is located in the United States constitutes an export. A license or written approval from the Office of Defense Trade Controls is therefore required. Such transactions may also require the prior approval of the Maritime Administration, the Federal Aviation Administration or other agencies of the U.S. Government.

§ 123.9 Country of ultimate destination and approval of reexports or retransfers.

(a) The country designated as the country of ultimate destination on an application for an export license, or on a Shipper's Export Declaration where an exemption is claimed under this subchapter, must be the country of ultimate end-use. The written approval of the Office of Defense Trade Controls must be obtained before reselling, transferring, transshipping, or disposing of a defense article to any end user, end use or destination other than as stated on the export license, or on the Shipper's Export Declaration in cases where an exemption is claimed under this subchapter. Exporters must ascertain the specific end-user and end-use prior to submitting an application to the Office of Defense Trade Controls or claiming an exemption under this subchapter.

(b) The exporter shall incorporate the following statement as an integral part of the bill of lading, and the invoice whenever defense articles on the U.S. Munitions List are to be exported:

These commodities are authorized by the U.S. Government for export only to [country of ultimate destination] for use by [end-user]. They may not be transferred, transshipped on a non-continuous voyage, or otherwise be disposed of in any other country, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State."

(c) A U.S. person or a foreign person requesting approval for the reexport or retransfer, or change in end-use, of a defense article shall submit a written request which shall be subject to all the documentation required for a permanent export license (see § 123.1) and shall contain the following:

(1) The license number under which the defense article was previously authorized for export from the United States;

(2) A precise description, quantity and value of the defense article;

(3) A description of the new end-use; and

(4) Identification of the new end-user.

(d) The written approval of the Office of Defense Trade Controls must be obtained before reselling, transferring, transshipping on a non-continuous voyage, or disposing of a defense article in any country other than the country of ultimate destination, or anyone other than the authorized end-user, as stated on the Shipper's Export Declaration in cases where an exemption is claimed under this subchapter.

(e) Reexports or retransfers of U.S.-origin components incorporated into a foreign defense article to a government of a NATO country, or the governments of Australia or Japan, are authorized without the prior written approval of the Office of Defense Trade Controls, provided:

(1) The U.S.-origin components were previously authorized for export from the United States, either by a license or an exemption;

(2) The U.S.-origin components are not significant military equipment, the items are not major defense equipment sold under a contract in the amount of $14,000,000 ($14 million) or more; the articles are not defense articles or defense services sold under a contract in the amount of $50,000,000 ($50 million) or more; and are not identified in part 121 of this subchapter as Missile Technology Control Regime (MTCR) items; and

(3) The person reexporting the defense article must provide written notification to the Office of Defense Trade Controls of the retransfer not later than 30 days following the reexport. The notification must state the articles being reexported and the recipient government.

(4) In certain cases, the Director, Office of Defense Trade Controls, may place retransfer restrictions on a license prohibiting use of this exemption.

§ 123.10 Non-transfer and use assurances.

(a) A nontransfer and use certificate (Form DSP–83) is required for the export of significant military equipment and classified articles including classified technical data. A license will

not be issued until a completed Form DSP–83 has been received by the Office of Defense Trade Controls. This form is to be executed by the foreign consignee, foreign end-user, and the applicant. The certificate stipulates that, except as specifically authorized by prior written approval of the Department of State, the foreign consignee and foreign end-user will not reexport, resell or otherwise dispose of the significant military equipment enumerated in the application outside the country named as the location of the foreign end-use or to any other person.

(b) The Office of Defense Trade Controls may also require a DSP–83 for the export of any other defense articles or defense services.

(c) When a DSP–83 is required for an export of any defense article or defense service to a non-governmental foreign end-user, the Office of Defense Trade Controls may require as a condition of issuing the license that the appropriate authority of the government of the country of ultimate destination also execute the certificate.

§ 123.11 Movements of vessels and aircraft covered by the U.S. Munitions List outside the United States.

(a) A license issued by the Office of Defense Trade Controls is required whenever a privately-owned aircraft or vessel on the U.S. Munitions List makes a voyage outside the United States.

(b) Exemption. An export license is not required when a vessel or aircraft referred to in paragraph (a) of this section departs from the United States and does not enter the territorial waters or airspace of a foreign country if no defense articles are carried as cargo. Such a vessel or aircraft may not enter the territorial waters or airspace of a foreign country before returning to the United States, or carry as cargo any defense article, without a temporary export license (Form DSP–73) from the Department of State. (See § 123.5.)

§ 123.12 Shipments between U.S. possessions.

An export license is not required for the shipment of defense articles between the United States, the Commonwealth of Puerto Rico, and U.S. possessions. A license is required, however, for the export of defense articles from these areas to foreign countries.

§ 123.13 Domestic aircraft shipments via a foreign country.

A license is not required for the shipment by air of a defense article from one location in the United States to another location in the United States via a foreign country. The pilot of the aircraft must, however, file a written statement with the District Director of Customs at the port of exit in the United States. The original statement must be filed at the time of exit with the District Director of Customs. A duplicate must be filed at the port of reentry with the District Director of Customs, who will duly endorse it and transmit it to the District Director of Customs at the port of exit. The statement will be as follows:

Domestic Shipment Via a Foreign Country of Articles on the U.S. Munitions List

Under penalty according to Federal law, the undersigned certifies and warrants that all the information in this document is true and correct, and that the equipment listed below is being shipped from (U.S. port of exit) via (foreign country) to (U.S. port of entry), which is the final destination in the United States.

Description of Equipment

Quantity: _____
Equipment: _____
Value: _____
Signed: _____

Endorsement: Customs Inspector.
Port of Exit _____
Date: _____
Signed: _____

Endorsement: Customs Inspector.
Port of Entry: _____
Date: _____

§ 123.14 Import certificate/delivery verification procedure.

(a) The Import Certificate/Delivery Verification Procedure is designed to assure that a commodity imported into the territory of those countries participating in IC/DV procedures will not be diverted, transshipped, or reexported to another destination except in accordance with export control regulations of the importing country.

(b) Exports. The Office of Defense Trade Controls may require the IC/DV procedure on proposed exports of defense articles to non-government entities in those countries participating in IC/DV procedures. In such cases, U.S. exporters must submit both an export license application (the completed Form DSP–5) and the original Import Certificate, which must be provided and authenticated by the government of the importing country. This document verifies that the foreign importer complied with the import regulations of the government of the importing country and that the importer declared the intention not to divert, transship or reexport the material described therein without the prior approval of that government. After delivery of the commodities to the foreign consignee, the Department of State may also require U.S. exporters to furnish Delivery Verification documentation from the government of the importing country. This documentation verifies that the delivery was in accordance with the terms of the approved export license. Both the Import Certificate and the Delivery Verification must be furnished to the U.S. exporter by the foreign importer.

(c) Triangular transactions. When a transaction involves three or more countries that have adopted the IC/DV procedure, the governments of these countries may stamp a triangular symbol on the Import Certificate. This symbol is usually placed on the Import Certificate when the applicant for the Import Certificate (the importer) states either (1) that there is uncertainty whether the items covered by the Import Certificate will be imported into the country issuing the Import Certificate; (2) that he or she knows that the items will not be imported into the country issuing the Import Certificate; or (3) that, if the items are to be imported into the country issuing the Import Certificate, they will subsequently be reexported to another destination. All parties, including the ultimate consignee in the country of ultimate destination, must be shown on the completed Import Certificate.

§ 123.15 Congressional notification for licenses.

All exports of major defense equipment, as defined in § 120.8 of this subchapter, sold under a contract in the amount of $14,000,000 or more, or exports of defense articles and defense services sold under a contract in the amount of $50,000,000 or more, may take place only after the Office of Defense Trade Controls notifies the exporter through issuance of a license or other approval that 30 calendar days have elapsed since receipt by the Congress of the certification required by 22 U.S.C. 2776(c)(1) and that Congress has not enacted a joint resolution prohibiting the export. Persons who intend to export defense articles and defense services pursuant to any exemption in this subchapter (e.g., § 126.5 of this subchapter) under the circumstances described in the first sentence of this subsection must notify the Office of Defense Trade Controls by letter of the intended export and, prior to transmittal to Congress, provide a signed contract and a DSP–83 signed by the applicant, the foreign consignee and end-user.

§ 123.16 Exemptions of general applicability.

(a) The following exemptions apply to exports of unclassified defense articles for which no approval is needed from the Office of Defense Trade Controls.

These exemptions do not apply to: Proscribed destinations under § 126.1 of this subchapter; exports for which Congressional notification is required; MTCR articles; and may not be used by persons who are generally ineligible as described in § 120.1(c) of this subchapter. All shipments of defense articles, including those to and from Canada, require a Shippers Export Declaration (SED). If the defense article is exempt from licensing, the SED must cite the exemption. Refer to § 123.22(c) for Shipper's Export Declaration requirements.

(b) The following exports are exempt from the licensing requirements of this subchapter.

(1) District Directors of Customs shall permit the export without a license of defense articles being exported in furtherance of an approved manufacturing license agreement, technical assistance agreement or distribution agreement provided that:

(i) The defense articles to be exported support the activity and must be identified by item, quantity and value in the agreement; and

(ii) Any provisos or limitations placed on the authorized agreement are adhered to; and

(iii) The exporter certifies on the Shipper's Export Declaration that the export is exempt from the licensing requirements of this subchapter. This is done by writing, "22 CFR 123.16(b)(1) and AG [identify agreement number] applicable and

(iv) The total value of all shipments does not exceed the value authorized in the agreement.

(v) In the case of distribution agreements, export must be made directly to the approved foreign distributor.

(2) District Directors of Customs shall permit the export of components or spare parts (for exemptions for firearms and ammunition see § 123.17) without a license when the total value does not exceed $500 in a single transaction and:

(i) The components or spare parts are being exported to support a defense article previously authorized for export; and

(ii) The spare parts or components are not going to a distributor, but to a previously approved end-user of the defense articles; and

(iii) The spare parts or components are not to be used to enhance the capability of the defense article;

(iv) exporters shall not split orders so as not to exceed the dollar value of this exemption;

(v) the exporter may not make more than 24 shipments per calender year to the previously authorized end user;

(vi) The exporter must certify on the Shipper's Export Declaration that the export is exempt from the licensing requirements of this subchapter. This is done by writing 22 CFR 123.16(b)(2) applicable.

(3) District Directors of Customs shall permit the export without a license, of packing cases specially designed to carry defense articles.

(4) District Directors of Customs shall permit the export without a license, of unclassified models or mock-ups of defense articles, provided that such models or mock-ups are nonoperable and do not reveal any technical data in excess of that which is exempted from the licensing requirements of § 125.4(b) of this subchapter and do not contain components covered by the U.S. Munitions List (see § 120.6(b) of this subchapter). Some models or mockups built to scale or constructed of original materials can reveal technical data. U.S. persons who avail themselves of this exemption must provide a written certification to the District Director of Customs that these conditions are met. This exemption does not imply that the Office of Defense Trade Controls will approve the export of any defense articles for which models or mocks-ups have been exported pursuant to this exemption.

(5) District Directors of Customs shall permit the temporary export without a license of unclassified defense articles to any public exhibition, trade show, air show or related event if that article has previously been licensed for a public exhibition, trade show, air show or related event and the license is still valid. U.S. persons who avail themselves of this exemption must provide a written certification to the District Director of Customs that these conditions are met.

(6) For exemptions for firearms and ammunition for personal use refer to § 123.17.

(7) For exemptions for firearms for personal use of members of the U.S. Armed Forces and civilian employees see § 123.18.

(8) For exports to Canada refer to § 126.5 of this subchapter.

(9) District Directors of Customs shall permit the temporary export without a license by a U.S. person of any unclassified component, part, tool or test equipment to a subsidiary, affiliate or facility owned or controlled by the U.S. person (see § 122.2(c) of this subchapter) if the component, part, tool or test equipment is to be used for manufacture, assembly, testing, production, or modification provided:

(i) The U.S. person is registered with the Office of Defense Trade Controls and complies with all requirements set forth in part 122 of this subchapter;

(ii) No defense article exported under this exemption may be sold or transferred without the appropriate license or other approval from the Office of Defense Trade Controls.

§ 123.17 Exports of firearms and ammunition.

(a) Except as provided in § 126.1 of this subchapter, District Directors of Customs shall permit the export without a license of components and parts for Category I(a) firearms, except barrels, cylinders, receivers (frames) or complete breach mechanisms when the total value does not exceed $500 wholesale in any transaction.

(b) District Directors of Customs shall permit the export without a license of nonautomatic firearms covered by Category I(a) of § 121.1 of this subchapter if they were manufactured in or before 1898, or are replicas of such firearms.

(c) District Directors of Customs shall permit U.S. persons to export temporarily from the United States without a license not more than three nonautomatic firearms in Category I(a) of § 121.1 of this subchapter and not more than 1,000 cartridges therefor, provided that:

(1) A declaration by the U.S. person and an inspection by a customs officer is made;

(2) The firearms and accompanying ammunition must be with the U.S. person's baggage or effects, whether accompanied or unaccompanied (but not mailed); and

(3) They must be for that person's exclusive use and not for reexport or other transfer of ownership. The foregoing exemption is not applicable to a crew-member of a vessel or aircraft unless the crew-member declares the firearms to a Customs officer upon each departure from the United States, and declares that it is his or her intention to return the article(s) on each return to the United States. It is also not applicable to the personnel referred to in § 123.18.

(d) District Directors of Customs shall permit a foreign person to export without a license such firearms in Category I(a) of § 121.1 of this subchapter and ammunition therefor as the foreign person brought into the United States under the provisions of 27 CFR 178.115(d). (The latter provision specifically excludes from the definition of importation the bringing into the United States of firearms and ammunition by certain foreign persons for specified purposes).

(e) District Directors of Customs shall permit U.S. persons to export without a

license ammunition for nonautomatic firearms referred to in paragraph (a) of this section if the quantity does not exceed 1,000 cartridges (or rounds) in any shipment. The ammunition must also be for personal use and not for resale or other transfer of ownership. The foregoing exemption is also not applicable to the personnel referred to in § 123.18.

§ 123.18 Firearms for personal use of members of the U.S. Armed Forces and civilian employees of the U.S. Government.

The following exemptions apply to members of the U.S. Armed Forces and civilian employees of the U.S. Government who are U.S. persons (both referred to herein as personnel). The exemptions apply only to such personnel if they are assigned abroad for extended duty. These exemptions do not apply to dependents.

(a) *Firearms.* District Directors of Customs shall permit nonautomatic firearms in Category I(a) of § 121.1 of this subchapter and parts therefor to be exported, except by mail, from the United States without a license if:

(1) They are consigned to servicemen's clubs abroad for uniformed members of the U.S. Armed Forces; or,

(2) In the case of a uniformed member of the U.S. Armed Forces or a civilian employee of the Department of Defense, they are for personal use and not for resale or other transfer of ownership, and if the firearms are accompanied by a written authorization from the commanding officer concerned; or

(3) In the case of other U.S. Government employees, they are for personal use and not for resale or other transfer of ownership, and the Chief of the U.S. Diplomatic Mission or his designee in the country of destination has approved in writing to Department of State the import of the specific types and quantities of firearms into that country. The exporter shall provide a copy of this written statement to the District Director of Customs.

(b) *Ammunition.* District Directors of Customs shall permit not more than 1,000 cartridges (or rounds) of ammunition for the firearms referred to in paragraph (a) of this section to be exported (but not mailed) from the United States without a license when the firearms are on the person of the owner or with his baggage or effects, whether accompanied or unaccompanied (but not mailed).

§ 123.19 Canadian and Mexican border shipments.

A shipment originating in Canada or Mexico which incidentally transits the United States en route to a delivery point in the same country that originated the shipment is exempt from the requirement for an in transit license.

§ 123.20 Nuclear materials.

(a) The provisions of this subchapter do not apply to equipment in Category VI(e) and Category XVI of § 121.1 of this subchapter to the extent such equipment is under the export control of the Department of Energy or the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978.

(b) A license for the export of any machinery, device, component, equipment, or technical data relating to equipment referred to in Category VI(e) will not be granted unless the proposed export comes within the scope of an existing Agreement for Cooperation for Mutual Defense Purposes concluded pursuant to the Atomic Energy Act of 1954, as amended, with the government of the country to which the article is to be exported. Licenses may be granted in the absence of such an agreement only (1) if the proposed export involves an article which is identical to that in use in an unclassified civilian nuclear power plant, (2) if the proposed export has no relationship to naval nuclear propulsion, and (3) if it is not for use in a naval propulsion plant.

§ 123.21 Duration, renewal and disposition of licenses.

(a) A license is valid for four years. The license expires when the total value or quantity authorized has been shipped or when the date of expiration has been reached, whichever occurs first. Defense articles to be shipped thereafter require a new application and license. The new application should refer to the expired license. It should not include references to any defense articles other than those of the unshipped balance of the expired license.

(b) Unused, expired, expended, suspended, or revoked licenses must be returned immediately to the Department of State.

§ 123.22 Filing of export licenses and Shipper's Export Declarations with District Directors of Customs.

(a) The exporter must deposit the license with the District Director of Customs at the port of exit before shipment, unless paragraph (d) of this section or § 125.9 applies (for exports by mail, see § 123.24). Licenses for temporary export or temporary import are to be retained by the exporter and presented to the District Director of Customs at the time of import or export for endorsement. If necessary, the export may be made through a port other than the one designated on the license if the exporter complies with the procedures established by the U.S. Customs Service. Every license will be returned to the Office of Defense Trade Controls by the District Director of Customs when the total value or quantity authorized has been shipped or when the date of expiration is reached, whichever occurs first.

(b) Before shipping any defense article, the exporter must also file a Shipper's Export Declaration with the District Director of Customs at the port of exit (unless otherwise exempt from filing a Shipper's Export Declaration). The District Director of Customs at the port of exit must authenticate the Shipper's Export Declaration, and endorse the license to show the shipments actually made. The District Director of Customs will return a copy of each authenticated Shipper's Export Declaration to the Office of Defense Trade Controls.

(c) Except for the export of unclassified technical data, an exporter must file a Shipper's Export Declaration with District Directors of Customs or Postmasters in those cases in which no export license is required because of an exemption under this subchapter. The exporter must certify that the export is exempt from the licensing requirements of this subchapter by writing 22 CFR (identify section) and 22 CFR 120.1(b) applicable on the Shipper's Export Declaration, and by identifying the section under which an exemption is claimed. A copy of each such declaration must be mailed immediately by the exporter to the Office of Defense Trade Controls.

(d) A Shipper's Export Declaration is not required for exports of unclassified technical data. Exporters shall notify the Office of Defense Trade Controls of the initial export of the data by either returning the license after self endorsement or by sending a letter to the Office of Defense Trade Controls. The letter shall provide the method, date, license number and airway bill number (if applicable) of the shipment. The letter must be signed by an empowered official of the company and provided to the Office of Defense Trade Controls within thirty days of the initial export. Additionally, similar notification must be provided to the Office of Defense Trade Controls for any subsequent exports.

(e) If a license for the export of unclassified defense articles, including technical data, is used but not endorsed by U.S. Customs or a Postmaster for whatever reason (e.g., electronic transmission, unavailability of Customs

officer or Postmaster, etc.), the person exporting the article must self-endorse the license, showing when and how the export took place. Every license shall also be returned by the exporter to the Office of Defense Trade Controls when the total value or quantity authorized has been shipped or when the date of expiration is reached, whichever occurs first.

§ 123.23 Monetary value of shipments.

District Directors of Customs shall permit the shipment of defense articles identified on any license when the total value of the export does not exceed the aggregate monetary value (not quantity) stated on the license by more than ten percent, provided that the additional monetary value does not make the total value of the license or other approval for the export of any major defense equipment sold under a contract reach $14,000,000 or more, and provided that the additional monetary value does not make defense articles or defense services sold under a contract reach the amount of $50,000,000 or more.

§ 123.24 Shipments by mail.

A Shipper's Export Declaration must be authenticated before an article is actually sent abroad by mail (see § 123.22(d)). The postmaster or exporter will endorse each license to show the shipments made. Every license must be returned by the exporter to the Office of Defense Trade Controls upon completion of the mailings.

§ 123.25 Amendments to licenses.

(a) The Office of Defense Trade Controls may approve an amendment to a license for permanent export, temporary export and temporary import of unclassified defense articles. A suggested format is available from the Office of Defense Trade Controls.

(b) The following types of amendments to a license that will be considered: Addition of U.S. freight forwarder or U.S. consignor; change due to an obvious typographical error; change in source of commodity; and change of foreign intermediate consignee if that party is only transporting the equipment and will not process (e.g., integrate, modify) the equipment. For changes in U.S. dollar value see § 123.23.

(c) The following types of amendments to a license will not be approved: Additional quantity, changes in commodity, country of ultimate destination, end-use or end-user, foreign consignee and/or extension of duration. The foreign intermediate consignee may only be amended if that party is acting as freight forwarder and the export does not involve technical data. A new license is required for these changes. Any new license submission must reflect only the unshipped balance of quantity and dollar value.

§ 123.26 Recordkeeping requirement for exemptions.

When an exemption is claimed for the export of unclassified technical data, the exporter must maintain a record of each such export. The business record should include the following information: A description of the unclassified technical data, the name of the recipient end-user, the date and time of the export, and the method of transmission.

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

Sec.

124.1 Manufacturing license agreements and technical assistance agreements.
124.2 Exemptions for training and military service.
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124.7 Information required in all manufacturing license agreements and technical assistance agreements.
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124.13 Procurement by United States persons in foreign countries (offshore procurement).
124.14 Exports to warehouses or distribution points outside the United States.

Authority: Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2658.

§ 124.1 Manufacturing license agreements and technical assistance agreements.

(a) The approval of the Office of Defense Trade Controls must be obtained before the defense services described in § 120.9(a) of this subchapter may be furnished. In order to obtain such approval, the U.S. person must submit a proposed agreement to the Office of Defense Trade Controls. Such agreements are generally characterized as either Manufacturing license agreements, technical assistance agreements, distribution agreements or off-shore procurement agreements, and may not enter into force without the prior written approval of the Office of Defense Trade Controls. Once approved, the defense services described in the agreements may generally be provided without further licensing in accordance with §§ 124.3 and 125.4(b)(2) of this subchapter. The requirements of this section apply whether or not technical data is to be disclosed or used in the performance of the defense services described in § 120.9(a) of this subchapter (e.g., all the information relied upon by the U.S. person in performing the defense service is in the public domain or is otherwise exempt from the licensing requirements of this subchapter pursuant to § 125.4 of this subchapter). This requirement also applies to the training of any foreign military forces, regular and irregular, in the use of defense articles. Technical assistance agreements must be submitted in such cases. In exceptional cases, The Office of Defense Trade Controls, upon written request, will consider approving the provision of defense services described in § 120.9(a) of this subchapter by granting a license under part 125 of this subchapter. Also, see § 126.8 of this subchapter for the requirements for prior approval of proposals relating to significant military equipment.

(b) *Classified Articles.* Copies of approved agreements involving the release of classified defense articles will be forwarded by the Office of Defense Trade Controls to the Defense Investigative Service of the Department of Defense.

(c) *Amendments.* Changes to the scope of approved agreements, including modifications, upgrades, or extensions must be submitted for approval. The amendments may not enter into force until approved by the Office of Defense Trade Controls.

(d) *Minor Amendments.* Amendments which only alter delivery or performance schedules, or other minor administrative amendments which do not affect in any manner the duration of the agreement or the clauses or information which must be included in such agreements because of the requirements of this part, do not have to be submitted for approval. One copy of all such minor amendments must be submitted to the Office of Defense Trade Controls within thirty days after they are concluded.

§ 124.2 Exemptions for training and military service.

(a) Technical assistance agreements are not required for the provision of

training in the basic operation and maintenance of defense articles lawfully exported or authorized for export to the same recipient. This does not include training in intermediate and depot level maintenance.

(b) Services performed as a member of the regular military forces of a foreign nation by U.S. persons who have been drafted into such forces are not deemed to be defense services for purposes of § 120.9 of this subchapter.

§ 124.3 Exports of technical data in furtherance of an agreement.

(a) *Unclassified technical data.* District Directors of Customs or postal authorities shall permit the export without a license of unclassified technical data if the export is in furtherance of a manufacturing license or technical assistance agreement which has been approved in writing by the Office of Defense Trade Controls and the technical data being exported does not exceed the scope or limitations of the relevant agreement. The U.S. party to the agreement must certify on the Shippers Export Declaration that the export does not exceed the scope of the agreement and any limitations imposed pursuant to this part. The approval of the Office of Defense Trade Controls must be obtained for the export of any unclassified technical data which may exceed the terms of the agreement.

(b) *Classified technical data.* The export of classified information in furtherance of an approved manufacturing license or technical assistance agreement which provides for the transmittal of classified information does not require further approval from the Office of Defense Trade Controls when:

(1) The United States party certifies to the Department of Defense transmittal authority that the classified information does not exceed the technical or product limitations in the agreement; and

(2) The U.S. party complies with the requirements of the Department of Defense Industrial Security Manual concerning the transmission of classified information and any other requirements of cognizant U.S. departments or agencies.

§ 124.4 Deposit of signed agreements with the Office of Defense Trade Controls.

The United States party to a manufacturing license or a technical assistance agreement must file one copy of the concluded agreement with the Office of Defense Trade Controls not later than 30 days after it enters into force.

§ 124.5 Proposed agreements that are not concluded.

The United States party to any proposed manufacturing license agreement or technical assistance agreement must inform the Office of Defense Trade Controls if a decision is made not to conclude the agreement. The information must be provided within 60 days of the date of the decision. These requirements apply only if the approval of the Office of Defense Trade Controls was obtained for the agreement to be concluded (with or without any provisos).

§ 124.6 Termination of manufacturing license agreements and technical assistance agreements.

The U. S. party to a manufacturing license or a technical assistance agreement must inform the Office of Defense Trade Controls in writing of the impending termination of the agreement not less than 30 days prior to the expiration date of such agreement.

§ 124.7 Information required in all manufacturing license agreements and technical assistance agreements.

The following information must be included in all proposed manufacturing license agreements and technical assistance agreements. The information should be provided in terms which are as precise as possible. If the applicant believes that a clause or that required information is not relevant or necessary, the applicant may request the omission of the clause or information. The transmittal letter accompanying the agreement must state the reasons for any proposed variation in the clauses or required information.

(1) The agreement must describe the defense article to be manufactured and all defense articles to be exported, including any test and support equipment or advanced materials. They should be described by military nomenclature, contract number, National Stock Number, nameplate data, or other specific information. Supporting technical data or brochures should be submitted in seven copies. Only defense articles listed in the agreement will be eligible for export under the exemption in § 123.16(b)(1) of this subchapter.

(2) The agreement must specifically describe the assistance and technical data, including the design and manufacturing know-how involved, to be furnished and any manufacturing rights to be granted;

(3) The agreement must specify its duration; and

(4) The agreement must specifically identify the countries or areas in which manufacturing, production, processing, sale or other form of transfer is to be licensed.

§ 124.8 Clauses required both in manufacturing license agreements and technical assistance agreements.

The following statements must be included both in manufacturing license agreements and in technical assistance agreements:

(1) "This agreement shall not enter into force, and shall not be amended or extended, without the prior written approval of the Department of State of the U.S. Government."

(2) "This agreement is subject to all United States laws and regulations relating to exports and to all administrative acts of the U.S. Government pursuant to such laws and regulations."

(3) "The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government."

(4) "No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government's approval of this agreement."

(5) "The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a person in a third country or to a national of a third country except as specifically authorized in this agreement unless the prior written approval of the Department of State has been obtained."

(6) "All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement."

§ 124.9 Additional clauses required only in manufacturing license agreements.

(a) Clauses for all manufacturing license agreements. The following clauses must be included only in manufacturing license agreements:

(1) "No export, sale, transfer, or other disposition of the licensed article is authorized to any country outside the territory wherein manufacture or sale is herein licensed without the prior written approval of the U.S. Government unless otherwise exempted by the U.S. Government. Sales or other

transfers of the licensed article shall be limited to governments of countries wherein manufacture or sale is hereby licensed and to private entities seeking to procure the licensed article pursuant to a contract with any such government unless the prior written approval of the U.S. Government is obtained."

(2) "It is agreed that sales by licensee or its sub-licensees under contracts made through the U.S. Government will not include either charges for patent rights in which the U.S. Government holds a royalty-free license, or charges for data which the U.S. Government has a right to use and disclose to others, which are in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon their use and disclosure to others."

(3) "If the U.S. Government is obligated or becomes obligated to pay to the licensor royalties, fees, or other charges for the use of technical data or patents which are involved in the manufacture, use, or sale of any licensed article, any royalties, fees or other charges in connection with purchases of such licensed article from licensee or its sub-licensees with funds derived through the U.S. Government may not exceed the total amount the U.S. Government would have been obligated to pay the licensor directly."

(4) "If the U.S. Government has made financial or other contributions to the design and development of any licensed article, any charges for technical assistance or know-how relating to the item in connection with purchases of such articles from licensee or sub-licensees with funds derived through the U.S. Government must be proportionately reduced to reflect the U.S. Government contributions, and subject to the provisions of paragraphs (a) (2) and (3) of this section, no other royalties, or fees or other charges may be assessed against U.S. Government funded purchases of such articles. However, charges may be made for reasonable reproduction, handling, mailing, or similar administrative costs incident to the furnishing of such data."

(5) "The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient, shall be provided by (applicant or licensee) to the Department of State." This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. See § 126.10(b) of this subchapter.

(6) (Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice or other appropriate document whenever the licensed articles are sold or otherwise transferred:

These commodities are authorized for export by the U.S. Government only to (country of ultimate destination or approved sales territory). They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State.

(b) Special clause for agreements relating to significant military equipment. With respect to an agreement for the production of significant military equipment, the following additional provisions must be included in the agreement:

(1) "A completed nontransfer and use certificate (DSP–83) must be executed by the foreign end-user and submitted to the Department of State of the United States before any transfer may take place."

(2) "The prior written approval of the U.S. Government must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside of the approved sales territory."

§ 124.10 Nontransfer and use assurances.

A nontransfer and use certificate (Form DSP–83) (see § 123.10 of this subchapter) signed by the applicant and the foreign party to a manufacturing license agreement or technical assistance agreement is required as a condition to the approval of any such agreement which relates to significant military equipment, classified articles or classified technical data. The Office of Defense Trade Controls may in some cases require that this certificate or a comparable undertaking be provided before approving an agreement that does not relate to significant military equipment. The Office of Defense Trade Controls may also require as a condition of approval that an appropriate authority of the foreign party's government also execute the certificate or provide undertakings comparable to those contained in the Form DSP–83 (e.g., in a diplomatic note). Agreements involving classified articles or classified technical data should be accompanied by a nontransfer and use certificate signed by an authorized representative of the foreign government concerned unless the Office of Defense Trade Controls has granted an exception to this requirement.

§ 124.11 Certification to Congress for agreements.

Regardless of dollar value, a Technical Assistance Agreement or a Manufacturing License Agreement for or in a country not a member of NATO that involves the manufacture abroad of any item of significant military equipment (as defined in § 120.7 of this subchapter) shall be certified to Congress by the Department as required by 22 U.S.C. 2776(d). Additionally, any technical assistance agreement or manufacturing license agreement providing for the export of major defense equipment, as defined in § 120.8, sold under a contract in the amount of $14 million or more, or of defense articles or defense services sold under a contract in the amount of $50 million or more, shall be certified to Congress by the Department as required by 22 U.S.C. 2776(c)(1). The Office of Defense Trade Controls will not approve agreements requiring Congressional notification until 30 calendar days have elapsed since receipt by the Congress of the required certification without the Congress having enacted a joint resolution prohibiting the agreement.

§ 124.12 Required information in letters of transmittal.

(a) An application for the approval of a manufacturing license or technical assistance agreement with a foreign person must be accompanied by an explanatory letter. The original letter and seven copies of the letter and eight copies of the proposed agreement shall be submitted to the Office of Defense Trade Controls. The explanatory letter shall contain:

(1) A statement giving the applicant's Defense Trade Controls registration number.

(2) A statement identifying the licensee and the scope of the agreement.

(3) A statement identifying the U.S. Government contract under which the equipment or technical data was generated, improved, or developed and supplied to the U.S. Government, and whether the equipment or technical data was derived from any bid or other proposal to the U.S. Government.

(4) A statement giving the military security classification of the equipment or technical data.

(5) A statement identifying any patent application which discloses any of the subject matter of the equipment or technical data covered by an invention

secrecy order issued by the U.S. Patent and Trademark Office.

(6) A statement of the actual or estimated value of the agreement, including the estimated value of all defense articles to be exported in furtherance of the agreement or amendments thereto. If the value is $500,000 or more, an additional statement must be made regarding the payment of political contributions, fees or commissions, pursuant to part 130 of this subchapter.

(7) A statement indicating whether any foreign military sales credits or loan guarantees are or will be involved in financing the agreement.

(8) The agreement must describe any classified information involved and identify, from Department of Defense form DD254, the address and telephone number of the U.S. Government office that classified the information.

(9) For agreements that may require the export of classified information, the Defense Investigative Service cognizant security offices that have responsibility for the facilities of the U.S. parties to the agreement shall be identified. The facility security clearance codes of the U.S. parties shall also be provided.

(b) The following statements must be made in the letter of transmittal:

(1) "If the agreement is approved by the Department of State, such approval will not be construed by (the applicant) as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will (the applicant) construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement."

(2) "The (applicant) will not permit the proposed agreement to enter into force until it has been approved by the Department of State."

(3) "The (applicant) will furnish the Department of State with one copy of the signed agreement (or amendment) within 30 days from the date that the agreement is concluded and will inform the Department of its termination not less than 30 days prior to expiration and provide information on the continuation of any foreign rights or the flow of technical data to the foreign party. If a decision is made not to conclude the proposed agreement, the applicant will so inform the Department within 60 days."

(4) "If this agreement grants any rights to sub-license, it will be amended to require that all sub-licensing arrangements incorporate all the provisions of the basic agreement that refer to the U.S. Government and the Department of State (i.e., 22 CFR 124.9 and 124.10)."

§ 124.13 Procurement by United States persons in foreign countries (offshore procurement).

Notwithstanding the other provisions in part 124 of this subchapter, the Office of Defense Trade Controls may authorize by means of a license (DSP–5) the export of unclassified technical data to foreign persons for offshore procurement of defense articles, provided that:

(a) The contract or purchase order for offshore procurement limits delivery of the defense articles to be produced only to the person in the United States or to an agency of the U.S. Government; and

(b) The technical data of U.S.-origin to be used in the foreign manufacture of defense articles does not exceed that required for bid purposes on a build-to-print basis (build-to-print means producing an end-item (i.e., system, subsystem or component) from technical drawings and specifications (which contain no process or know-how information) without the need for additional technical assistance). Release of supporting documentation (e.g., acceptance criteria, object code software for numerically controlled machines) is permissible. Build-to-print does not include the release of any information which discloses design methodology, engineering analysis, detailed process information or manufacturing know-how); and

(c) The contract or purchase order between the person in the United States and the foreign person:

(1) Limits the use of the technical data to the manufacture of the defense articles required by the contract or purchase order only; and

(2) Prohibits the disclosure of the data to any other person except subcontractors within the same country; and

(3) Prohibits the acquisition of any rights in the data by any foreign person; and

(4) Provides that any subcontracts between foreign persons in the approved country for manufacture of equipment for delivery pursuant to the contract or purchase order contain all the limitations of this paragraph (c); and

(5) Requires the foreign person, including subcontractors, to destroy or return to the person in the United States all of the technical data exported pursuant to the contract or purchase order upon fulfillment of their terms; and

(6) Requires delivery of the defense articles manufactured abroad only to the person in the United States or to an agency of the U.S. Government; and

(d) The person in the United States provides the Office of Defense Trade Controls with a copy of each contract, purchase order or subcontract for offshore procurement at the time it is accepted. Each such contract, purchase order or subcontract must clearly identify the article to be produced and must identify the license number or exemption under which the technical data was exported; and

(e) Licenses issued pursuant to this section must be renewed upon their expiration if offshore procurement is to extend beyond the period of validity of the license. If the technical data involved in an offshore procurement arrangement is otherwise exempt from the licensing requirements pursuant to § 126.4 or § 126.5 of this subchapter, the DSP–5 referred to in the first sentence of this section is not required. However, the exporter must comply with the other requirements of this section. The exemptions under § 125.4 of this subchapter may not be used to establish offshore procurement arrangements.

§ 124.14 Exports to warehouses or distribution points outside the United States.

(a) Agreements (e.g., contracts) between U.S. persons and foreign persons for the warehousing and distribution of defense articles must be approved by the Office of Defense Trade Controls before they enter into force. Such agreements will be limited to unclassified defense articles and must contain conditions for special distribution, end-use and reporting. Licenses for exports pursuant to such agreements must be obtained prior to exports of the defense articles unless an exemption under § 123.16(b)(1) of this subchapter is applicable.

(b) Required information. Proposed warehousing and distribution agreements (and amendments thereto) shall be submitted to the Office of Defense Trade Controls for approval. The following information must be included in all such agreements:

(1) A description of the defense articles involved including test and support equipment covered by the U.S. Munitions List. This shall include when applicable the military nomenclature, the Federal stock number, nameplate data, and any control numbers under which the defense articles were developed or procured by the U.S. Government. Only those defense articles specifically listed in the agreement will be eligible for export under the exemption in § 123.16(b)(1) of this subchapter.

(2) A detailed statement of the terms and conditions under which the defense articles will be exported and distributed;

(3) The duration of the proposed agreement;

(4) Specific identification of the country or countries that comprise the distribution territory. Distribution must be specifically limited to the governments of such countries or to private entities seeking to procure defense articles pursuant to a contract with a government within the distribution territory or to other eligible entities as specified by the Office of Defense Trade Controls. Consequently, any deviation from this condition must be fully explained and justified. A nontransfer and use certificate (DSP–83) will be required to the same extent required in licensing agreements under § 124.9(b).

(c) Required statements. The following statements must be included in all warehousing and distribution agreements:

(1) "This agreement shall not enter into force, and may not be amended or extended, without the prior written approval of the Department of State of U.S. Government."

(2) "This agreement is subject to all United States laws and regulations related to exports and to all administrative acts of the United States Government pursuant to such laws and regulations.

(3) "The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government."

(4) "No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign by reason of the U.S. Government's approval of this agreement."

(5) "No export, sale, transfer, or other disposition of the defense articles covered by this agreement is authorized to any country outside the distribution territory without the prior written approval of the Office of Defense Trade Controls of the U.S. Department of State."

(6) "The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient shall be provided by (applicant or licensee) to the Department of State." This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. (See § 126.10(b) of this subchapter.)

(7) (Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice or other appropriate document whenever the articles covered by this agreement are sold or otherwise transferred:

These commodities are authorized for export by the U.S. Government only to (country of ultimate destination or approved sales territory). They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State.

(8) "All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement."

(9) Additional clause. Unless the articles covered by the agreement are in fact intended to be distributed to private persons or entities (e.g., sporting firearms for commercial resale, cryptographic devices and software for financial and business applications), the following clause must be included in all warehousing and distribution agreements: "Sales or other transfers of the licensed article shall be limited to governments of the countries in the distribution territory and to private entities seeking to procure the licensed article pursuant to a contract with a government within the distribution territory, unless the prior written approval of the U.S. Department of State is obtained."

(d) Special clauses for agreements relating to significant military equipment. With respect to agreements for the warehousing and distribution of significant military equipment, the following additional provisions must be included in the agreement:

(1) A completed nontransfer and use certificate (DSP–83) must be executed by the foreign end-user and submitted to the U.S. Department of State before any transfer may take place.

(2) The prior written approval of the U.S. Department of State must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside the approved distribution territory.

(e) *Transmittal Letters*. Requests for approval of warehousing and distribution agreements with foreign persons must be made by letter. The original letter and seven copies of the letter and seven copies of the proposed agreement shall be submitted to the Office of Defense Trade Controls. The letter shall contain:

(1) A statement giving the applicant's Defense Trade Controls registration number.

(2) A statement identifying the foreign party to the agreement.

(3) A statement identifying the defense articles to be distributed under the agreement.

(4) A statement identifying any U.S. Government contract under which the equipment may have been generated, improved, developed or supplied to the U.S. Government, and whether the equipment was derived from any bid or other proposal to the U.S. Government.

(5) A statement that no classified defense articles or classified technical data are involved.

(6) A statement identifying any patent application which discloses any of the subject matter of the equipment or related technical data covered by an invention secrecy order issued by the U.S. Patent and Trademark Office.

(f) Required clauses. The following statements must be made in the letter of transmittal:

(1) "If the agreement is approved by the Department of State, such approval will not be construed by (applicant) as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will (the applicant) construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement."

(2) "The (applicant) will not permit the proposed agreement to enter into force until it has been approved by the Department of State."

(3) "(Applicant) will furnish the Department of State with one copy of the signed agreement (or amendment thereto) within 30 days from the date that the agreement is concluded, and will inform the Department of its termination not less than 30 days prior to expiration. If a decision is made not to conclude the proposed agreement, (applicant) will so inform the Department within 60 days."

PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES

Sec.
125.1 Exports subject to this part.
125.2 Exports of unclassified technical data.
125.3 Exports of classified technical data and classified defense articles.
125.4 Exemptions of general applicability.
125.5 Exemptions for plant visits.
125.6 Certification requirements for exemptions.
125.7 Procedures for the export of classified technical data and other classified defense articles.
125.8 Filing of licenses for exports of unclassified technical data.
125.9 Filing of licenses and other authorizations for exports of classified technical data and classified defense articles.

Authority: Sections 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311, 3 CFR, 1977 Comp. p.79; 22 U.S.C. 2658.

§ 125.1 Exports subject to this part.

(a) The controls of this part apply to the export of technical data and the export of classified defense articles. Information which is in the public domain (see § 120.11 of this subchapter and § 125.4(b)(13)) is not subject to the controls of this subchapter.

(b) A license for the export of technical data and the exemptions in § 125.4 may not be used for foreign production purposes or for technical assistance unless the approval of the Office of Defense Trade Controls has been obtained. Such approval is generally provided only pursuant to the procedures specified in part 124 of this subchapter.

(c) Technical data authorized for export may not be reexported, transferred or diverted from the country of ultimate end-use or from the authorized foreign end-user (as designated in the license or approval for export) or disclosed to a national of another country without the prior written approval of the Office of Defense Trade Controls.

(d) The controls of this part apply to the exports referred to in paragraph (a) of this section regardless of whether the person who intends to export the technical data produces or manufactures defense articles if the technical data is determined by the Office of Defense Trade Controls to be subject to the controls of this subchapter.

(e) The provisions of this subchapter do not apply to technical data related to articles in Category VI(e) and Category XVI. The export of such data is controlled by the Department of Energy and the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978.

§ 125.2 Exports of unclassified technical data.

(a) A license (DSP–5) is required for the export of unclassified technical data unless the export is exempt from the licensing requirements of this subchapter. In the case of a plant visit, details of the proposed discussions must be transmitted to the Office of Defense Trade Controls for an appraisal of the technical data. Seven copies of the technical data or the details of the discussion must be provided.

(b) Patents. A license issued by the Office of Defense Trade Controls is required for the export of technical data whenever the data exceeds that which is used to support a domestic filing of a patent application or to support a foreign filing of a patent application whenever no domestic application has been filed. Requests for the filing of patent applications in a foreign country, and requests for the filing of amendments, modifications or supplements to such patents, should follow the regulations of the U.S. Patent and Trademark Office in accordance with 37 CFR part 5. The export of technical data to support the filing and processing of patent applications in foreign countries is subject to regulations issued by the U.S. Patent and Trademark Office pursuant to 35 U.S.C. 184.

(c) Disclosures. Unless otherwise expressly exempted in this subchapter, a license is required for the oral, visual or documentary disclosure of technical data by U.S. persons to foreign persons. A license is required regardless of the manner in which the technical data is transmitted (e.g., in person, by telephone, correspondence, electronic means, etc.). A license is required for such disclosures by U.S. persons in connection with visits to foreign diplomatic missions and consular offices.

§ 125.3 Exports of classified technical data and classified defense articles.

(a) A request for authority to export defense articles, including technical data, classified by a foreign government or pursuant to Executive Order 12356, successor orders, or other legal authority must be submitted to the Office of Defense Trade Controls for approval. The application must contain full details of the proposed transaction. It should also list the facility security clearance code of all U.S. parties on the license and include the Defense Investigative Service cognizant security office of the party responsible for packaging the commodity for shipment. A nontransfer and use certificate (Form DSP–83) executed by the applicant, foreign consignee, end-user and an authorized representative of the foreign government involved will be required.

(b) Classified technical data which is approved by the Office of Defense Trade Controls either for export or reexport after a temporary import will be transferred or disclosed only in accordance with the requirements in the Department of Defense Industrial Security Manual. Any other requirements imposed by cognizant U.S. departments and agencies must also be satisfied.

(c) The approval of the Office of Defense Trade Controls must be obtained for the export of technical data by a U.S. person to a foreign person in the U.S. or in a foreign country unless the proposed export is exempt under the provisions of this subchapter.

(d) All communications relating to a patent application covered by an invention secrecy order are to be addressed to the U.S. Patent and Trademark Office (see 37 CFR 5.11).

§ 125.4 Exemptions of general applicability.

(a) The following exemptions apply to exports of unclassified technical data for which approval is not needed from the Office of Defense Trade Controls. These exemptions, except for paragraph (b)(13) of this section, do not apply to exports to proscribed destinations under § 126.1 of this subchapter or for persons considered generally ineligible under § 120.1(c) of this subchapter. The exemptions are also not applicable for purposes of establishing offshore procurement arrangements. If § 126.8 of this subchapter requirements are applicable, they must be met before an exemption under this section may be used. Transmission of classified information must comply with the requirements of the Department of Defense Industrial Security Manual and the exporter must certify to the transmittal authority that the technical data does not exceed the technical limitation of the authorized export.

(b) The following exports are exempt from the licensing requirements of this subchapter.

(1) Technical data, including classified information, to be disclosed pursuant to an official written request or directive from the U.S. Department of Defense;

(2) Technical data, including classified information, in furtherance of a manufacturing license or technical assistance agreement approved by the Department of State under part 124 of

this subchapter and which meet the requirements of § 124.3 of this subchapter;

(3) Technical data, including classified information, in furtherance of a contract between the exporter and an agency of the U.S. Government, if the contract provides for the export of the data and such data does not disclose the details of design, development, production, or manufacture of any defense article;

(4) Copies of technical data, including classified information, previously authorized for export to the same recipient. Revised copies of such technical data are also exempt if they pertain to the identical defense article, and if the revisions are solely editorial and do not add to the content of technology previously exported or authorized for export to the same recipient;

(5) Technical data, including classified information, in the form of basic operations, maintenance, and training information relating to a defense article lawfully exported or authorized for export to the same recipient. Intermediate or depot-level repair and maintenance information may be exported only under a license or agreement approved specifically for that purpose;

(6) Technical data, including classified information, related to firearms not in excess of caliber .50 and ammunition for such weapons, except detailed design, development, production or manufacturing information;

(7) Technical data, including classified information, being returned to the original source of import;

(8) Technical data directly related to classified information which has been previously exported or authorized for export in accordance with this part to the same recipient, and which does not disclose the details of the design, development, production, or manufacture of any defense article;

(9) Technical data, including classified information, sent by a U.S. corporation to a U.S. person employed by that corporation overseas or to a U.S. Government agency. This exemption is subject to the limitations of § 125.1(b) and may be used only if:

(i) The technical data is to be used overseas solely by U.S. persons;

(ii) If the U.S. person overseas is an employee of the U.S. Government or is directly employed by the U.S. corporation and not by a foreign subsidiary; and

(iii) The classified information is sent overseas in accordance with the requirements of the Department of Defense Industrial Security Manual.

(10) Disclosures of unclassified technical data in the U.S. by U.S. institutions of higher learning to foreign persons who are their bona fide and full time regular employees. This exemption is available only if:

(i) The employee's permanent abode throughout the period of employment is in the United States;

(ii) The employee is not a national of a country to which exports are prohibited pursuant to § 126.1 of this subchapter; and

(iii) The institution informs the individual in writing that the technical data may not be transferred to other foreign persons without the prior written approval of the Office of Defense Trade Controls;

(11) Technical data, including classified information, for which the exporter, pursuant to an arrangement with the Department of Defense, Department of Energy or NASA which requires such exports, has been granted an exemption in writing from the licensing provisions of this part by the Office of Defense Trade Controls. Such an exemption will normally be granted only if the arrangement directly implements an international agreement to which the United States is a party and if multiple exports are contemplated. The Office of Defense Trade Controls, in consultation with the relevant U.S. Government agencies, will determine whether the interests of the United States Government are best served by expediting exports under an arrangement through an exemption (see also paragraph (b)(3) of this section for a related exemption);

(12) Technical data which is specifically exempt under part 126 of this subchapter; or

(13) Technical data approved for public release (i.e., unlimited distribution) by the cognizant U.S. Government department or agency or Directorate for Freedom of Information and Security Review. This exemption is applicable to information approved by the cognizant U.S. Government department or agency for public release in any form. It does not require that the information be published in order to qualify for the exemption.

§ 125.5 Exemptions for plant visits.

(a) A license is not required for the oral and visual disclosure of unclassified technical data during the course of a classified plant visit by a foreign person, provided (1) the classified visit has itself been authorized pursuant to a license issued by the Office of Defense Trade Controls; or (2) the classified visit was approved in connection with an actual or potential government-to-government program or project by a U.S. Government agency having classification jurisdiction over the classified defense article or classified technical data involved under Executive Order 12356 or other applicable Executive Order; and (3) the unclassified information to be released is directly related to the classified defense article or technical data for which approval was obtained and does not disclose the details of the design, development, production or manufacture of any other defense articles. In the case of visits involving classified information, the requirements of the Defense Industrial Security Manual (Department of Defense Manual 5220.22M) must be met.

(b) The approval of the Office of Defense Trade Controls is not required for the disclosure of oral and visual classified information to a foreign person during the course of a plant visit approved by the appropriate U.S. Government agency if (1) the requirements of the Defense Industrial Security Manual have been met, (2) the classified information is directly related to that which was approved by the U.S. Government agency, (3) it does not exceed that for which approval was obtained, and (4) it does not disclose the details of the design, development, production or manufacture of any defense articles.

(c) A license is not required for the disclosure to a foreign person of unclassified technical data during the course of a plant visit (either classified or unclassified) approved by the Office of Defense Trade Controls or a cognizant U.S. Government agency provided the technical data does not contain information in excess of that approved for disclosure. This exemption does not apply to technical data which could be used for design, development, production or manufacture of a defense article.

§ 125.6 Certification requirements for exemptions.

(a) To claim an exemption for the export of technical data under the provisions of §§ 125.4 and 125.5, an exporter must certify that the proposed export is covered by a relevant paragraph of that section. For § 125.4, certification consists of marking the package or letter containing the technical data: "22 CFR 125.4 (identify subsection) applicable." This certification must be made in written form and retained in the exporter's files for a period of five years. A Shippers Export Declaration is not required for

exports of unclassified technical data (see § 123.22 (d) of this subchapter.

(b) If a District Director of Customs or Postmaster is unavailable at the time of export, or if the export is via oral, visual, or electronic means, the exporter must also complete a written certification as indicated in paragraph (a) of this section.

§ 125.7 Procedures for the export of classified technical data and other classified defense articles.

(a) All applications for the export or temporary import of classified technical data or other classified defense articles must be submitted to the Office of Defense Trade Controls on Form DSP–85.

(b) An application for the export of classified technical data or other classified defense articles must be accompanied by seven copies of the data and a completed Form DSP–83 (see § 123.10 of this subchapter). Only one copy of the data or descriptive literature must be provided if a renewal of the license is requested. All classified materials accompanying an application must be transmitted to the Office of Defense Trade Controls in accordance with the requirements of the Defense Industrial Security Manual (Department of Defense Manual Number 5220.22–M).

§ 125.8 Filing of licenses for exports of unclassified technical data.

(a) Licenses for the export of unclassified technical data must be presented to the appropriate District Director of Customs or Postmaster at the time of shipment or mailing. The District Director of Customs or Postmaster will endorse and transmit the licenses to the Office of Defense Trade Controls in accordance with the instructions contained on the reverse side of the license.

(b) If a license for the export of unclassified technical data is used but not endorsed by U.S. Customs or a Postmaster for whatever reason (e.g., electronic transmission, unavailability of Customs officer or Postmaster, etc.), the person exporting the data must self-endorse the license, showing when and how the export took place. Every license must be returned to the Office of Defense Trade Controls when the total value authorized has been shipped or when the date of expiration has been reached, whichever occurs first.

§ 125.9 Filing of licenses and other authorizations for exports of classified technical data and classified defense articles.

Licenses and other authorizations for the export of classified technical data or classified defense articles will be forwarded by the Office of Defense Trade Controls to the Defense Investigative Service of the Department of Defense in accordance with the provisions of the Department of Defense Industrial Security Manual. The Office of Defense Trade Controls will forward a copy of the license to the applicant for the applicant's information. The Defense Investigative Service will return the endorsed license to the Office of Defense Trade Controls upon completion of the authorized export or expiration of the license, whichever occurs first.

PART 126—GENERAL POLICIES AND PROVISIONS

Sec.

126.1 Prohibited exports and sales to certain countries.
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Authority: Secs. 2, 38, 40, 42, and 71, Arms Export Control Act, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, and 2791, and 2797); E.O. 11958, 42 FR 4311, E.O. 11322, 32 FR 119; 22 U.S.C. 2658.

§ 126.1 Prohibited exports and sales to certain countries.

(a) It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to: Albania, Armenia, Azerbaijan, Bulgaria, Byelarus, Cambodia, Cuba, Estonia, Georgia, Iran, Iraq, Libya, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, North Korea, Romania, Russia, South Africa, Syria, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (e.g., Burma, China, Liberia, Somalia, the Sudan, the former Yugoslavia, and Zaire) or for whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Comprehensive arms embargoes are normally the subject of a State Department notice published in the Federal Register. The exemptions provided in the regulations in this subchapter, except §§ 123.17 and 125.4(b)(13) of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries or areas.

(b) Shipments. A defense article licensed for export under this subchapter may not be shipped on a vessel, aircraft or other means of conveyance which is owned or operated by, or leased to or from, any of the proscribed countries or areas.

(c) South Africa. South Africa is subject to an arms embargo and thus to the policy specified in paragraph (a) of this section. Exceptions may be made to this policy only if the Assistant Secretary for Politico-Military Affairs determines that:

(1) The item is not covered by United Nations Security Council Resolution 418 of November 4, 1977; and

(2) The item is to be exported solely for commercial purposes and not for use by the armed forces, police, or other security forces of South Africa or for any other similar purpose.

(d) Terrorism. Exports to countries which the Secretary of State has determined to have repeatedly provided support for acts of international terrorism are contrary to the foreign policy of the United States and are thus subject to the policy specified in paragraph (a) of this section and the requirements of section 40 of the Arms Export Control Act (22 U.S.C. 2780) and the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986 (22 U.S.C. 4801, note). The countries in this category are: Cuba, Iran, Iraq, Libya, North Korea and Syria. The same countries are identified pursuant to section 6(j) of the Export Administration Act, as amended (50 U.S.C. App. 2405(j)).

(e) Proposed sales. No sale or transfer and no proposal to sell or transfer any defense articles, defense services or technical data subject to this subchapter may be made to any country referred to in this section (including the embassies or consulates of such a country), or to any person acting on its behalf, whether in the United States or abroad, without first obtaining a license or written approval of the Office of Defense Trade Controls. However, in accordance with paragraph (a) of this section, it is the policy of the Department of State to deny licenses and approvals in such cases. Any person who knows or has reason to know of such a proposed or actual sale, or transfer, of such articles, services or data must immediately

inform the Office of Defense Trade Controls.

§ 126.2 Temporary suspension or modification of this subchapter.

The Director, Office of Defense Trade Controls, may order the temporary suspension or modification of any or all of the regulations of this subchapter in the interest of the security and foreign policy of the United States.

§ 126.3 Exceptions.

In a case of exceptional or undue hardship, or when it is otherwise in the interest of the United States Government, the Director, Office of Defense Trade Controls may make an exception to the provisions of this subchapter.

§ 126.4 Shipments by or for United States Government agencies.

(a) A license is not required for the temporary import, or temporary export, of any defense article, including technical data or the performance of a defense service, by or for any agency of the U.S. Government (1) for official use by such an agency, or (2) for carrying out any foreign assistance, cooperative project or sales program authorized by law and subject to control by the President by other means. This exemption applies only when all aspects of a transaction (export, carriage, and delivery abroad) are effected by a United States Government agency or when the export is covered by a United States Government Bill of Lading. This exemption, however, does not apply when a U.S. Government agency acts as a transmittal agent on behalf of a private individual or firm, either as a convenience or in satisfaction of security requirements. The approval of the Office of Defense Trade Controls must be obtained before defense articles previously exported pursuant to this exemption are permanently transferred (e.g., property disposal of surplus defense articles overseas) unless (i) the transfer is pursuant to a grant, sale, lease, loan or cooperative project under the Arms Export Control Act or a sale, lease or loan under the Foreign Assistance Act of 1961, as amended, or (ii) the defense articles have been rendered useless for military purposes beyond the possibility of restoration.

Note: *Special definition.* For purposes of this section, defense articles exported abroad for incorporation into a foreign launch vehicle or for use on a foreign launch vehicle or satellite that is to be launched from a foreign country shall be considered a permanent export.

(b) This section does not authorize any department or agency of the U.S. Government to make any export which is otherwise prohibited by virtue of other administrative provisions or by any statute.

(c) A license is not required for the temporary import, or temporary or permanent export, of any classified or unclassified defense articles, including technical data or the performance of a defense service, for end-use by a U.S. Government Agency in a foreign country under the following circumstances:

(1) The export or temporary import is pursuant to a contract with, or written direction by, an agency of the U.S. Government; and

(2) The end-user in the foreign country is a U.S. Government agency or facility, and the defense articles or technical data will not be transferred to any foreign person; and

(3) The urgency of the U.S. Government requirement is such that the appropriate export license or U.S. Government Bill of Lading could not have been obtained in a timely manner.

(d) A Shipper's Export Declaration (SED), required under § 123.22(c) of this subchapter, and a written statement by the exporter certifying that these requirements have been met must be presented at the time of export to the appropriate District Director of Customs or Department of Defense transmittal authority. A copy of the SED and the written certification statement shall be provided to the Office of Defense Trade Controls immediately following the export.

§ 126.5 Canadian exemptions.

(a) District Directors of Customs and postmasters shall permit the export or temporary import without a license of any unclassified defense article or any unclassified technical data to Canada for end-use in Canada by Canadian citizens or return to the United States, or from Canada for end-use in the United States or return to a Canadian citizen in Canada, with the exception of the articles or related technical data listed in paragraph (b) of this section.

(b) Exceptions. The exemptions of this section do not apply to the following articles and related technical data:

(1) Fully automatic firearms in Category I(a) which are not for end-use by the Federal Government, or a Provincial or Municipal Government of Canada;

(2) Nuclear weapons strategic delivery systems and all components, parts, accessories, attachments specifically designed for such systems and associated equipment;

(3) Nuclear weapon design and test equipment listed in Category XVI;

(4) Naval nuclear propulsion equipment listed in Category VI(e);

(5) Aircraft listed in Category VIII(a);

(6) Submersible and oceanographic vessels and related articles listed in Category XX (a) through (d).

(7) Technical data for use by a foreign national other than a Canadian.

(8) Unclassified technical data directly related to a classified defense article.

(c) Related requirements. The foregoing exemption from obtaining an export license does not exempt an exporter from complying with the requirements set forth in § 123.15 of this subchapter or from filing the Shipper's Export Declaration required by § 123.22 of this subchapter.

(d) Part 124 agreements. The requirements of part 124 of this subchapter must be complied with in the situations contemplated in that part. For example, the exemptions of this section may not be used for the provision of defense services except pursuant to an approved manufacturing license agreement or technical assistance agreement.

§ 126.6 Foreign-owned military aircraft and naval vessels, and the Foreign Military Sales program.

(a) A license from the Office of Defense Trade Controls is not required if:

(1)(i) The article or technical data to be exported was sold, leased, or loaned by the Department of Defense to a foreign country or international organization pursuant to the Arms Export Control Act or the Foreign Assistance Act of 1961, as amended, and

(ii) The article or technical data was delivered to representatives of such a country or organization in the United States; and

(iii) The article or technical data is to be exported from the United States on a military aircraft or naval vessel of that government or organization or via the Defense Transportation Service (DTS).

(b) Foreign military aircraft and naval vessels. A license is not required for the entry into the United States of military aircraft or naval vessels of any foreign state if no overhaul, repair, or modification of the aircraft or naval vessel is to be performed. However, Department of State approval for overflight (pursuant to the 49 U.S.C. 1508) and naval visits must be obtained from the Bureau of Politico-Military Affairs, Office of International Security Operations.

(c) Procedures for the Foreign Military Sales Program. (1) District Directors of Customs are authorized to permit the

export and temporary import of classified and unclassified defense articles, defense services and technical data without a license if the articles or technical data were sold, leased or loaned by the U.S. Department of Defense to foreign governments or international organizations under the Foreign Military Sales (FMS) program of the Arms Export Control Act. This procedure may be used only if a proposed export is:

(i) Pursuant to an executed U.S. Department of Defense Letter of Offer and Acceptance (DD Form 1513); and

(ii) Accompanied by a properly executed DSP–94, or in the case of a classified shipment, an approved Letter of Offer and Acceptance; and

(iii) Made by the relevant foreign diplomatic mission of the purchasing country or its authorized freight forwarder, provided that the freight forwarder is registered with the Office of Defense Trade Controls pursuant to part 122 of this subchapter, and, if classified defense articles or technical data are involved, has the requisite U.S. Government security clearance and a transportation plan has been approved as in § 126.6(a)(1), above and the defense articles or technical data are shipped in compliance with the Department of Defense Industrial Security Manual.

(2) Filing and documents.

(i) The original copy of completed Form DSP–94, together with one copy of the corresponding authenticated DD Form 1513 and a Shipper's Export Declaration, must be filed with the District Director of Customs at the port of exit prior to actual shipment. An executed DD Form 1513 is one which has been signed by:

(A) an authorized Department of Defense representative and countersigned by the Comptroller, Defense Security Assistance Agency (DSAA); and

(B) by an authorized representative of the foreign government.

(ii) SED or Outbound Manifest. The Shipper's Export Declaration or, if authorized, the outbound manifest, must be annotated as follows:

This shipment is being exported under the authority of Department of State Form DSP–94. It covers FMS Case (case identification), expiration date _____. 22 CFR 126.6 applicable. The U.S. Government point of contact is _____, telephone number _____.

§ 126.7 Denial, revocation, suspension, or amendment of licenses and other approvals.

(a) *Policy.* Licenses or approvals shall be denied or revoked whenever required by any statute of the United States (see §§ 127.6 and 127.10 of this subchapter). Any application for an export license or other approval under this subchapter may be disapproved, and any license or other approval or exemption granted under this subchapter may be revoked, suspended, or amended without prior notice whenever:

(1) The Department of State deems such action to be in furtherance of world peace, the national security or the foreign policy of the United States, or is otherwise advisable; or

(2) The Department of State believes that 22 U.S.C. 2778, any regulation contained in this subchapter, or the terms of any U.S. Government export authorization (including the terms of a manufacturing license or technical assistance agreement, or export authorization granted pursuant to the Export Administration Act, as amended) has been violated by any party to the export or other person having significant interest in the transaction; or

(3) An applicant is the subject of an indictment for a violation of any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter; or

(4) An applicant or any party to the export or the agreement has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter; or

(5) An applicant is ineligible to contract with, or to receive a license or other authorization to import defense articles or defense services from, any agency of the U.S. Government; or

(6) An applicant, any party to the export or agreement, any source or manufacturer of the defense article or defense service or any person who has a significant interest in the transaction has been debarred, suspended, or otherwise is ineligible to receive an export license or other authorization from any agency of the U.S. government (e.g., pursuant to debarment by the Department of Commerce under 15 CFR part 388 or by the Department of State under part 127 or 128 of this subchapter); or

(7) An applicant has failed to include any of the information or documentation expressly required to support a license application or other request for approval under this subchapter or as required in the instructions in the applicable Department of State form; or

(8) An applicant is subject to sanctions under other relevant U.S. laws (e.g., the Missile Technology Controls title of the National Defense Authorization Act for FY 1991 (Pub. L. 101–510); the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (Pub. L. 102–182); or the Iran-Iraq Arms Non-Proliferation Act of 1992 (Pub. L. 102–484)).

(b) *Notification.* The Office of Defense Trade Controls will notify applicants or licensees or other appropriate United States persons of actions taken pursuant to paragraph (a) of this section. The reasons for the action will be stated as specifically as security and foreign policy considerations permit.

(c) *Reconsideration.* If a written request for reconsideration of an adverse decision is made within 30 days after a person has been informed of the decision, the U.S. person will be accorded an opportunity to present additional information. The case will then be reviewed by the Office of Defense Trade Controls.

(d) *Reconsideration of certain applications.* Applications for licenses or other requests for approval denied for repeated failure to provide information or documentation expressly required will normally not be reconsidered during the thirty day period following denial. They will be reconsidered after this period only after a final decision is made on whether the applicant will be subject to an administrative penalty imposed pursuant to this subchapter. Any request for reconsideration shall be accompanied by a letter explaining the steps that have been taken to correct the failure and to ensure compliance with the requirements of this subchapter.

(e) *Special definition.* For purposes of this section, the term *party to the export* means:

(1) The chief executive officer, president, vice-presidents, other senior officers and officials (e.g., comptroller, treasurer, general counsel) and any member of the board of directors of the applicant;

(2) The freight forwarders or designated exporting agent of the applicant; and

(3) Any consignee or end-user of any item to be exported.

§ 126.8 Proposals to foreign persons relating to significant military equipment.

(a) Certain proposals to foreign persons for the sale or manufacture abroad of significant military equipment require either the prior approval of, or prior notification to, the Office of Defense Trade Controls.

(1) Sale of significant military equipment: Prior approval requirement. The approval of the Office of Defense Trade Controls is required before a U.S. person may make a proposal or presentation designed to constitute a basis for a decision on the part of any foreign person to purchase significant

military equipment on the U.S. Munitions List whenever all the following conditions are met:

(i) The value of the significant military equipment to be sold is $14,000,000 or more; and

(ii) The equipment is intended for use by the armed forces of any foreign country other than a member of the North Atlantic Treaty Organization, Australia, New Zealand, or Japan; and

(iii) The sale would involve the export from the United States of any defense article or the furnishing abroad of any defense service including technical data; and

(iv) The identical significant military equipment has not been previously licensed for permanent export or approved for sale under the Foreign Military Sales Program of the Department of Defense, to any foreign country.

(2) Sale of significant military equipment: Prior notification requirement. The Office Defense Trade Controls must be notified in writing at least thirty days in advance of any proposal or presentation concerning the sale of significant military equipment whenever the conditions specified in paragraphs (a)(1) (i) through (iii) of this section are met and the identical equipment has been previously licensed for permanent export or approved for sale under the FMS Program to any foreign country.

(3) Manufacture abroad of significant military equipment: Prior approval requirement. The approval of the Office of Defense Trade Controls is required before a U.S. person may make a proposal or presentation designed to constitute a basis for a decision on the part of any foreign person to enter into any manufacturing license agreement or technical assistance agreement for the production or assembly of significant military equipment, regardless of dollar value, in any foreign country, whenever:

(i) The equipment is intended for use by the armed forces of any foreign country; and

(ii) The agreement would involve the export from the United States of any defense article or the furnishing abroad of any defense service including technical data.

(b) *Definition of proposal or presentation.* The terms proposal or presentation (designed to constitute a basis for a decision to purchase and to enter into any agreement) mean the communication of information in sufficient detail that the person communicating that information knows or should know that it would permit an intended purchaser to decide either to acquire the particular equipment in question or to enter into the manufacturing license agreement or technical assistance agreement. For example, a presentation which describes the equipment's performance characteristics, price, and probable availability for delivery would require prior notification or approval, as appropriate, where the conditions specified in paragraph (a) of this section are met. By contrast, the following would not require prior notification or approval: Advertising or other reporting in a publication of general circulation; preliminary discussions to ascertain market potential; or merely calling attention to the fact that a company manufactures a particular item of significant military equipment.

(c) *Satisfaction of requirements.* (1) The requirement of this section for prior approval is met by any of the following:

(i) A written statement from the Office of Defense Trade Controls approving the proposed sale or agreement or approving the making of a proposal or presentation.

(ii) A license issued under § 125.2 or § 125.3 of this subchapter for the export of technical data relating to the proposed sale or agreement to the country concerned.

(iii) A temporary export license issued under § 123.5 of this subchapter relating to the proposed sale or agreement for a demonstration to the armed forces of the country of export.

(iv) With respect to manufacturing license agreements or technical assistance agreements, the application for export licenses pursuant to the two preceding subparagraphs must state that they are related to possible agreements of this kind.

(2) The requirement of this section for prior notification is met by informing the Office of Defense Trade Controls by letter at least 30 days before making the proposal or presentation. The letter must comply with the procedures set forth in paragraph (d) of this section and must identify the relevant license, approval, or FMS case by which the identical equipment had previously been authorized for permanent export or sale. The Office of Defense Trade Controls will provide written acknowledgement of such prior notification to confirm compliance with this requirement and the commencement of the 30-day notification period.

(d) *Procedures.* Unless a license has been obtained pursuant to § 126.8(c)(1) (ii) or (iii), a request for prior approval to make a proposal or presentation with respect to significant military equipment, or a 30-day prior notification regarding the sale of such equipment, must be made by letter to the Office of Defense Trade Controls. The letter must outline in detail the intended transaction, including usage of the equipment involved and the country (or countries) involved. Seven copies of the letter should be provided as well as seven copies of suitable descriptive information concerning the equipment.

(e) *Statement to accompany licensing requests.* (1) Every application for an export license or other approval to implement a sale or agreement which meets the criteria specified in paragraph (a) of this section must be accompanied by a statement from the applicant which either:

(i) Refers to a specific notification made or approval previously granted with respect to the transaction; or

(ii) Certifies that no proposal or presentation requiring prior notification or approval has been made.

(2) The Department of State may require a similar statement from the Foreign Military Sales contractor concerned in any case where the United States Government receives a request for a letter of offer for a sale which meets the criteria specified in paragraph (a) of this section.

(f) *Penalties.* In addition to other remedies and penalties prescribed by law or this subchapter, a failure to satisfy the prior approval or prior notification requirements of this section may be considered to be a reason for disapproval of a license, agreement or sale under the FMS program.

(g) *License for technical data.* Nothing in this section constitutes or is to be construed as an exemption from the licensing requirement for the export of technical data that is embodied in any proposal or presentation made to any foreign persons.

§ 126.9 Advisory opinions.

Any person desiring information as to whether the Office of Defense Trade Controls would be likely to grant a license or other approval for the export of a particular defense article or defense service to a particular country may request an advisory opinion from the Office of Defense Trade Controls. These opinions are not binding on the Department of State and are revocable. A request for an advisory opinion must be made in writing and must outline in detail the equipment, its usage, the security classification (if any) of the articles or related technical data, and the country or countries involved. An original and seven copies of the letter must be provided along with seven copies of suitable descriptive information concerning the defense article or defense service.

§ 126.10 Disclosure of information.

(a) *Freedom of Information.* Subchapter R of this title contains regulations on the availability to the public of information and records of the Department of State. The provisions of subchapter R apply to such disclosures by the Office of Defense Trade Controls.

(b) *Determinations required by law.* Section 38 of the Arms Export Control Act (22 U.S.C. 2778) provides that certain information required by the Department of State in connection with the licensing process may generally not be disclosed to the public unless certain determinations relating to the national interest are made in accordance with the procedures specified by that provision. Determinations required by section 38(e) shall be made by the Assistant Secretary of State for Politico-Military Affairs.

(c) *Information required under part 130.* Part 130 of this subchapter contains specific provisions on the disclosure of information described in that part.

(d) *National Interest Determinations.* In accordance with section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)), the Secretary of State has determined that the following disclosures are in the national interest of the United States:

(1) Furnishing information to foreign governments for law enforcement or regulatory purposes; and

(2) Furnishing information to foreign governments and other agencies of the U.S. Government in the context of multilateral or bilateral export regimes (e.g., the Missile Technology Control Regime, the Australia Group, and CoCoM).

§ 126.11 Relations to other provisions of law.

The provisions in this subchapter are in addition to, and are not in lieu of, any other provisions of law or regulations. The sale of firearms in the United States, for example, remains subject to the provisions of the Gun Control Act of 1968 and regulations administered by the Department of the Treasury. The performance of defense services on behalf of foreign governments by retired military personnel continues to require consent pursuant to Part 3a of this title. Persons who intend to export defense articles or furnish defense services should consequently not assume that satisfying the requirements of this subchapter relieves one of other requirements of law.

§ 126.12 Continuation in force.

All determinations, authorizations, licenses, approvals of contracts and agreements and other action issued, authorized, undertaken, or entered into by the Department of State pursuant to section 414 of the Mutual Security Act of 1954, as amended, or under the previous provisions of this subchapter, continue in full force and effect until or unless modified, revoked or superseded by the Department of State.

§ 126.13 Required information.

(a) All applications for licenses (DSP–5, DSP–61, DSP–73, and DSP–85), all requests for approval of agreements and amendments thereto under part 124 of this subchapter, all requests for other written authorizations, and all 30-day prior notifications of sales of significant military equipment under § 126.8(c) must include a letter signed by a responsible official empowered by the applicant and addressed to the Director, Office of Defense Trade Controls, stating whether:

(1) The applicant or the chief executive officer, president, vice-presidents, other senior officers or officials (e.g., comptroller, treasurer, general counsel) or any member of the board of directors is the subject of an indictment for or has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter since the effective date of the Arms Export Control Act, Public Law 94–329, 90 Stat. 729 (June 30, 1976);

(2) The applicant or the chief executive officer, president, vice-presidents, other senior officers or officials (e.g., comptroller, treasurer, general counsel) or any member of the board of directors is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government;

(3) To the best of the applicant's knowledge, any party to the export as defined in § 126.7(e) has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter since the effective date of the Arms Export Control Act, Public Law 94–329, 90 Stat. 729 (June 30, 1976), or is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from any agency of the U.S. government; and

(4) The natural person signing the application, notification or other request for approval (including the statement required by this subsection) is a citizen or national of the United States, has been lawfully admitted to the United States for permanent residence (and maintains such a residence) under the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a), section 101(a)20, 60 Stat. 163), or is an official of a foreign government entity in the United States.

(b) In addition, all applications for licenses must include, on the application or an addendum sheet, the complete names and addresses of all U.S. consignors and freight forwarders, and all foreign consignees and foreign intermediate consignees involved in the transaction. If there are multiple consignors, consignees or freight forwarders, and all the required information cannot be included on the application form, an addendum sheet and seven copies containing this information must be provided. The addendum sheet must be marked at the top as follows: "Attachment to Department of State License From (insert DSP–5, 61, 73, or 85, as appropriate) for Export of (insert commodity) valued at (insert U.S. dollar amount) to (insert country of ultimate destination)." The Office of Defense Trade Controls will impress one copy of the addendum sheet with the Department of State seal and return it to the applicant with each license. The sealed addendum sheet must remain attached to the license as an integral part thereof. District Directors of Customs and Department of Defense transmittal authorities will permit only those U.S. consignors or freight forwarders listed on the license or sealed addendum sheet to make shipments under the license, and only to those foreign consignees named on the documents. Applicants should list all freight forwarders who may be involved with shipments under the license to ensure that the list is complete and to avoid the need for amendments to the list after the license has been approved. If there are unusual or extraordinary circumstances that preclude the specific identification of all the U.S. consignors and freight forwarders and all foreign consignees, the applicant must provide a letter of explanation with each application.

(c) In cases when foreign nationals are employed at or assigned to security-cleared facilities, provision by the applicant of a Technology Control Plan (available from the Defense Investigative Service) will facilitate processing.

PART 127—VIOLATIONS AND PENALTIES

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Authority: Secs. 2, 38 and 42, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); E.O. 11958, 42 FR 4311, 22 U.S.C. 401; 22 U.S.C. 2658.

§ 127.1 Violations.

(a) It is unlawful:

(1) To export or attempt to export from the United States any defense article or technical data or to furnish any defense service for which a license or written approval is required by this subchapter without first obtaining the required license or written approval from the Office of Defense Trade Controls;

(2) To import or attempt to import any defense article whenever a license is required by this subchapter without first obtaining the required license or written approval from the Office of Defense Trade Controls;

(3) To conspire to export, import, reexport or cause to be exported, imported or reexported, any defense article or to furnish any defense service for which a license or written approval is required by this subchapter without first obtaining the required license or written approval from the Office of Defense Trade Controls; or

(4) To violate any of the terms or conditions of licenses or approvals granted pursuant to this subchapter.

(b) Any person who is granted a license or other approval under this subchapter is responsible for the acts of employees, agents, and all authorized persons to whom possession of the licensed defense article or technical data has been entrusted regarding the operation, use, possession, transportation, and handling of such defense article or technical data abroad. All persons abroad subject to U.S. jurisdiction who obtain temporary custody of a defense article exported from the United States or produced under an agreement described in part 124 of this subchapter, and irrespective of the number of intermediate transfers, are bound by the regulations of this subchapter in the same manner and to the same extent as the original owner or transferer.

(c) A person with knowledge that another person is then ineligible pursuant to §§ 120.1(c) of this subchapter or 126.7 of this chapter, is then subject to an order of debarment, or interim suspension, may not, directly or indirectly, in any manner or capacity, without prior disclosure of the facts to, and written authorization from, the Office of Defense Trade Controls:

(1) Apply for, obtain, or use any export control document as defined in § 127.2(b) for such debarred, suspended, or ineligible person; or

(2) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any transaction which may involve any defense article or the furnishing of any defense service for which a license or approval is required by this subchapter for export, where such debarred, suspended, or ineligible person may obtain any benefit therefrom or have any direct or indirect interest therein.

(d) No person may willfully cause, or aid, abet, counsel, demand, induce, procure or permit the commission of any act prohibited by, or the omission of any act required by 22 U.S.C. 2778, 22 U.S.C. 2779, or any regulation, license, approval, or order issued thereunder.

§ 127.2 Misrepresentation and omission of facts.

(a) It is unlawful to use any export or temporary import control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting any defense article or technical data or the furnishing of any defense service for which a license or approval is required by this subchapter. Any false statement, misrepresentation, or omission of material fact in an export or temporary import control document will be considered as made in a matter within the jurisdiction of a department or agency of the United States for the purposes of 18 U.S.C. 1001, 22 U.S.C. 2778 and 22 U.S.C. 2779.

(b) For the purpose of this section, *export or temporary import control documents* include the following:

(1) An application for a permanent export or a temporary import license and supporting documents.

(2) Shipper's Export Declaration.

(3) Invoice.

(4) Declaration of destination.

(5) Delivery verification.

(6) Application for temporary export.

(7) Application for registration.

(8) Purchase order.

(9) Foreign import certificate.

(10) Bill-of-lading.

(11) Airway bill.

(12) Nontransfer and use certificate.

(13) Any other document used in the regulation or control of a defense article, defense service or technical data for which a license or approval is required by this subchapter.

§ 127.3 Penalties for violations.

Any person who willfully:

(a) Violates any provision of section 38 or section 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779), or any undertaking specifically required by part 124 of this subchapter; or

(b) In a registration, license application or report required by section 38 or section 39 of the Arms Export Control Act (22 U.S.C. 2278 and 2779) or by any rule or regulation issued under either section, makes any untrue statement of a material fact or omits a material fact required to be stated therein or necessary to make the statements therein not misleading, shall, upon conviction, be subject to a fine or imprisonment, or both, as prescribed by 22 U.S.C. 2778(c).

§ 127.4 Authority of U.S. Customs Service officers.

(a) U.S. Customs Service officers may take appropriate action to ensure observance of this subchapter as to the export or the attempted export of any defense article or technical data, including the inspection of loading or unloading of any vessel, vehicle, or aircraft. This applies whether the export is authorized by license or by written approval issued under this subchapter.

(b) U.S. Customs Service officers have the authority to investigate, detain or seize any export or attempted export of defense articles or technical data contrary to this subchapter.

(c) Upon the presentation to a Customs Officer of a license or written approval authorizing the export of any defense article, the customs officer may require the production of other relevant documents and information relating to the proposed export. This includes an invoice, order, packing list, shipping document, correspondence, instructions, and the documents otherwise required by the U.S. Customs Service.

§ 127.5 Authority of the Defense Investigative Service.

In the case of exports involving classified technical data or defense articles, the Defense Investigative Service may take appropriate action to ensure compliance with the Department of Defense Industrial Security Manual. Upon a request to the Defense Investigative Service regarding the export of any classified defense article or technical data, the Defense

Investigative Service official or a designated government transmittal authority may require the production of other relevant documents and information relating to the proposed export.

§ 127.6 Seizure and forfeiture in attempts at illegal exports.

(a) An attempt to export from the United States any defense articles in violation of the provisions of this subchapter constitutes an offense punishable under section 401 of title 22 of the United States Code. Whenever it is known or there is probable cause to believe that any defense article is intended to be or is being or has been exported or removed from the United States in violation of law, such article and any vessel, vehicle or aircraft involved in such attempt is subject to seizure, forfeiture and disposition as provided in section 401 of title 22 of the United States Code.

(b) Similarly, an attempt to violate any of the conditions under which a temporary export or temporary import license was issued pursuant to this subchapter or to violate the requirements of § 123.2 of this subchapter also constitutes an offense punishable under section 401 of Title 22 of the United States Code, and such article, together with any vessel, vehicle or aircraft involved in any such attempt is subject to seizure, forfeiture, and disposition as provided in section 401 of title 22 of the United States Code.

§ 127.7 Debarment.

(a) In implementing section 38 of the Arms Export Control Act, the Assistant Secretary of State for Politico-Military Affairs may prohibit any person from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or approval is required by this subchapter for any of the reasons listed below. Any such prohibition is referred to as a debarment for purposes of this subchapter. The Assistant Secretary of State for Politico-Military Affairs shall determine the appropriate period of time for debarment, which shall generally be for a period of three years.

(b) Grounds. (1) The basis for a statutory debarment, as described in paragraph (c) of this section, is any conviction for violating the Arms Export Control Act (see § 127.3 of this subchapter) or any conspiracy to violate the Arms Export Control Act.

(2) The basis for administrative debarment, described in part 128 of this subchapter, is any violation of 22 U.S.C. 2778 or any rule or regulation issued thereunder when such a violation is of such a character as to provide a reasonable basis for the Office of Defense Trade Controls to believe that the violator cannot be relied upon to comply with the statute or these rules or regulations in the future, and when such violation is established in accordance with part 128 of this subchapter.

(c) Statutory Debarment. Section 38(g)(4) of the Arms Export Control Act prohibits the issuance of licenses to persons who have been convicted of violating the U.S. criminal statutes enumerated in § 120.27 of this subchapter. Discretionary authority to issue licenses is provided, but only if certain statutory requirements are met. It is the policy of the Department of State not to consider applications for licenses or requests for approvals involving any person who has been convicted of violating the Arms Export Control Act or convicted of conspiracy to violate that Act for a three year period following conviction. Such individuals shall be notified in writing that they are debarred pursuant to this policy. A list of persons who have been convicted of such offenses and debarred for this reason shall be published periodically in the **Federal Register**. Debarment in such cases is based solely upon the outcome of a criminal proceeding, conducted by a court of the United States, that established guilt beyond a reasonable doubt in accordance with due process. The procedures of part 128 of this subchapter are not applicable in such cases.

(d) Appeals. Any person who is ineligible pursuant to paragraph (c) of this section may appeal to the Under Secretary of State for International Security Affairs for reconsideration of the ineligibility determination. The procedures specified in § 128.13 of this subchapter are applicable in such appeals.

§ 127.8 Interim suspension.

(a) The Director of the Office of Defense Trade Controls is authorized to order the interim suspension of any person when the Director believes that grounds for debarment (as defined in § 127.6 of this part) exist and where and to the extent the Director finds that interim suspension is reasonably necessary to protect world peace or the security or foreign policy of the United States. The interim suspension orders prohibit that person from participating directly or indirectly in the export of any defense article or defense service for which a license or approval is required by this subchapter. The suspended person shall be notified in writing as provided in § 127.6(c) of this part (statutory debarment) or § 128.3 of this subchapter (administrative debarment), whichever is appropriate. In both cases, a copy of the interim suspension order will be served upon that person in the same manner as provided in § 128.3 of this subchapter. The interim suspension order may be made immediately effective, without prior notice. The order will state the relevant facts, the grounds for issuance of the order, and describe the nature and duration of the interim suspension. No person may be suspended for a period exceeding 60 days unless proceedings under § 127.6(c) of this part or under part 128 of this subchapter, or criminal proceedings, are initiated before the expiration of that period.

(b) A motion or petition to vacate or modify an interim suspension order may be filed at any time with the Under Secretary of State for International Security Affairs. After a final decision is reached, the Director of the Office of Defense Trade Controls will issue an appropriate order disposing of the motion or petition and will promptly inform the respondent accordingly.

§ 127.9 Applicability of orders.

For the purpose of preventing evasion, orders of the Assistant Secretary of State for Politico-Military Affairs, debarring a person under § 127.6 and orders of the Director, Office of Defense Trade Controls, suspending a person under § 127.7 may be made applicable to any other person who may then or thereafter (during the term of the order) be related to the debarred person by affiliation, ownership, control, position of responsibility, or other commercial connection. Appropriate notice and opportunity to respond to charges will be given.

§ 127.10 Civil penalty.

(a) The Assistant Secretary of State for Politico-Military Affairs, Department of State, is authorized to impose a civil penalty in an amount not to exceed that authorized by 50 U.S.C. App. 2410(c) for each violation of 22 U.S.C. 2778, or any regulation, order, license or approval issued thereunder. This civil penalty may be either in addition to, or in lieu of, any other liability or penalty which may be imposed.

(b) The Office of Defense Trade Controls may make:

(1) The payment of a civil penalty under this section or

(2) The completion of any administrative action pursuant to this part 127 or 128 of this subchapter a prior condition for the issuance, restoration, or continuing validity of any export license or other approval

§ 127.11 Past violations.

(a) Pursuant to section 38 of the Arms Export Control Act, licenses or other approvals may not be granted to persons who have been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter or who are ineligible to receive any export licenses from any agency of the U.S. government, subject to a narrowly defined statutory exception. This provision establishes a presumption of denial for licenses or other approvals involving such persons. This presumption is applied by the Office of Defense Trade Controls to all persons convicted or deemed ineligible in this manner since the effective date of the Arms Export Control Act (Pub. L. 94–329; 90 Stat. 729) (June 30, 1976).

(b) Policy. An exception to the policy of the Department of State to deny applications for licenses or other approvals that involve persons described in paragraph (a) of this section shall not be considered unless there are extraordinary circumstances surrounding the conviction or ineligibility to export, and only if the applicant demonstrates, to the satisfaction of the Bureau of Politico-Military Affairs, that the applicant has taken appropriate steps to mitigate any law enforcement and other legitimate concerns, and to deal with the causes that resulted in the conviction, ineligibility, or debarment. Any person described in paragraph (a) of this section who wishes to request consideration of any application must explain, in a letter to the Director, Office of Defense Trade Controls, the reasons why the application should be considered. If the Bureau of Politico-Military Affairs concludes that the application and written explanation have sufficient merit, it shall consult with the Office of the Legal Adviser and the Department of the Treasury regarding law enforcement concerns, and may also request the views of other departments, including the Department of Justice. If the Office of Defense Trade Controls does grant the license or other approval, subsequent applications from the same person need not repeat the information previously provided but should instead refer to the favorable decision.

(c) Debarred persons. Persons debarred pursuant to § 127.6(c) (statutory debarment) may not utilize the procedures provided by this section while the debarment is in force. Such persons may utilize only the procedures provided by § 127.7(d) of this part.

§ 127.12 Voluntary Disclosures.

(a) *General policy.* The Department strongly encourages the disclosure of information to the Office of Defense Trade Controls by persons, firms or any organization that believe they may have violated any export control provision of the Arms Export Control Act, or any regulations, order, license, or other authorization issued under the Arms Export Control Act. Voluntary self-disclosure may be considered a mitigating factor in determining the administrative penalties, if any, that should be imposed by the Department. Failure to report such violation(s) may result in circumstances detrimental to U.S. national security and foreign policy interests.

(b) *Limitations.* (1) The provisions of this section apply only when information is provided to the Office of Defense Trade Controls for its review in determining whether to take administrative action under part 128 of this subchapter concerning violation(s) of the export control provisions of the Arms Export Control Act and these regulations.

(2) The provisions of this section apply only when information is received by the Office of Defense Trade Controls for review prior to such time that either the Department of State or any other agency, bureau or department of the United States Government obtains knowledge of either the same or substantially similar information from another source and commenced an investigation or inquiry that involves that information, and that is intended to determine whether the Arms Export Control Act or these regulations, or any other license, order or other authorization issued under the Arms Export Control Act has been violated.

(3) It is possible that the activity in question—despite voluntary disclosure—might merit penalties, administrative actions, sanctions, or referrals to the Department of Justice for consideration as to whether criminal prosecution is warranted. In the latter case, the Office of Defense Trade Controls will notify the Department of Justice of the voluntary nature of the disclosure although the Department of Justice is not required to give that fact any weight. The Office of Defense Trade Controls has the sole discretion to consider whether "voluntary disclosure," in context with other relevant information in a particular case, should be a mitigating factor in determining what, if any, administrative action will be imposed. Some of the mitigating factors the Office of Defense Trade Controls may consider are:

(i) Whether the transaction would have been authorized had proper application been made;

(ii) Why the violation(s) occurred;

(iii) The degree of cooperation with the ensuing investigation;

(iv) Whether the person or firm has instituted or improved an internal compliance program to reduce the likelihood of future violation(s);

(v) Whether the person making the disclosure did so with the full knowledge and authorization of the firm's senior management. (If not, then a firm will not be deemed to have made a disclosure as covered in this section.)

(4) The provisions of this section do not, nor should they be relied on, to create, confer, or grant any rights, benefits, privileges, or protection enforceable at law or in equity by any person, business, or entity in any civil, criminal, administrative, or other matter.

(c) *Notification.* (1) Any person or firm wanting to disclose information that constitutes a voluntary self-disclosure should, in the manner outlined below, initially notify the Office of Defense Trade Controls as soon as possible after violation(s) are discovered and then conduct a thorough review of all export-related transactions where violation(s) are suspected.

(2) Notification of violation(s) must be in writing and should include the following information:

(i) A precise description of the nature and extent of the violation(s) (e.g., an unauthorized shipment, doing business with a party denied U.S. export privileges, etc.);

(ii) The exact circumstances surrounding the violation(s) (a thorough explanation of why, when, where, and how the violation(s) occurred);

(iii) The complete identities and addresses of all individuals and organizations, whether foreign or domestic, involved in the activities giving rise to the violation(s);

(iv) Export license numbers, if applicable;

(v) U.S. Munitions List category and subcategory, product descriptions, quantities, and characteristics of the commodities or technical data involved;

(vi) A description of any corrective actions already undertaken;

(vii) The name and address of the person(s) making the disclosure and a point of contact, if different, should further information be needed.

(3) Factors to be considered include, for example, whether the violation(s) were intentional or inadvertent; the degree to which the person or firm responsible for the violation(s) making the disclosure was familiar with the

laws and regulations; and whether the violator was the subject of prior administrative or criminal action under the AECA. In addition to immediately providing written notification, persons, firms, companies and organizations are strongly urged to conduct a thorough review of all export-related transactions where possible violation(s) are suspected.

(d) *Documentation. (1) The written disclosure should be accompanied by copies of those documents that substantiate it. Where appropriate, the documentation should include, but is not limited to:*

(i) Licensing documents (e.g., license applications, export licenses and end-user statements);

(ii) Shipping documents (e.g., shipper's export declarations, airway bills and bills of lading);

(iii) Any other relevant documents must be retained by the person making the disclosure until the Office of Defense Trade Controls requests them or until a final decision on the disclosed information has been made.

(e) *Certification.* A certification must be submitted stating that all of the representations made in connection with the voluntary self-disclosure are true and correct to the best of that person's knowledge and belief. Certifications made by a firm, corporation or any other organization should be executed by someone with the authority to do so.

(f) *Oral presentations.* It is generally not necessary to augment the written presentation with an oral presentation. However, if the person making the disclosure believes a meeting is desirable, a request for one should be included with the written presentation.

(g) Voluntary disclosures should be sent to:

Compliance Analysis Division, PM/DTC, SA–6, room 200, Office of Defense Trade Controls, Bureau of Politico-Military Affairs, U.S. Department of State, Washington, DC 20522–0602.

PART 128—ADMINISTRATIVE PROCEDURES

Sec.
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Authority: Secs. 2, 38, 40, 42, and 71, Arms Export Control Act. 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311: 22 U.S.C. 2658; E.O. 12291, 46 FR 1981.

§ 128.1 Exclusion of functions from the Administrative Procedure Act.

The Arms Export Control Act authorizes the President to control the import and export of defense articles and services in furtherance of world peace and the security and foreign policy of the United States. It authorizes the Secretary of State to make decisions on whether licenses shall be granted, as well as to revoke, suspend or amend licenses whenever the Secretary deems such action to be advisable. The administration of the Arms Export Control Act is a foreign affairs function and is thus encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act and is thereby expressly exempt from various provisions of that Act. Because the exercising of the foreign affairs function, including the decisions required to implement the Arms Export Control Act, is highly discretionary, it is excluded from review under the Administrative Procedure Act.

§ 128.2 Presiding Official.

The Presiding Official referred to in this part is the Presiding Official of the International Trade Administration of the Department of Commerce, as provided in 15 CFR 388.2. The Presiding Official is authorized to exercise the powers and perform the duties provided for in §§ 127.6, 127.7 of this subchapter and §§ 128.3 through 128.16.

§ 128.3 Institution of administrative proceedings.

(a) *Charging letters.* The Director, Office of Munitions Control, with the concurrence of the Office of the Legal Adviser, Department of State, may initiate debarment proceedings in accordance with § 127.6 of this subchapter or civil penalties in accordance with § 127.9 of this subchapter. Administrative proceedings shall be initiated by means of a charging letter. The charging letter will state the essential facts constituting the alleged violation and refer to the regulatory or other provisions involved. It will give notice that if the respondent to answer the charges with 30 days, as provided in § 128.5(a), and indicate that a failure to answer will be taken as an admission of the truth of the charges. It will inform the respondent that he or she is entitled to an oral hearing if a written demand for one is filed with the answer or within 7 days after service of the answer. The respondent will also be informed that he or she may, if so desired, be represented by counsel of his or her choosing. Charging letters may be amended from time to time, upon reasonable notice.

(b) *Service.* A charging letter is served upon a respondent:

(1) If the respondent is a resident of the United States, when it is mailed postage prepaid in a wrapper addressed to the respondent at his or her last known address; or when left with the respondent or the agent or employee of the respondent; or when left at the respondent's dwelling with some person of suitable age and discretion then residing herein; or

(2) If the respondent is a non-resident of the United States, when served upon the respondent by any of the foregoing means. If such methods of service are not practicable or appropriate, the charging letter may be tendered for service on the respondent to an official of the government of the country wherein the respondent resides, provided that there is an agreement or understanding between the United States Government and the government of the country wherein the respondent resident permitting this action.

§ 128.4 Default.

(a) *Failure to answer.* If the respondent fails to answer the charging letter, the respondent may be held in default. The case shall then be referred to the Presiding Official for consideration in a manner as the Presiding Official may consider appropriate. Any order issued shall have the same effect as an order issued following the disposition of contested charges.

(b) *Petition to set aside defaults.* Upon showing good cause, any respondent against whom a default order has been issued may apply to set aside the default and vacate the order entered thereon. The petition shall be submitted in duplicate to the Assistant Secretary for Politico-Military Affairs, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. The Director will refer the petition to the Presiding Official for consideration and a recommendation. The Presiding Official will consider the application and may order a hearing and require the respondent to submit further evidence

in support of his or her petition. The filing of a petition to set aside a default does not in any manner affect an order entered upon default and such order continues in full force and effect unless a further order is made modifying or terminating it.

§ 128.5 Answer and Demand for oral hearing.

(a) *When to answer.* The respondent is required to answer the charging letter within 30 days after service.

(b) *Contents of answer.* An answer must be responsive to the charging letter. It must fully set forth the nature of the respondent's defense or defenses. In the answer, the respondent must admit or deny specifically each separate allegation of the charging letter, unless the respondent is without knowledge, in which case the respondent's answer shall so state and the statement shall operate as a denial. Failure to deny or controvert any particular allegation will be deemed an admission thereof. The answer may set forth such additional or new matter as the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in an answer shall be deemed waived. Evidence offered thereon by the respondent at a hearing may be refused except upon good cause being shown. If the respondent does not demand an oral hearing, he or she shall transmit, within 7 days after the service of his or her answer, original or photocopies of all correspondence, papers, records, affidavits, and other documentary or written evidence having any bearing upon or connection with the matters in issue. If any such materials are in language other than English, translations into English shall be submitted at the same time.

(c) *Submission of answer.* The answer, written demand for oral hearing (if any) and supporting evidence required by § 128.5(b) shall be in duplicate and mailed or delivered to the Office of EAR Administration Proceedings, United States Department of Commerce, room 3810, 14th Street and Constitution Avenue, NW., Washington, DC 20230. A copy shall be simultaneously mailed or delivered to the Director, Office of Munitions Control, Department of State, Washington, DC 20520.

§ 128.6 Discovery.

(a) *Discovery by the respondent.* The respondent, through the Presiding Official, may request from the Office of Munitions Control any relevant information, not privileged, that may be necessary or helpful in preparing a defense. The Office of Munitions Control any relevant information, not privileged, that may be necessary or helpful in preparing a defense. The Office of Munitions Control may supply summaries in place of original documents and may withhold information from discovery if necessary to comply with any statute, executive order or regulation requiring that the information not be disclosed. The respondent may request the Presiding Officer to request any relevant information, books, records, or other evidence, from any other person or government agency so long as the request is reasonable in scope and not unduly burdensome.

(b) *Discovery by the Office of Munitions Control.* The Office of Munitions Control or the Presiding Official may request from the respondent admissions of facts, answers to interrogatories, the production of books, records, or other relevant evidence, so long as the request is relevant and material, reasonable in scope, and not unduly burdensome.

(c) *Subpoenas.* At the request of any party, the Presiding Official may issue subpoenas, returnable before him, requiring the attendance of witnesses and the production of books, records, and other documentary or physical evidence determined by the Presiding Official to be relevant and material to the proceedings, reasonable in scope, and not unduly burdensome.

(d) *Enforcement of discovery rights.* If the Office of Munitions Control fails to provide the respondent with information in its possession which is not otherwise available and which is necessary to the respondent's defense, the Presiding Official may dismiss the charges on her or his own motion or on a motion of the respondent. If the respondent fails to respond with reasonable diligence to the requests for discovery by the Office of Munitions Control or the Presiding Official, on her or his own motion or motion of the Office of Munitions Control, and upon such notice to the respondent as the Presiding Official may direct, may strike respondent's answer and declare the respondent in default, or make any other ruling which the Presiding Official deems necessary and just under the circumstances. If a third party fails to respond to the request for information, the Presiding Official shall consider whether the evidence sought is necessary to a fair hearing, and if it is so necessary that a fair hearing may not be held without it, the Presiding Official shall dismiss the charges.

§ 128.7 Prehearing conference.

(a) The Presiding Official may, upon his own motion or upon motion of any party, request the parties or their counsel to a prehearing conference to consider (1) simplification of issues; (2) the necessity or desirability of amendments to pleadings; (3) obtaining stipulations of fact and of documents to avoid unnecessary proof; or (4) such other matter as may expedite the disposition of the proceeding. The Presiding Official will prepare a summary of the action agreed upon or taken at the conference, and will incorporate therein any written stipulations or agreements made by the parties. The conference proceedings may be recorded magnetically or taken by a reporter and transcribed, and filed with the Presiding Official.

(b) If a conference is impracticable, the Presiding Official may request the parties to correspond with him or her to achieve the purposes of a conference. The Presiding Official shall prepare a summary of action taken as in the case of a conference.

§ 128.8 Hearings.

(a) A respondent who had not filed a timely written answer is not entitled to a hearing, and the case may be considered by the Presiding Official as provided in § 128.4(a). If any answer is filed, but no oral hearing demanded, the Presiding Official may proceed to consider the case upon the written pleadings and evidence available. The Presiding Official may provide for the making of the record in such manner as the Presiding Official deems appropriate. If respondent answers and demands an oral hearing, the Presiding Official, upon due notice, shall set the case for hearing, unless a respondent has raised in his answer no issues of material fact to be determined. If respondent fails to appear at a scheduled hearing, the hearing nevertheless may proceed in respondent's absence. The respondent's failure to appear will not affect the validity of the hearing or any proceedings or action thereafter.

(b) The Presiding Official may administer oaths and affirmations. Respondent may be represented by counsel. Unless otherwise agreed by the parties and the Presiding Official, the proceeding will be taken by a reporter or by magnetic recording, transcribed, and filed with the Presiding Official. Respondent may examine the transcript and may obtain a copy upon payment of proper costs.

§ 128.9 Proceedings before and report of Presiding Official.

(a) The Presiding Official may conform any part of the proceedings before him or her to the Federal Rules of Civil Procedure. The record may be made available in any other administrative or other proceeding involving the same respondent.

(b) The Presiding Official, after considering the record, will prepare a written report. The report will include findings of fact, findings of law, a finding whether a law or regulation has been violated, and the Presiding Official's recommendations. It shall be transmitted to the Assistant Secretary for Politico-Military Affairs, Department of State.

§ 128.10 Disposition of proceedings.

Where the evidence is not sufficient to support the charges, the Director, Office of Munitions Control or the Presiding Official will dismiss the charges. Where the Presiding Official finds that a violation has been committed, the Presiding Official's recommendation shall be advisory only. The Assistant Secretary for Politico-Military Affairs will review the record, consider the report of the Presiding Official, and make an appropriate disposition of the case. The Director may issue an order debarring the respondent from participating in the export of defense articles or technical data or the furnishing of defense services as provided in § 127.6 of this subchapter, impose a civil penalty as provided in § 127.9 of this subchapter or take such other action as the presiding Official deems appropriate. Any debarment order will be effective for the period of time specified therein and may contain such additional terms and conditions as are deemed appropriate. A copy of the order together with a copy of the Presiding Official's report will be served upon the respondent.

§ 128.11 Consent agreements.

(a) The Office of Munitions Control and the respondent may, by agreement, submit to the Presiding Official a proposal for the issuance of a consent order. The Presiding Official will review the facts of the case and the proposal and may conduct conferences with the parties and may require the presentation of evidence in the case. If the Presiding Official does not approve the proposal, the Presiding Official will notify the parties and the case will proceed as though no consent proposal had been made. If the proposal is approved, the Presiding Official will report the facts of the case along with recommendations to the Assistant Secretary for Politico-Military Affairs. If the Director does not approve the proposal, the case will proceed as though no consent proposal has been made. If the Director approves the proposal, an appropriate order may be issued.

(b) Cases may also be settled prior to service of a charging letter. In such an event, a proposed charging letter shall be prepared, and a consent agreement and order shall be submitted for the approval and signature of the Assistant Secretary for Politico-Military Affairs, and no action by the Presiding Official shall be required. Cases which are settled may not be reopened or appealed.

§ 128.12 Rehearings.

The Presiding Official may grant a rehearing or reopen a proceeding at any time for the purpose of hearing any relevant and material evidence which was not known or obtainable at the time of the original hearing. A report for rehearing or reopening must contain a summary of such evidence, and must explain the reasons why it could not have been presented at the original hearing. The Presiding Official will inform the parties of any further hearing, and will conduct such hearing and submit a report and recommendations in the same manner as provided for the original proceeding (described in § 128.10).

§ 128.13 Appeals.

(a) *Filing of appeals.* An appeal must be in writing, and be addressed to and filed with the Under Secretary of State for Security Assistance, Science and Technology, Department of State, Washington, DC 20520. An appeal from a final order denying export privileges or imposing civil penalties must be filed within 30 days after receipt of a copy of the order. If the Under Secretary cannot for any reason act on the appeal, he or she may designate another Department of State official to receive and act on the appeal.

(b) *Grounds and conditions for appeal.* The respondent may appeal from the debarment or from the imposition of a civil penalty (except the imposition of civil penalties pursuant to a consent order pursuant to § 128.11) upon the ground: (1) That the findings of a violation are not supported by any substantial evidence; (2) that a prejudicial error of law was committed: or (3) that the provisions of the order are arbitrary, capricious, or an abuse of discretion. The appeal must specify upon which of these grounds the appeal is based and must indicate from which provisions of the order the appeal is taken. An appeal from an order issued upon default will not be entertained if the respondent has failed to seek relief as provided in § 128.4(b).

(c) *Matters considered on appeal.* An appeal will be considered upon the basis of the assembled record. This record consists of (but is not limited to) the charging letter, the respondent's answer, the transcript or magnetic recording of the hearing before the Presiding Official, the report of the Presiding Official, the order of the Assistant Secretary for Politico-Military Affairs, and any other relevant documents involved in the proceedings before the Presiding Official. The Under Secretary for Security Assistance, Science and Technology may direct a rehearing and reopening before the Presiding Official if he or she finds that the record is insufficient or that new evidence is relevant and material to the issues and was not known and was not available to the respondent at the time of the original hearings.

(d) *Effect of appeals.* The taking of an appeal will not stay the operation of any order.

(e) *Preparation of appeals.*—(1) *General requirements.* An appeal shall be in letter form. The appeal and accompanying material should be filed in duplicate, unless otherwise indicated, and a copy simultaneously mailed or delivered to the Director, Office of Munitions Control, Department of State, Washington, DC 20520.

(2) *Oral presentation.* The Under Secretary for Security Assistance, Science and Technology may grant the appellant an opportunity for oral argument and will set the time and place for oral argument and will notify the parties, ordinarily at least 10 days before the date set.

(f) *Decisions.* All appeals will be considered and decided within a reasonable time after they are filed. An appeal may be granted or denied in whole or in part, or dismissed at the request of the appellant. The decision of the Under Secretary for Security Assistance, Science and Technology will be final.

§ 128.14 Confidentiality of proceedings.

Proceedings under this part are confidential. The documents referred to in § 128.17 are not, however, deemed to be confidential Reports of the Presiding Official and copies of transcripts or recordings of hearings will be available to parties and, to the extent of their own testimony, to witnesses. All records are available to any U.S. Government agency showing a proper interest therein.

§ 128.15 Orders containing probationary periods.

(a) *Revocation of probationary periods.* A debarment or interim suspension order may set a probationary period during which the order may be held in abeyance for all or part of the debarment or suspension period, subject to the conditions stated therein. The Director, Office of Munitions Control, may apply, without notice to any person to be affected thereby, to the Presiding Official for an order revoking probation when it appears that the conditions of the probation have been breached. The facts in support of the application will be presented to the Presiding Official, who will report thereon and make a recommendation to the Assistant Secretary for Politico-Military Affairs. The latter will make a determination whether to revoke probation and will issue an appropriate order.

(b) *Hearing*—(1) *Objections upon notice.* Any person affected by an application upon notice to revoke probation, within the time specified in the notice, may file objections with the Presiding Official.

(2) *Objections to order without notice.* Any person adversely affected by an order revoking probation, without notice may request that the order be set aside by filing his objections thereto with the Presiding Official. The request will not stay the effective date of the order or revocation.

(3) *Requirements for filing objections.* Objections filed with the Presiding Official must be submitted in writing and in duplicate. A copy must be simultaneously submitted to the Office of Munitions Control. Denials and admissions, as well as any mitigating circumstances, which the person affected intends to present must be set forth in or accompany the letter of objection and must be supported by evidence. A request for an oral hearing may be made at the time of filing objections.

(4) *Determination.* The application and objections thereto will be referred to the Presiding Official. An oral hearing, if requested, will be conducted at an early convenient date, unless the objections filed raise no issues of material fact to be determined. The Presiding Official will report the facts and make a recommendation to the Assistant Secretary for Politico-Military Affairs, who will determine whether the application should be granted or denied and will issue an appropriate order. A copy of the order and of the Presiding Official's report will be furnished to any person affected thereby.

(c) *Effect of revocation on other actions.* The revocation of a probationary period will not preclude any other action concerning a further violation, even where revocation is based on the further violation.

§ 128.16 Extension of time.

The Presiding Official, for good cause shown, may extend the time within which to prepare and submit an answer to a charging letter or to perform any other act required by this part 128.

§ 128.17 Availability of orders.

All charging letters, debarment orders, orders imposing civil penalties, probationary periods, and interim suspension orders are available for public inspection in the Public Reading Room of the Department of State.

PART 129—[RESERVED]

PART 130—POLITICAL CONTRIBUTIONS, FEES AND COMMISSIONS

Sec.

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Authority: Sec. 39, Arms Export Control Act, 90 Stat. 767 (22 U.S.C. 2779); E.O. 11958, 42 FR 4311, 3 CFR, 1977 Comp. p.79; 22 U.S.C. 2658.

§ 130.1 Purpose.

Section 39(a) of the Arms Export Control Act (22 U.S.C. 2779) provides that the Secretary of State shall prescribe regulations with respect to reporting on certain payments relating to sales of defense articles and defense services. The provisions of this part implement that requirement. Definitions which apply to this part are contained in §§ 130.2 through 130.8.

§ 130.2 Applicant.

Applicant means any person who applies to the Office of Defense Trade Controls for any license or approval required under this subchapter for the export of defense articles or defense services valued in an amount of $500,000 or more which are being sold commercially to or for the use of the armed forces of a foreign country or international organization. This term also includes a person to whom the required license or approval has been given.

§ 130.3 Armed forces.

Armed forces means the army, navy, marine, air force, or coast guard, as well as the national guard and national police, of a foreign country. This term also includes any military unit or military personnel organized under or assigned to an international organization.

§ 130.4 Defense articles and defense services.

Defense articles and defense services have the meaning given those terms in paragraphs (3), (4) and (7) of section 47 of the Arms Export Control Act (22 U.S.C. 2794 (3), (4), and (7)). When used with reference to commercial sales, the definitions in §§ 120.6 and 120.9 of this subchapter apply.

§ 130.5 Fee or commission.

(a) *Fee or commission* means, except as provided in paragraph (b) of this section, any loan, gift, donation or other payment of $1,000 or more made, or offered or agreed to be made directly or indirectly, whether in cash or in kind, and whether or not pursuant to a written contract, which is:

(1) To or at the direction of any person, irrespective of nationality, whether or not employed by or affiliated with an applicant, a supplier or a vendor; and

(2) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization.

(b) The term fee or commission does not include:

(1) A political contribution or a payment excluded by § 130.6 from the definition of political contribution:

(2) A normal salary (excluding contingent compensation) established at an annual rate and paid to a regular employee of an applicant, supplier or vendor;

(3) General advertising or promotional expenses not directed to any particular sale or purchaser; or

(4) Payments made, or offered or agreed to be made, solely for the purchase by an applicant, supplier or vendor of specific goods or technical, operational or advisory services, which

payments are not disproportionate in amount with the value of the specific goods or services actually furnished.

§ 130.6 Political contribution.

Political contribution means any loan, gift, donation or other payment of $1,000 or more made, or offered or agreed to be made, directly or indirectly, whether in cash or in kind, which is:

(a) To or for the benefit of, or at the direction of, any foreign candidate, committee, political party, political faction, or government or governmental subdivision, or any individual elected, appointed or otherwise designated as an employee or officer thereof; and

(b) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization. Taxes, customs duties, license fees, and other charges required to be paid by applicable law or regulation are not regarded as political contributions.

§ 130.7 Supplier.

Supplier means any person who enters into a contract with the Department of Defense for the sale of defense articles or defense services valued in an amount of $500,000 or more under section 22 of the Arms Export Control Act (22 U.S.C. 2762).

§ 130.8 Vendor.

Vendor means any distributor or manufacturer who, directly or indirectly, furnishes to an applicant or supplier defense articles valued in an amount of $500,000 or more which are end-items or major components as defined in § 121.8 of this subchapter. It also means any person who, directly or indirectly, furnishes to an applicant or supplier defense articles or services valued in an amount of $500,000 or more when such articles or services are to be delivered (or incorporated in defense articles or defense services to be delivered) to or for the use of the armed forces of a foreign country or international organization under:

(1) A sale requiring a license or approval from the Office of Defense Trade Controls under this subchapter; or

(2) A sale pursuant to a contract with the Department of Defense under section 22 of the Arms Export Control Act (22 U.S.C. 2762).

§ 130.9 Obligation to furnish information to the Office of Defense Trade Controls.

(a)(1) Each applicant must inform the Office of Defense Trade Controls as to whether applicant or its vendors have paid, or offered or agreed to pay, in respect of any sale for which a license or approval is requested:

(i) Political contributions in an aggregate amount of $5,000 or more, or

(ii) Fees or commissions in an aggregate amount of $100,000 or more.

If so, applicant must furnish to the Office of Defense Trade Controls the information specified in § 130.10. The furnishing of such information or an explanation satisfactory to the Director of the Office of Defense Trade Controls as to why all the information cannot be furnished at that time is a condition precedent to the granting of the relevant license or approval.

(2) The requirements of this paragraph do not apply in the case of an application with respect to a sale for which all the information specified in § 130.10 which is required by this section to be reported shall already have been furnished.

(b) Each supplier must inform the Office of Defense Trade Controls as to whether the supplier or its vendors have paid, or offered or agreed to pay, in respect of any sale:

(1) Political contributions in an aggregate amount of $5,000 or more, or

(2) Fees or commissions in an aggregate amount of $100,000 or more.

If so, supplier must furnish to the Office of Defense Trade Controls the information specified in § 130.10. The information required to be furnished pursuant to this paragraph must be so furnished no later than 30 days after the contract award to such supplier, or such earlier date as may be specified by the Department of Defense. For purposes of this paragraph, a contract award includes a purchase order, exercise of an option, or other procurement action requiring a supplier to furnish defense articles or defense services to the Department of Defense for the purposes of section 22 of the Arms Export Control Act (22 U.S.C. 2762).

(c) In determining whether an applicant or its vendors, or a supplier or its vendors, as the case may be, have paid, or offered or agreed to pay, political contributions in an aggregate amount of $5,000 or more in respect of any sale so as to require a report under this section, there must be included in the computation of such aggregate amount any political contributions in respect of the sale which are paid by or on behalf of, or at the direction of, any person to whom the applicant, supplier or vendor has paid, or offered or agreed to pay, a fee or commission in respect of the sale. Any such political contributions are deemed for purposes of this part to be political contributions by the applicant, supplier or vendor who paid or offered or agreed to pay the fee or commission.

(d) Any applicant or supplier which has informed the Office of Defense Trade Controls under this section that neither it nor its vendors have paid, or offered or agreed to pay, political contributions or fees or commissions in an aggregate amount requiring the information specified in § 130.10 to be furnished, must subsequently furnish such information within 30 days after learning that it or its vendors had paid, or offered or agreed to pay, political contributions or fees or commissions in respect of a sale in an aggregate amount which, if known to applicant or supplier at the time of its previous communication with the Office of Defense Trade Controls, would have required the furnishing of information under § 130.10 at that time. Any report furnished under this paragraph must, in addition to the information specified in § 130.10, include a detailed statement of the reasons why applicant or supplier did not furnish the information at the time specified in paragraph (a) or paragraph (b) of this section, as applicable.

§ 130.10 Information to be furnished by applicant or supplier to the Office of Defense Trade Controls.

(a) Every person required under § 130.9 to furnish information specified in this section in respect to any sale must furnish to the Office of Defense Trade Controls:

(1) The total contract price of the sale to the foreign purchaser;

(2) The name, nationality, address and principal place of business of the applicant or supplier, as the case may be, and, if applicable, the employer and title;

(3) The name, nationality, address and principal place of business, and if applicable, employer and title of each foreign purchaser, including the ultimate end-user involved in the sale;

(4) Except as provided in paragraph (c) of this section, a statement setting forth with respect to such sale:

(i) The amount of each political contribution paid, or offered or agreed to be paid, or the amount of each fee or commission paid, or offered or agreed to be paid;

(ii) The date or dates on which each reported amount was paid, or offered or agreed to be paid;

(iii) The recipient of each such amount paid, or intended recipient if not yet paid;

(iv) The person who paid, or offered or agreed to pay such amount; and

(v) The aggregate amounts of political contributions and of fees or

commission, respectively, which shall have been reported.

(b) In responding to paragraph (a)(4) of this section, the statement must:

(1) With respect to each payment reported, state whether such payment was in cash or in kind. If in kind, it must include a description and valuation thereof. Where precise amounts are not available because a payment has not yet been made, an estimate of the amount offered or agreed to be paid must be provided;

(2) With respect to each recipient, state:

(i) Its name;

(ii) Its nationality;

(iii) Its address and principal place of business;

(iv) Its employer and title; and

(v) Its relationship, if any, to applicant, supplier, or vendor, and to any foreign purchaser or end-user.

(c) In submitting a report required by § 130.9, the detailed information specified in paragraph (a)(4) and (b) of this section need not be included if the payments do not exceed:

(1) $2,500 in the case of political contributions; and

(2) $50,000 in the case of fees or commissions.

In lieu of reporting detailed information with respect to such payments, the aggregate amount thereof must be reported, identified as miscellaneous political contributions or miscellaneous fees or commissions, as the case may be.

(d) Every person required to furnish the information specified in paragraphs (a) and (b) of this section must respond fully to each subdivision of those paragraphs and, where the correct response is none or not applicable," must so state.

§ 130.11 Supplementary reports.

(a) Every applicant or supplier who is required under § 130.9 to furnish the information specified in § 130.10 must submit a supplementary report in connection with each sale in respect of which applicant or supplier has previously been required to furnish information if:

(1) Any political contributions aggregating $2,500 or more or fees or commissions aggregating $50,000 or more not previously reported or paid, or offered or agreed to be paid by applicant or supplier or any vendor;

(2) Subsequent developments cause the information initially reported to be no longer accurate or complete (as in the case where a payment actually made is substantially different in amount from a previously reported estimate of an amount offered or agreed to be paid); or

(3) Additional details are requested by the Office of Defense Trade Controls with respect to any miscellaneous payments reported under § 130.10(c).

(b) Supplementary reports must be sent to the Office of Defense Trade Controls within 30 days after the payment, offer or agreement reported therein or, when requested by the Office of Defense Trade Controls, within 30 days after such request, and must include:

(1) Any information specified in § 130.10 required or requested to be reported and which was not previously reported; and

(2) The Defense Trade Control license number, if any, and the Department or Defense contract number, if any, related to the sale.

§ 130.12 Information to be furnished by vendor to applicant or supplier.

(a) In order to determine whether it is obliged under § 130.9 to furnish the information specified in § 130.10 with respect to a sale, every applicant or supplier must obtain from each vendor, from or through whom the applicant acquired defense articles or defense services forming the whole or a part of the sale, a full disclosure by the vendor of all political contributions or fees or commission paid, by vendor with respect to such sale. Such disclosure must include responses to all the information pertaining to vendor required to enable applicant or supplier, as the case may be, to comply fully with §§ 130.9 and 130.10. If so required, they must include the information furnished by each vendor in providing the information specified.

(b) Any vendor which has been requested by an applicant or supplier to furnish an initial statement under paragraph (a) of this section must, except as provided in paragraph (c) of this section, furnish such statement in a timely manner and not later than 20 days after receipt of such request.

(c) If the vendor believes that furnishing information to an applicant or supplier in a requested statement would unreasonably risk injury to the vendor's commercial interests, the vendor may furnish in lieu of the statement an abbreviated statement disclosing only the aggregate amount of all political contributions and the aggregate amount of all fees or commissions which have been paid, or offered or agreed to be paid, or offered or agreed to be paid, by the vendor with respect to the sale. Any abbreviated statement furnished to an applicant or supplier under this paragraph must be accompanied by a certification that the requested information has been reported by the vendor directly to the Office of Defense Trade Controls. The vendor must simultaneously report fully to the Office of Defense Trade Controls all information which the vendor would otherwise have been required to report to the applicant or supplier under this section. Each such report must clearly identify the sale with respect to which the reported information pertains.

(d)(1) If upon the 25th day after the date of its request to vendor, an applicant or supplier has not received from the vendor the initial statement required by paragraph (a) of this section, the applicant or supplier must submit to the Office of Defense Trade Controls a signed statement attesting to:

(i) The manner and extent of applicant's or supplier's attempt to obtain from the vendor the initial statement required under paragraph (a) of this section;

(ii) Vendor's failure to comply with this section; and

(iii) The amount of time which has elapsed between the date of applicant's or supplier's request and the date of the signed statement;

(2) The failure of a vendor to comply with this section does not relieve any applicant or supplier otherwise required by § 130.9 to submit a report to the Office of Defense Trade Controls from submitting such a report.

§ 130.13 Information to be furnished to applicant, supplier or vendor by a recipient of a fee or commission.

(a) Every applicant or supplier, and each vendor thereof;

(1) In order to determine whether it is obliged under § 130.9 or § 130.12 to furnish information specified in § 130.10 with respect to a sale; and

(2) Prior to furnishing such information, must obtain from each person, if any, to whom it has paid, or offered or agreed to pay, a fee or commission in respect of such sale, a timely statement containing a full disclosure by such a person of all political contributions paid, or offered or agreed to be paid, by it or on its behalf, or at its direction, in respect of such sale. Such disclosure must include responses to all the information required to enable the applicant, supplier or vendor, as the case may be, to comply fully with §§ 130.9, 130.10, and 130.12.

(b) In obtaining information under paragraph (a) of this section, the applicant, supplier or vendor, as the case may be, must also require each person to whom a fee or commission is paid, or offered or agreed to be paid, to furnish from time to time such reports of its political contributions as may be necessary to enable the applicant, supplier or vendor, as the case may be,

to comply fully with §§ 130.9, 130.10, 130.11, and 130.12.

(c) The applicant supplier or vendor, as the case may be, must include any political contributions paid, or offered or agreed to be paid, by or on behalf of, or at the direction of, any person to whom it has paid, or offered or agreed to pay a fee or commission in determining whether applicant, supplier or vendor is required by §§ 130.9, 130.11, and 130.12 to furnish information specified in § 130.10.

§ 130.14 Recordkeeping.

Each applicant, supplier and vendor must maintain a record of any information it was required to furnish or obtain under this part and all records upon which its reports are based for a period of not less than five years following the date of the report to which they pertain.

§ 130.15 Confidential business information.

(a) Any person who is required to furnish information under this part may identify any information furnished hereunder which the person considers to be confidential business information. No person, including any applicant or supplier, shall publish, divulge, disclose, or make known in any manner, any information so identified by a vendor or other person unless authorized by law or regulation.

(b) For purposes of this section, *confidential business information* means commercial or financial information which by law is entitled to protection from disclosure. (See, e.g., 5 U.S.C. 552(b) (3) and (4); 18 U.S.C. 1905; 22 U.S.C. 2778(e); Rule 26(c)(7), Federal Rules of Civil Procedure.)

§ 130.16 Other reporting requirements.

The submission of reports under this part does not relieve any person of any requirements to furnish information to any federal, state, or municipal agency, department or other instrumentality as required by law, regulation or contract.

§ 130.17 Utilization of and access to reports and records.

(a) All information reported and records maintained under this part will be made available, upon request for utilization by standing committees of the Congress and subcommittees thereof, and by United States Government agencies, in accordance with section 39(d) of the Arms Export Control Act (22 U.S.C. 2779(d)), and reports based upon such information will be submitted to Congress in accordance with sections 36(a)(8) and 36(b)(1) of that Act (22 U.S.C. 2776 (a)(8) and (b)(1)).

(b) All confidential business information provided pursuant to this part shall be protected against disclosure to the extent provided by law.

(c) Nothing in this section shall preclude the furnishing of information to foreign governments for law enforcement or regulatory purposes under international arrangements between the United States and any foreign government.

Dated: July 12, 1993.

Lynn E. Davis,

Under Secretary for International Security Affairs.

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Thursday
July 22, 1993

Part III

Department of the Interior

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

RIN 1090-AA22

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On April 29, 1991, the Department of the Interior (the Department) issues a notice of proposed rulemaking to revise the natural resource damage assessment regulations. The natural resource damage assessment regulations establish procedures for assessing damages for injury to natural resources resulting from a discharge of oil into navigable waters under the Clean Water Act, as amended (CWA), or a release of a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). The Department has developed two types of assessment procedures: standard procedures for simplified assessments requiring minimal field observation (the type A rule); and site-specific procedures for detailed assessments in individual cases (the type B rule).

The April 29, 1991 proposed rule would revise the type B rule to comply with a court decision that held that: Restoration costs are the preferred measure of natural resource damages; and all reliably calculated lost values of injured natural resources should also be recoverable, with no specific hierarchy of methodologies required of natural resource trustees in estimating those values. The court also requested clarification of whether the Department intended the natural resource damage assessment regulations to apply to any resources not actually owned by the government.

The comment period was originally set to expire on June 28, 1991, but was extended to July 16, 1991. The Department is now reopening the comment period to accept additional comments.

DATES: Comments will be accepted through September 7, 1993.

ADDRESSES: Comments should be sent to the Office of Environmental Affairs, ATTN: NRDA Rule, room 2340, Department of the Interior, 1849 C Street, NW., Washington DC 20240 (regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Cecil Hoffman, David Rosenberger or Mary C. Morton at (202) 208-3301.

SUPPLEMENTARY INFORMATION: This preamble is organized as follows:

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- A. Statutory Background
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- T. Other Valuation Methodologies
- U. Use of Damages Collected.
- V. Date of Promulgation
- W. Impact of the Rule
- X. Miscellaneous Issues

I. Background

A. Statutory Background

Section 311(f) of CWA (33 U.S.C. 1251 et seq.) and section 107 of CERCLA (42 U.S.C. 9601 et seq.) authorize natural resource trustees to recover compensatory damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil into navigable waters or a release of a hazardous substance. Federal and State officials may be designated to serve as natural resource trustees under section 107(f) of CERCLA and sections 311(f)(4) and (5) of CWA. Section 107(f) of CERCLA also recognizes the authority of Indian tribes to commence actions as natural resource trustees.

Natural resource damages may be recovered for injuries residual to response actions. All sums recovered for natural resource injuries must be used to restore, replace, or acquire the equivalent of such natural resources. Trustees may also recover the reasonable costs of assessing natural resource damages and any prejudgment interest.

Section 301(c) of CERCLA requires the promulgation of regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance. Section 107(f) of CERCLA provides that assessments performed by Federal and State natural resource trustees in accordance with these regulations receive the evidentiary status of a rebuttable presumption. The promulgation of these regulations was delegated to the Department by Executive Order 12580. 52 FR 2923 (January 23, 1987).

The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 et seq., was signed into law on August 18, 1990. It authorizes the Under Secretary of Commerce for Oceans and Atmosphere, particularly the National Oceanic and Atmospheric Administration (NOAA), in consultation with the Fish and Wildlife Service among others, to develop natural resource damage assessment rules for discharges of oil in navigable waters. The Department is coordinating its rulemakings with NOAA to ensure, to the maximum extent possible, that parallel processes are established for assessing damages under CERCLA and OPA. Further, section 6001(b) of OPA provides that until NOAA develops its rule, the Department's rules may be used to assess natural resource damages under OPA.

B. Regulatory History

The Department, pursuant to its delegated responsibilities under section 301(c) of CERCLA, has issued various final rules for the assessment of natural resource damages: 51 FR 27674 (August 1, 1986); 52 FR 9042 (March 20, 1987); 53 FR 5166 (February 22, 1988); and 53 FR 9769 (March 25, 1988). These rulemakings are all codified at 43 CFR Part 11.

The natural resource damage assessment rule provides both an administrative process for conducting natural resource damage assessments in addition to substantive, technical procedures for the actual identification of injuries and calculation of damages. Under the rule, each assessment consists of four major phases.

The first phase of an assessment includes the steps that trustee agencies must take before the actual planning or initiation of an assessment. For

example, upon detecting or receiving notification of a discharge or release, trustee agencies must perform a preassessment screen to ascertain whether further assessment actions are warranted.

The second phase involves the preparation of an Assessment Plan. The Assessment Plan, which is subject to public review and comment, is designed to assist the involvement of other interested trustees, potentially responsible parties (PRPs), and the general public and to ensure that assessments are performed at a reasonable cost.

In the third phase, trustee agencies actually begin the assessment. All assessments include the following three steps: Injury Determination; Quantification; and Damage Determination. Currently, under some circumstances, these steps can be performed by a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME) in what is known as a "type A" assessment. In "type B" assessments, trustees perform these steps using a range of alternative scientific and economic methodologies and standards provided in the rule. In the Injury Determination step of a type B assessment, trustee agencies determine whether an injury to the resource has occurred. After injury has been confirmed, trustees quantify the resulting reduction in services provided by the resource. Finally, in Damage Determination, trustee officials calculate the monetary compensation to be sought as damages for the injury to the natural resources.

The fourth phase of every natural resource damage assessment, whether the type A or type B rule is followed, consists of post-assessment activities such as: preparation of a Report of Assessment; establishment of an account for damage assessment awards; and development of a Restoration Plan for use of the awards.

C. Judicial Review

Section 113 of CERCLA provides that any member of the public may petition the Court of Appeals for the District of Columbia Circuit to review any regulation issued under CERCLA. A number of parties filed such petitions for review of the natural resource damage assessment regulations. The regulations were challenged in two separate, but parallel, cases. In *State of Ohio* v. *United States Department of the Interior*, 880 F.2d 432 (D.C. Cir. 1989) (*Ohio* v. *Interior*), petitioners challenged a total of twelve issues that pertained to the administrative process and the type B rule. In *Colorado* v. *United States Department of the Interior*, 880 F.2d 481 (D.C. Cir. 1989) (*Colorado* v. *Interior*), petitioners challenged two issues pertaining to the type A rule.

The court in *Ohio* v. *Interior* unanimously upheld most of the challenged aspects of the administrative process and the type B rule but did remand three issues. The court held that: (1) Restoration costs are the preferred measure of natural resource damages; and (2) all reliably calculated lost values of injured natural resources should also be recoverable, with no specific hierarchy of methodologies required of trustees in estimating those values. Addressing a third issue, the court asked the Department to clarify whether the rule applies to natural resources that are not actually owned by the government.

D. Implementation of Court Remand

The Department published an advance notice of proposed rulemaking on September 22, 1989, to announce the Department's intent to revise the type B rule to comply with *Ohio* v. *Interior*. 54 FR 39016. The Department then issued a proposed rule on April 29, 1991, with comments requested by June 28, 1991. 56 FR 19752. On July 2, 1991, the Department extended the comment period to July 16, 1991. 56 FR 30367.

The Department received 53 sets of comments on the proposed rule. One issue that elicited numerous and widely-divergent comments was the continued allowance for the use of the contingent valuation methodology (CVM). CVM is a method of estimating lost values of an injured resource through the use of surveys. Although CVM has been used to estimate both use and nonuse values, it has been most contentious when used to determine nonuse values.

There have been additional developments concerning CVM since the close of the comment period. The Department has been approached by several commenters who claim that they have new information about the reliability of CVM that should be considered in this rulemaking. On April 8, 1992, NOAA announced that it was forming an expert panel, pursuant to its rulemaking authority under OPA, to examine the use of CVM to estimate nonuse values. The panel's report was published in the Federal Register on January 15, 1993. 58 FR 4601.

In order to allow consideration of the most up-to-date information in this rulemaking while also providing all interested parties with a full opportunity to respond to that additional information, the Department has decided to reopen the comment period. The Department requests additional information concerning CVM that is relevant to the calculation of natural resource damages. This includes technical studies that have actually applied CVM to determine natural resource damages; and reviews of CVM that address its reliability for measuring use values, nonuse values, or all compensable values.

Moreover, to ensure that the final rule provides a coherent overall assessment process, the Department will also consider additional comments on any other aspect of the April 29, 1991 proposed rule. In particular, commenters should consider those issues pertaining to the proposed measure of damages; the requirements of the proposed Restoration and Compensation Determination Plan; and the proposed clarification of the scope of resources covered by the regulations. Prior comments need not be re-submitted. Also, this notice contains a discussion of the comments received to date, including summaries of certain revisions to the proposed regulatory language that the Department is considering in light of those comments. The Department solicits comments on this discussion to assist it in developing a final rule.

CERCLA mandates biennial review and revision, as appropriate, of the Department's damage assessment regulations. The Department plans to begin its next biennial update of the type B rule as soon as possible after this rulemaking becomes final and will address other issues related to the administrative process and the type B rule during that review. Also, the Department will revise the type A rule in compliance with *Colorado* v. *Interior* in future rulemakings. In addition to the existing NRDAM/CME, the Department has been developing a model for Great Lakes Environments (NRDAM/GLE). For efficiency, changes to reflect the holding of *Colorado* v. *Interior* are being made first on the work in progress, NRDAM/GLE.

II. Summary of Proposed Rule

To assist in the development of additional comments, the Department is providing a brief summary of the proposed rule. For more detailed information on the proposed rule, commenters are urged to review the April 29, 1991 notice. 56 FR 19752.

A. Measure of Damages

The rule as originally published on August 1, 1986, provided that damages consisted of the lesser of restoration

costs or the diminution in resource values. 51 FR 27674. The court remanded the rule on the ground that CERCLA indicates a preference for using restoration costs as the measure of natural resource damages. CERCLA provides that sums recovered in natural resource damage actions may be used to restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources. The court used the simple term "restoration" costs as shorthand for the cost of performing any of these actions. In many cases, trustee officials will likely use damage awards to fund some combination of these actions, rather than only one. Therefore, the Department has proposed to revise the rule to allow trustees to recover the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources in all cases.

The court recognized the Department's authority to identify circumstances when some factor other than the cost of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources could be used as the measure of damages. However, the Department believes that trustee agencies may always perform some, albeit occasionally minor, form of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Even in situations where natural recovery is the preferred action, trustee agencies may nonetheless incur some costs such as the expense of restricting public access or taking other such actions to ensure that natural recovery is not impeded. Therefore, the Department has not proposed any exceptions to the general measure of damages. Moreover, the proposed rule would also allow trustees to recover the value of the services lost to the public from the date of the discharge or release until restoration, rehabilitation, replacement, and/or acquisition of equivalent resources has been completed.

B. Restoration and Compensation Determination Plan

To assist trustee agencies in developing claims under the new measure of damages, the Department has proposed to amend the rule to provide for the development of a Restoration and Compensation Determination Plan. This Restoration and Compensation Determination Plan would replace the Restoration Methodology Plan discussed in the original version of the rule. The Restoration and Compensation Determination Plan would be designed to focus the scope of the Damage Determination phase of the assessment. The Restoration and Compensation Determination Plan would be part of the overall Assessment Plan and, thus, subject to public review and comment.

1. Selection of an Alternative for Restoration, Rehabilitation, Replacement, and/or Acquisition of Equivalent Resources

Since damages are based on the costs of restoring, rehabilitating, replacing and/or acquiring equivalent resources, trustee officials need a mechanism for projecting these costs for inclusion in their damage claim. The proposed rule includes a procedure for selecting a method of restoring, rehabilitating, replacing and/or acquiring equivalent resources that can be used in this projection.

Under the proposed rule, trustees would first identify and consider a reasonable number of possible alternatives for restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured resources. Trustee officials would also estimate those services that are likely to be lost to the public pending completion of each possible alternative being considered. Trustee agencies would then select one of the possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. The proposed rule lists ten factors to consider when selecting one of the alternatives. The relative weight of these factors would be left to the discretion of the trustee officials. The trustee officials would document their decisions in the Restoration and Compensation Determination Plan. The cost of implementing the selected alternative provides the basic measure of damages.

2. Calculation of the Costs of Restoration, Rehabilitation, Replacement, and/or Acquisition of Equivalent Resources

Once the trustee agencies select a method of restoring, rehabilitating, replacing, and/or acquiring equivalent resources, they will need to decide how they intend to develop a detailed estimate of the costs of implementing that method. To do this, trustee officials would select among the specific cost estimating methodologies provided in the proposed rule. Trustees would include their rationale for selecting particular cost estimating methodologies in the Restoration and Compensation Determination Plan.

3. Calculation of Compensable Value

Under the proposed rule, the costs of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured resources would be the preferred measure of damages; however, these costs would only be part of the total damage claim. Damages would also include the value of the services that the public lost from the date of the release or discharge until completion of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. The Restoration and Compensation Determination Plan would include a description of the methodologies trustees intend to use when valuing these lost services during the Damage Determination phase.

The rule as originally published on August 1, 1986, distinguished between "use values" and "option and existence values." "Option and existence values" are generally considered to be types of nonuse values. Trustees were allowed to recover option and existence values only when no use values could be determined. The proposed rule would eliminate this restriction to allow for the recovery of all reliably calculated values in compliance with *Ohio* v. *Interior*. The proposed rule introduces the term "compensable value," which stands for the combination of all lost public values that could be included in a natural resource damage claim. "Compensable value" encompasses all of the public economic values associated with an injured resource, including use values and nonuse values.

As initially published in 1986, the rule provided a list of methodologies that could be used to calculate lost public values. The rule had ranked these methodologies stating that if trustees determined that the market for the injured resource was "reasonably competitive," then the diminution of the market price attributable to the discharge or release should be used to estimate damages. If a market-price methodology was not available, then the trustee officials were required to use appraisal methodologies. Only when neither market-price nor appraisal methodologies were appropriate for the affected resources being assessed did the original version of the rule allow the trustee to use non-market-based valuation methodologies.

The court ruled that the hierarchy, or ranked order, of valuation methodologies established in the original version of the rule incorrectly established a strong presumption in favor of market-price and appraisal methodologies. The proposed rule would remove the required hierarchy and leave trustees free to select among the methodologies. However, trustees would be required to state the rationale for their choice of any methodology in

the Restoration and Compensation Determination Plan.

c. Resources Covered by this Rule

The final issue remanded by the *Ohio* v. *Interior* court concerns the scope of the resources covered by the rule. The rule as originally published incorporated the definition of "natural resources" contained in section 101(16) of CERCLA. This definition encompasses any resource "belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by" the United States, any State or local government, any foreign government, or any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe. The court in *Ohio* v. *Interior* noted that, although CERCLA does not authorize recovery of damages for injuries to purely private resources, this statutory definition does appear to extend beyond those resources that are actually owned by the government. Similarly, in its oral argument in *Ohio* v. *Interior*, the Department suggested that the rule could apply to privately-owned resources provided they were subject to a substantial degree of government regulation, management, or other form of control. However, the August 1, 1986 preamble to the final type B rule stated that "section 101(16) of CERCLA clearly indicates that privately-owned natural resources are not to be included in natural resource damage assessments." 54 FR 27696. Therefore, the court asked the Department to clarify whether this rule may be used to assess damages for injuries to any resources that are not owned by the government.

The Department never intended to suggest that the applicability of the rule hinges solely on ownership of a resource by a government entity. The Department intends this rule to be available for assessments of all natural resources covered by CERCLA, which under the plain language of the statute includes more than just resources owned by the government.

D. Other Significant Revisions of the Rule

Implementation of the court remand has also necessitated that the Department propose two additional revisions:

(1) A requirement that trustee officials develop a preliminary estimate of damages; and

(2) Clarification of the date of promulgation of the natural resource damage assessment regulations.

1. Preliminary Estimate of Damages

As discussed above, the original measure of damages under the rule was the lesser of restoration costs or diminution in resource values. Under § 11.35 of the rule as originally published, the determination of whether restoration costs or diminution in value would serve as the basis of damages was made in the Economic Methodology Determination. Under the proposed rule, damages would include both the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and compensable value. Therefore, the Department has proposed to eliminate the Economic Methodology Determination.

However, the Economic Methodology Determination served a second function that is still relevant under the proposed rule. CERCLA provides that trustees may recover the costs of performing an assessment, but only if those costs are reasonable. Under the definition of "reasonable cost," set forth at § 11.14(ee) of the existing rule, the anticipated cost of the assessment must be expected to be less than the anticipated damage amount. The Economic Methodology Determination helped to ensure that assessments satisfied this aspect of reasonableness. In order to continue assisting trustee agencies in performing assessments at reasonable costs in the absence of the Economic Methodology Determination, the Department has proposed a requirement that trustees prepare a preliminary estimate of damages before they begin the development of an Assessment Plan.

2. Clarification of the Date of Promulgation

Section 113(g)(1)(b) of CERCLA provides that natural resource damage claims other than those involving Federal facilities or sites on the National Priorities List must be commenced by Federal and State trustees:

* * * within 3 years after the later of the following:

(A) The date of the discovery of the loss and its connection with the release in question.

(B) The date on which regulations are promulgated under section 301(c).

Neither the language nor the legislative history of CERCLA defines the date of promulgation of the section 301(c) regulations.

There has been considerable confusion over section 113(g)(1)(B) in the aftermath of *Ohio* v. *Interior* and *Colorado* v. *Interior*. The regulations issued under section 301(c) are designed to calculate a monetary damage figure for injuries to natural resources. *Ohio* v. *Interior* and *Colorado* v. *Interior* remanded the fundamental issue of what should serve as the basis of the damage calculus. Until the court remands are fully implemented, trustees are left without a completed damage calculus consistent with the provisions of CERCLA. Therefore, the Department has proposed to amend the rule to clarify that for the purposes of section 113(g)(1)(B), the "date on which regulations are promulgated" is the date when both the revisions ordered in *Ohio* v. *Interior* and in *Colorado* v. *Interior* become effective as final rules.

III. Response to Comments

A. Overview

The Department received numerous comments on the April 29, 1991 proposed rule. To assist in the development of additional comments, the Department is providing a discussion of the comments received to date. The Department appreciates the time and effort expended by the commenters.

Several commenters raised issues that are outside the scope of the *Ohio* v. *Interior* remand. Due to the focused nature of this particular rulemaking, the Department has not attempted to address these issues beyond reproducing guidance that has been provided in prior **Federal Register** notices. Nevertheless, the Department recognizes that these comments merit additional consideration and plans to revisit them during the upcoming biennial review.

B. General Comments

1. Issues Not Addressed by Court Remand

Comment: One commenter stated that the Department had proposed changes other than those required by *Ohio* v. *Interior* and had done so without providing any justification. The commenter offered as examples of such changes the modification of the criteria for selection of an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and the development of the concept of compensable value.

Response: The Department does not agree that it has proposed changes beyond those required by *Ohio* v. *Interior*. The preamble to the proposed rule explained how the proposed changes would implement the court decision. As was noted in the April 29, 1991 preamble, the Department could have complied with the court's decision by merely removing the "lesser of" language from the damage formula,

eliminating the economic valuation hierarchy and deleting the provision restricting recovery of nonuse values to those cases where direct uses cannot be determined. However, the Department has instead sought to implement the court's decision in a manner that is more coherent and provides better guidance to trustees, potentially responsible parties (PRPs) and the public. For example, the Department proposed modifications to the criteria for selecting an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources only to ensure that the rule appropriately reflects the statutory preference for restoration noted by the court. Similarly the notion of compensable value was developed to clarify that all reliably calculated values may be included in the damage claim, as required by the court.

2. Trustee Discretion

Comment: A number of commenters addressed the level of discretion that the proposed rule affords trustees. Several commenters thought that the rule delegates too much authority to trustees. These commenters stated that the language and legislative history of section 301(c) of CERCLA, through reference to "protocols," "best available procedures," and "most accurate and efficient procedures," require that the Department develop substantive objective standards. According to these commenters, the proposed rule relies upon subjective standards that will lead to arbitrary and capricious results. These commenters also stated that, without additional guidance, trustee officials with limited expertise would likely pursue inappropriate and excessively expensive assessments and plans for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Moreover, one commenter stated that the absence of objective standards would make it impossible for PRPs to evaluate their potential liability.

On the other hand, many commenters thought that trustee agencies will be in the best position to determine how to proceed at a specific site and praised the flexibility of the proposed rule. One commenter stated that the proposed rule imposed too many restrictions on trustees and would force them to pursue undesirable courses of action that would strain already tight budgets.

Response: The Department believes the proposed rule appropriately balances the need for objective procedures against the need for flexibility. In order to comply with the statutory requirement to identify best available procedures for assessing natural resource damages, the Department has proposed a detailed, standardized process that incorporates a specific range of acceptable alternative economic methodologies. However, the type B rule was also intended to have broad application. Natural resource damage cases range from situations involving discrete injury of one resource caused by a small, incidental release of a single substance to incidents involving extensive injuries to multiple resources caused by large, long-term releases of mixtures of substances. In light of the myriad of possible natural resource damage scenarios, a type B rule that mandates a particular course of action at each stage of every assessment would generally be unusable or result in unreasonable assessment costs. Therefore, in certain areas the proposed rule would allow trustee agencies to use their best judgment.

Although trustees do have some discretion, the proposed rule would require them to document their decisions; provide criteria by which most discretionary decisions can be evaluated; and subject the decisionmaking process to review by other affected trustees, any PRPs, and the public. The Department believes that these provisions would offer necessary and adequate protection against arbitrary and capricious decisions and inappropriate or excessively expensive assessments and plans for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

The Department acknowledges that it may be difficult for a PRP to predict precisely how a trustee agency would exercise its discretion in a particular case. However, the Department does not believe that this fact imposes an unfair burden on PRPs.

3. Public and PRP Involvement

Comment: Several commenters voiced opinions about the opportunity for PRP and public participation in the assessment process. Some commenters stated that the proposed rule provided an appropriate level of public participation. One commenter thought that the public should be notified at the same time that PRPs are first notified. Another commenter expressed concern that the opportunity for public participation would merely provide PRPs with additional chances to direct the process.

Response: The proposed rule would not change the level or timing of PRP or public participation in the natural resource damage assessment process. As was discussed in the August 1, 1986 preamble, while the Department recognizes the importance of participation in the natural resource damage assessment process both by interested members of the public and by PRPs, it does not consider their responsibilities or roles identical. The public has a right to review and comment on decisions at appropriate points in the process, and this right should be protected even if the public does not exercise it in every case. The public's role, however, is not meant to supplant that of authorized officials acting as trustees, who bear a direct obligation to protect the public's interests. On the other hand, PRPs are potential defendants and are ultimately responsible for paying both the assessed damages and the costs of performing the assessment. The Department believes that early participation of PRPs in the assessment process protects those parties' interest in a cost-effective approach and promotes amicable settlement of natural resource damage claims.

Comment: A few commenters expressed concern about the Department's statements that any required trustee explanation may be "brief." These commenters stated that neither the PRPs nor the public would have a meaningful opportunity to challenge the rebuttable presumption attached to a damage assessment unless trustee agencies were required to prepare detailed explanations of their decisions.

Response: The Department believes that the cost of preparing elaborate explanations and discussions of trustees' rationales for each decision would often be unreasonable. Nevertheless, the scope of the explanations may vary depending on the extent of the damages and the anticipated costs of the assessment.

4. Relationship to OPA

Comment: There were two comments concerning the relationship between these rules and OPA. One commenter, citing language in the Conference Report for OPA, stated that the rule should not apply to oil spills. Another commenter encouraged the Department to work closely with NOAA to ensure that any rule developed by NOAA under OPA is consistent with the Department's rule.

Response: Section 1006(e) of OPA, which is the subject of the Conference Report language cited by one commenter, does provide that NOAA will develop the regulations governing assessments of natural resource damages caused by oil spills in navigable waters. However, section 6001(b) of OPA provides that any rule in effect under a

law replaced by OPA will continue in effect until superseded. Section 1002 of OPA supersedes section 311(f) of CWA for incidents occurring after August 18, 1990. The Department's rule applies to claims under sections 311(f)(4) and (5) of CWA. Therefore, until NOAA develops its rule, the Department's rule will continue to apply to oil spills in navigable waters. OPA Senate committee report language makes it clear that "[t]he existing Interior Department rules, as amended by the court's decisions, may be used with a rebuttable presumption in the interim." S. Rep. No. 101–94, 101st Cong. 1st Sess. 15 (1990).

The interests of regulatory clarity and efficiency will be best served if the processes for assessing natural resource damages, whether they result from releases of hazardous substances or discharges of oil, are as consistent as possible. Therefore, the Department will continue to coordinate its rulemakings with those of NOAA.

5. Lack of Funding

Comment: Two commenters stated that the rule is of little value to trustee agencies given the lack of funding to initiate natural resource damage assessments.

Response: The Department recognizes the financial limitations with which trustees are faced. However, section 517 of the Superfund Amendments and Reauthorization Act (SARA) amended the Internal Revenue Code to prohibit expenditures from the Hazardous Substance Superfund to pay for natural resource damage assessments. 26 U.S.C. 9507(c)(1)(A)(ii). In addition, some Federal trustee agencies, including the Department, have sought and received appropriated funds to perform some of their assessments. Also, in some instances, PRPs have made money available to trustee agencies for the conduct of assessments.

6. Selective Use of Portions of the Rule

Comment: One commenter stated that, in light of the lack of funding for natural resource damage assessments, trustee officials should be allowed to follow portions of the rule and still receive a rebuttable presumption for those elements of the assessment that conform with the rule. Another commenter stated that the Department should make clear that the rebuttable presumption attaches only if all aspects of the assessment conform with the rule.

Response: Under § 11.91(c) of the existing rule, the rebuttable presumption attaches to those assessments that are performed in accordance with the entire rule. Modification of § 11.91(c) is beyond the scope of this rulemaking. However, the Department notes that nothing prevents trustees who are dealing with cooperative PRPs from making selective use of portions of the rule for purposes of working out a settlement.

7. Complexity of the Rule

Comment: One commenter thought that the rule was too complicated.

Response: The Department admits that this is a comprehensive rule. However, the rule is designed to provide not only an administrative process for conducting assessments but also an entire range of alternative methodologies for calculating full compensation for injuries to the complete scope of natural resources covered by CERCLA. The variety of possible natural resource damage cases is virtually endless, and the type B rule was designed to be available for use in all of those situations. Therefore, the Department believes that some level of intricacy is unavoidable. The Department notes that it has given a number of workshops and seminars on the use of the rule at the request of State trustee officials, other Federal agencies and private parties. The Department welcomes the opportunity to hold additional workshops and seminars.

8. Separate Assessments for Each Injury

Comment: One commenter stated that in cases involving multiple injuries, different geographic areas and numerous PRPs, any aggregate damage figure developed under the rule would have to be divided to ensure that each PRP is only held liable for the damages caused by its release or discharge. Therefore, the commenter believed that the rule should require trustees to assess each injury separately.

Response: In those cases involving multiple PRPs, if the injuries, the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and the compensable values could all be segregated, then trustee agencies could perform separate assessments for each PRP. However, natural resources are generally highly interdependent. Therefore, the selection of methodologies to value or restore, rehabilitate, replace, and/or acquire the equivalent of one injured resource will often affect the selection of methodologies to address other resources. Furthermore, courts have held that CERCLA imposes joint and several liability where there is no clear basis on which to apportion liability. Therefore, if either the injuries, the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources or the compensable values cannot be segregated in a particular case, trustee agencies usually would not perform separate assessments.

C. Measure of Damages

Comment: There were a number of comments on the use of the cost of restoration, rehabilitation, replacement and/or acquisition of equivalent resources as the general measure of damages. Several commenters supported this measure of damages and thought that the determination whether a different measure of damages would be more appropriate in a particular case was correctly left to the discretion of trustee agencies. One commenter thought that the proposed measure of damages was particularly appropriate in light of the difficulties and controversies surrounding calculation of use values. This commenter went on to state the risk that any damages collected would merely serve as a windfall for the treasury in the absence of a commitment to restoring, rehabilitating, replacing and/or acquiring equivalent resources.

However, many other commenters stated that there should be an explicit exception to this measure of damages when the cost of restoration, rehabilitation, replacement and/or acquisition of equivalent resources is grossly disproportionate to the value of the resource. A number of these commenters disagreed with the Department's statements that no exceptions were needed because some form of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources will always be performed. To support their positions, these commenters offered hypothetical cases in which long-lived pollutants had contaminated surface water sediments but response actions had eliminated all danger to human health or the environment. According to the commenters, the proposed measure of damages would be inappropriate in these cases, because the costs of restoring the sediments generally would vastly outweigh the potential benefits; there are no known means of rehabilitating the sediments; there is no point in replacing the sediments or acquiring equivalent sediments; and natural recovery is impossible.

Most commenters who thought that there should be exceptions to the measure of damages failed to provide a definition of "grossly disproportionate." However, one commenter stated that the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources should be

considered grossly disproportionate if they are more than three times the value of the resource. Another commenter believed that imposition of any costs that exceeded the value of the resource would be punitive and violate due process. Also, one commenter suggested that the rule should allow for the eliminatation of the costs of restoration, rehabilitation, replacement and/or acquisition of equivalent resources upon a showing by PRPs that recovery of these costs is inappropriate.

Response: The Department continues to believe that the measure of damages included in the proposed rule is appropriate. The Department believes that natural resource damages should always include the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, because trustees will always be able to perform some element or combination of these actions. In the hypothetical case of sediments contaminated by long-lived pollutants, replacement actions may not in fact be pointless if they would return the baseline level of services provided by that resource to other resources or to humans. Moreover, assuming that intensive intervention would be inappropriate, natural recovery may not be impossible, but rather extremely slow. Therefore, trustees may choose to allow natural recovery but would then take certain actions, such as restricting public use of the body of water, to ensure that natural recovery is not impeded. These actions would qualify as actions taken to restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources.

The Department agrees that when trustee officials evaluate a particular methodology of restoring, rehabilitating, replacing, and/or acquiring equivalent resources, they should consider the relationship between the costs of implementing that methodology and the compensable value of the resource. However, if the costs of implementing that particular methodology do greatly exceed the compensable value of the resource, trustee agencies need not eliminate restoration, rehabilitation, replacement, and/or acquisition of equivalent resources as a basis for damages but could instead select a different methodology. Moreover, selection of a particular methodology for restoring, rehabilitating, replacing and/or acquiring equivalent resources determines the period and quantity of lost use. As a result, evaluating the relationship between the costs of implementing a particular methodology and the compensable value of a resource becomes more than a simple analysis of strict numeric proportions. Therefore, § 11.83(a)(3) of the proposed rule sets forth criteria to help trustee officials evaluate different methodologies for restoring, rehabilitating, replacing, and/or acquiring equivalent resources. The Department believes that consideration of these criteria would be the most useful means of ensuring that damage figures are compensatory not punitive.

Comment: Several commenters stated that the language and legislative history of CERCLA, *Ohio* v. *Interior* and *Commonwealth of Puerto Rico* v. *SS Zoe Colocotroni*, 628 F.2d 652 (1st Cir. 1980), *cert. denied*, 450 U.S. 912 (1981) (*Puerto Rico* v. *SS Zoe Colocotroni*), require inclusion of an exception for grossly disproportionate restoration costs.

Response: The Department does not agree that CERCLA, *Ohio* v. *Interior* or *Puerto Rico* v. *SS Zoe Colocotroni* mandate an exclusion from the general measure of damages when the cost of restoring, rehabilitating, replacing, and/or acquiring equivalent resources is grossly disproportionate to the lost value of the injured resources. CERCLA and *Ohio* v. *Interior* grant the Department the discretion to develop exceptions to the general measure of damages but do not require such exceptions. *Puerto Rico* v. *SS Zoe Colocotroni* arose under a Puerto Rican statute, and although the case does contain some dicta concerning CWA, it did not establish any standards for damages under either CWA or CERCLA.

Moreover, *Puerto Rico* v. *SS Zoe Colocotroni* focused on whether damages should be based on the costs of implementing a plan to dig up and replant an oiled mangrove forest instead of relying upon natural recovery. The court rejected the plan as "impractical, inordinately expensive, and unjustifiably dangerous to the healthy mangroves and marine animals still present in the area to be restored." 628 F.2d at 676. The proposed rule would neither require nor authorize trustees to pursue intensive activities to restore or rehabilitate an injured resource if such activities would be impractical, inordinately expensive or unjustifiably dangerous. Under the proposed rule, trustees would evaluate a range of alternatives, including an alternative based on natural recovery, under a set of factors, including technical feasibility, cost-benefit considerations, cost-effectiveness, and potential for additional injury. The proposed rule would allow trustees to rely upon natural recovery when appropriate and base their damage claims on the cost of actions taken to ensure that natural recovery is not impeded.

Comment: Some commenters states that failure to include such an exception would lead to double recoveries and inflated, arbitrary assessments.

Response: The issue of double recovery arises when PRPs are asked to pay damages for the same injury more than once. The concept of compensable value and the concept of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources relate to two different effects of an injury. Therefore, the Department does not believe that the absence of an explicit exception to the general measure of damages would lead to double recoveries.

Further, the Department does not believe that the absence of exceptions to the measure of damages would result in inflated, arbitrary damage assessments. The costs of restoring, rehabilitating, replacing, and/or acquiring the equivalent of an injured resource might be high in particular cases. However, implementation of some form of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources in those cases might considerably shorten the recovery period, thus reducing the compensable value and the overall damages. Also, the Restoration and Compensation Determination Plan, which sets forth the basis for calculation of damages, would be made available for public comment, so the trustee officials' judgment would be subject to review.

Comment: There were a number of comments about the inclusion of compensable value in the measure of damages. One commenter stated that requiring trustees to calculate compensable value in every case would improperly encroach upon trustees' discretion and could result in unreasonable assessment costs.

Response: The Department believes that calculation of compensable value would help ensure that the public is fully compensated for injuries to natural resources. Calculation of compensable value generally would not result in unreasonable assessment costs so long as trustees select appropriate valuation methodologies. Trustee officials would be allowed to use any valuation methodology listed in § 11.83(c) of the proposed rule or any other cost-effective methodology that measures compensable value in accordance with the public's willingness to pay. However, if there is no acceptable methodology for calculating compensable value at a reasonable cost, as defined under § 11.14(ee) of the existing rule, trustee agencies would have the authority to base damages solely on the cost of restoration,

rehabilitation, replacement, and/or acquisition of equivalent resources. The Department is considering revising the language of proposed § 11.83 to make this point explicit.

Comment: Other commenters believed that recovery of compensable value was not authorized under CWA. These commenters stated that unlike section 107(a)(C) of CERCLA, which imposes liability for "damages for injury to, destruction of, or loss of natural resources," section 311(f)(4) of CWA merely refers to the "costs of removal," which "include any costs incurred by the Federal Government or any State government in the restoration or replacement of natural resources." Furthermore, these commenters stated that nothing in the legislative history of CWA suggests that lost use values were intended to be recoverable.

Response: Under § 11.93(a) of the proposed rule, compensable value would be recovered in order to replace public uses and nonuses of an injured resource that are lost to the public during the recovery period. Thus the Department believes that compensable values would be recoverable under CWA as "costs incurred * * * in the restoration or replacement of natural resources." Further, the Department notes that section 1002(b)(2) of OPA, which amends CWA, explicitly authorizes recovery of damages for loss of use of natural resources.

Comment: A couple of commenters asked how to calculate compensable value when full restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is not possible.

Response: The Department recognizes that in some cases the time period for complete restoration, rehabilitation, replacement, and/or acquisition of equivalent resources may be considerable. Nevertheless, even in those cases, trustee officials would estimate the length of the recovery period and calculate the value of public uses and nonuses lost during that time.

Comment: One commenter stated that the proposed measure of damages should "take cognizance of any benefits resulting from the particular incident (e.g., increased fish harvest resulting from oil discharge with resultant increase in plankton/fish growth rate in Prince William Sound)."

Response: The Department believes that the existing rule takes adequate cognizance of any positive effects of a release or discharge in the Quantification phase. Under § 11.70, which would not be affected by the proposed rule, trustee officials quantify an injury by calculating the reduction in the level of services provided by the injured resource to other resources or to humans. If a particular resource were injured but nonetheless provided the same or a greater level of services, then there would be no reduction in service levels to quantify. Further clarification is beyond the scope of this rulemaking.

Comment: Another commenter thought that PRPs should not be held liable for damages associated with injuries caused or aggravated by ill-advised cleanup operations.

Response: Section 11.15(a)(1)(ii), which would not be affected by the proposed rule, provides that PRPs are liable for any increase in injuries that is reasonably unavoidable as a result of response actions taken or anticipated. As was stated in the August 1, 1986 preamble, liability is limited to those increases that are reasonably unavoidable

> * * * because the Department believes that any response actions undertaken by government agencies should strive to avoid additional injury to natural resources whenever possible. Damages from such "reasonably unavoidable" increases in injury resulting from response actions by governmental agencies are not excluded from damage actions, because they are indirectly due to the discharge or release and thus included under section 301(c) of CERCLA. 51 FR 27698.

Comment: A few commenters believed that the rule should incorporate and clarify section 107(f)(1) of CERCLA, which provides that there shall be no recovery for natural resource damages if those damages and the release that caused those damages occurred wholly before December 11, 1980, the date on which CERCLA was enacted.

Response: The Department notes that § 11.24(b)(1), which would not be affected by the proposed rule, already incorporates the limitation on damages set forth in section 107(f)(1) of CERCLA. Any further clarification of this limitation is beyond the scope of this rulemaking.

Comment: A few commenters stated that the rule should incorporate the ceilings on recovery set forth in section 107(c) of CERCLA.

Response: The Department notes that § 11.15(b), which would not be affected by the proposed rule, already incorporates the ceilings on damages set forth in section 107(c) of CERCLA.

D. Resources Covered by the Rule

Comment: There were numerous comments on the issue of the resources covered by this rule. Several commenters supported the Department's proposal not to define the scope of trusteeship over privately-owned resources. These commenters stated that the scope of trusteeship is governed by a wide variety of Federal and State laws that are constantly evolving and that trustee agencies are in the best position to interpret.

Several commenters disagreed with the Department and stated that the rule should include some limits on its application to privately-owned property in order to avoid overly-broad claims and additional litigation. A few of these commenters offered specific regulatory language.

Finally, a number of commenters thought that if the Department did not provide a specific regulatory definition of the scope of trusteeship, then the Department should at least clarify that a trustee agency's determination of the scope of its authority is not entitled to a rebuttable presumption.

Response: The *Ohio* v. *Interior* court did not require or even request the Department to provide a regulatory definition of the scope of trusteeship over privately-owned resources. The court merely asked for clarification of whether the Department intended its rule to cover any non-government-owned property. The scope of trusteeship is determined by section 101(16) of CERCLA, which defines "natural resources" as:

> [L]and, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States * * *, any State or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

As the court noted, this definition, which is incorporated into § 11.14(z) of the existing rule, extends beyond resources that are actually owned by the government. The Department does not intend to restrict application of the rule to government-owned property but instead intends to allow use of the rule to assess damages for all natural resources covered by CERCLA. The Department believes that no additional action is needed to comply with the court's request.

Not only is development of a regulatory definition of the scope of trusteeship over privately-owned resources not required by *Ohio* v. *Interior*, it is also impractical. Under CERCLA, trustees can only recover damages for injuries to those resources to which they are related through ownership, management, trust or control. These relationships are themselves created by other Federal, State, local and tribal laws. In light of

the diversity of these other Federal, State and tribal laws, the Department believes that the scope of trusteeship under CERCLA must be addressed on a case-by-case basis.

The Department disagrees that lack of a regulatory definition of "public resources" will result in overly-broad claims and additional litigation. The proposed rule would require trustee officials to prepare a statement explaining the basis for their assertions of trusteeship. This statement would be included in the Notice of Intent to Perform an Assessment, which is sent to PRPs, and in the Assessment Plan, which is subject to public review and comment. These opportunities for early input from PRPs and the public would provide both a check on trustees' discretion and a means of resolving disputes over the scope of trusteeship prior to litigation. Other provisions of the rule, such as the requirement that only committed public uses of the resource be included in compensable value, provide additional protection against improper assertions of authority over private property.

Nevertheless, the Department believes there are significant concerns about the propriety and legality of allowing trustee agencies to define the very scope of their own jurisdiction. Therefore, the Department is considering revising the language of the proposed regulation to clarify that a trustee agency's statement of its basis of authority would not be entitled to a rebuttable presumption.

Comment: One commenter stated that if the Department chose to defer to the courts and did not define the scope of trusteeship in the rule itself if should not then speculate on the issue in the preamble. However, other commenters did not object to the language of the rule but did ask the Department to provide some additional guidance in the preamble. Several commenters offered examples of the types of privately-owned resources that should or should not be covered by the rule.

Response: The multiplicity of Federal, State and tribal laws that give rise to trusteeship not only makes it virtually impossible to develop a regulatory definition, it also creates a risk that any general discussion or list of examples would not be representative of the wide range of resources covered by CERCLA. Therefore, the Department believes it would be inappropriate to offer specific examples of privately-owned resources covered by this rule.

Comment: A few commenters had questions about the application of the rule to specific resources. Two commenters raised the issue of whether an Indian tribe has authority to assert claims for damages for injuries to natural resources owned by tribal members but located outside the reservation.

Response: The CERCLA definition of "natural resources" is not linked to the location of a resource. Thus, the rule could be used to assess damages to resources owned by tribal members but located outside a reservation provided that the tribal trustee were able to cite authority for such a claim.

Comment: Another commenter sought clarification of whether archaeological resources are covered by the rule.

Response: The Department acknowledges the confusion that has arisen as a result of multiple uses and meanings of the term "resource" under different statutes. "Archaeological" and other "cultural" resources are not "land, fish, wildlife, biota, air, water, ground water, drinking water supplies, [or] other such resources." Therefore, "archaeological" and "cultural" resources do not constitute "natural" resources under CERCLA.

Nevertheless, although archaeological and cultural resources, as defined in other statutes, are not treated as "natural" resources under CERCLA, the rule does allow trustee agencies to factor the loss of archaeological and other cultural attributes provided by a natural resource into a natural resource damage assessment through consideration of the services provided by that resource. For example, if land constituting a CERCLA-defined natural resource contained archaeological artifacts, then that land might provide a variety of different services including, for example, the service of supporting archaeological research. If an injury to the land caused a reduction in the level of archaeological research that could be performed, trustee officials could recover damages for the lost public use of that service.

E. Coordination Among Trustees

Comment: There were several comments concerning coordination among trustees. Some commenters thought that the rule should require trustees to send the Notice of Intent to Perform an Assessment not only to the PRPs but also to any interested trustees. Also, one commenter thought that the rule should require dissemination of the draft Assessment Plan to all other trustees prior to the public review period.

Response: The Department urges trustee agencies to work together and § 11.32(a)(1) of the existing rule, which would not be affected by the proposed rule, discusses trustee coordination. Section 11.32 (a)(i) requires notification of all known affected trustees that an Assessment Plan is being developed. The Department believes that this requirement provides trustee officials with adequate notice of an impending assessment and opportunity to ensure that their interests are protected.

Comment: Another commenter suggested that the Department revise § 11.32(a)(1)(ii)(B) of the existing rule, which provides that when the natural resources being assessed are located on lands or water subject to the administrative jurisdiction of a Federal agency, a designated official of the Federal agency shall act as the lead authorized official. The commenter stated that there may be cases where a Federal agency is both a trustee and a PRP. The commenter suggested that § 11.32(a)(1)(i)(B) be revised to provide that in those cases a State official should serve as lead authorized official.

Response: Revision of the procedures for appointing a lead authorized official area beyond the scope of this rulemaking. However, the Department notes that § 11.32(a)(1)(ii)(B) only designates a lead authorized official in those cases where a consensus among all trustees cannot be reached.

Comment: One commenter thought that the Department should add a presumption that Federal trustee agencies will use the rule to assess damages unless all involved trustees agree otherwise. The commenter stated that such a presumption was needed to avoid collateral estoppel problems where one trustee chooses to follow the rule while other trustees do not. The commenter further stated that the need for such a presumption is created by the requirement that trustees prepare statements of the basis of authority.

Response: Section 11.10 of the existing rule provides that use of the procedures set forth in the rule is not mandatory. Modifications to this provision are beyond the scope of this rulemaking. Moreover, the Department notes that potential collateral estoppel issues arise whenever trustee agencies with overlapping authority fail to cooperate regardless of the methods used to assess damages or the content of their statements of their basis of authority.

F. Preliminary Estimate of Damages

Comment: Most of the commenters who addressed the issue of the preliminary estimate of damages acknowledged that some estimate of damages is needed to determine the proper scope of assessment and to ensure the reasonableness of assessment costs. However, some commenters stated that the preliminary estimate of

damages should not be disclosed in the Assessment Plan or the Report of Assessment. These commenters stated that disclosure of the estimate to PRPs might compromise the ability of trustee officials to settle a case or prepare for litigation. The commenters also believed that disclosure of the preliminary estimate in the Report of Assessment was unnecessary for the purpose of determining whether the assessment costs were reasonable, because the reasonableness of the final costs is measured by the ratio of those costs to the final damage figure not to the preliminary estimate. On the other hand, one commenter stated that trustees should be required to disclose the preliminary estimate as soon as possible to ensure that the public and the PRPs have a meaningful opportunity to comment on the reasonableness of the assessment costs.

Response: The Department acknowledges the confusion generated by the proposed rule concerning disclosure of the preliminary estimate. The Department agrees that premature disclosure of the preliminary estimate might adversely affect the ability of trustee officials to settle or litigate a natural resource damage case. Further, the Department notes that PRPs and the general public would still have a meaningful opportunity to comment on the reasonableness of assessment costs even if the preliminary estimate were not disclosed in the draft Assessment Plan. Under § 11.14(ee) of the existing rule, the relationship between anticipated costs and anticipated damages in only one of the aspects of reasonableness. Another factor is whether all aspects of the assessment directly contribute to the calculation of a monetary damage figure. The public and the PRPs need not know the preliminary estimate of damages to comment on whether an assessment satisfies this factor of reasonableness.

Therefore, the Department never intended the preliminary estimate to be included in the Assessment Plan, which is offered for public review and comment. Instead, the preliminary estimate was designed as a predecisional, deliberative, inter- or intra-agency document for the sole use of trustee agencies in scoping the assessment. The Department intends to revise proposed § 11.35 to clarify this point.

Nevertheless, although it does not believe that the preliminary estimate of damages should be publicly disclosed along with the Assessment Plan, the Department does think that the estimate should be included in the Report of Assessment, which is disclosed at the completion of the assessment. Under § 11.14(ee) of the existing rule, reasonableness is determined by the ratio of anticipated assessment costs to anticipated damages not the ratio of final costs to final damages. Therefore, PRPs, the public and the courts will need access to the preliminary estimate to determine the reasonableness of the assessment costs that have been incurred.

Comment: A few commenters thought that the Department's proposed procedures for calculating the preliminary estimate were too detailed and cumbersome. These commenters expressed concern that the procedures were unnecessarily time-consuming. On the other hand, one commenter complained about the Department's characterization of the estimate as a "back-of-the-envelope" calculation and requested that the Department clarify that the estimate should be carefully developed based on the best available data.

Response: The Department believes that the proposed procedures for calculating the preliminary estimate are appropriate. The preliminary estimate, which may be revised as new information becomes available would serve the important function of ensuring that the assessment is performed at a reasonable cost, thus trustee agencies should exercise appropriate care when calculating a preliminary estimate. Section 11.35(c) lists factors that trustee officials would consider when developing a preliminary estimate. These factors are all related to elements of the final damage figure and are designed to ensure that the preliminary estimate covers the same general scope as the final damage figure.

On the other hand, the Department recognizes that trustee agencies will generally have relatively little information on which to base a preliminary estimate. Thus, the factors listed in proposed § 11.35(c) need only be considered "to the extent possible." Also, the Department recognizes that the preliminary estimate will be very rough and the description of the estimate as a "back-of-the-envelope" calculation was merely intended as an acknowledgement of this fact.

Comment: A number of commenters suggested that trustee be allowed to develop a range of preliminary estimates or a qualitative estimate rather than a specific quantitative estimate. These commenters expressed concern that it would generally be too difficult to calculate a quantitative preliminary estimate of damages at an early stage in the assessment process. Commenters also thought the danger that early development of a specific quantitative estimate could generate pressure for the trustees to find damages at least as high as the preliminary estimate regardless of the actual damages.

Response: The Department does not believe that a range of preliminary estimates or a qualitative estimate would provide an adequate standard for evaluating whether assessment costs are reasonable as required by CERCLA. The Department realizes that development of a preliminary estimate might be difficult in some cases; however, the estimate is not intended as a precise, final figure. Also, the Department does not believe that development of a quantitative preliminary estimate would generate pressure on trustee officials, provided that the estimate was not disclosed to the public until after the assessment was completed.

Comment: Other commenters requested that the Department emphasize the preliminary nature of the estimate and specify that an estimate would not be used against trustees if later-discovered information necessitates an adjustment in the estimate.

Response: The Department agrees that trustee officials should have discretion to modify the preliminary estimate as new information becomes available. Section 11.35(e) of the proposed rule would require trustee agencies to review the preliminary estimate after completion of the Injury Determination and Quantification phases and would authorize trustees to revise the estimate as appropriate. Any earlier versions would be included in the Report of Assessment to provide a basis for evaluating the reasonableness of the costs incurred throughout the assessment but could not otherwise be used against the trustee officials.

Comment: There were a number of comments concerning the timing of the preparation of the preliminary estimate. Some commenters agreed that trustee officials should be allowed to delay completion of the estimate until after the Injury Determination phase given the difficulties of calculation. Other commenters thought that the estimate should always be completed before completion of the Assessment Plan to ensure that the costs of performing the assessment are reasonable.

Response: The Department acknowledges the importance of the preliminary estimate in ensuring that the Assessment Plan is appropriately focused. However, the Department believes that trustees should have discretion to delay completion of the preliminary estimate until the end of the Injury Determination phase if

insufficient data exist upon which to base an estimate. The Department realizes that in some cases the injuries might be so complex or the existing data might be so sparse that any preliminary estimate of damages would be meaningless until the Injury Determination phase had been completed. Further, § 11.32(f) of the existing rule requires the trustees to review the Assessment Plan after completion of the Injury Determination phase. Therefore, the Assessment Plan can be modified as needed once the preliminary estimate is developed.

Comment: A few commenters approved of the provisions of the proposed rule that would restrict use of the preliminary estimate to scoping purposes. However, some commenters believed that trustees should also be allowed to use the estimate in settlement negotiations.

Response: The Department does not believe that this rule should specifically address the use of the preliminary estimate for settlement negotiations. This rule was developed to create an optional procedure that trustee officials could use to obtain a rebuttable presumption in a judicial or administrative proceeding. Although the Department strongly supports and encourages the use of the rule as a framework for negotiated resolutions of natural resource damage claims, it believes that discussions of settlement procedures are beyond the scope of this rule. Moreover, the Department notes that establishment of specific settlement procedures in this rule could unduly restrict the flexibility of negotiating parties.

Comment: Finally, one commenter requested that proposed § 11.35 be revised to specify that releases excluded from liability under CERCLA should not be included in any preliminary estimate.

Response: Sections 11.24(b) and (c), which would be affected by the proposed rule, already direct trustee officials to exclude from their assessments any releases or discharges that are exempt from liability under CERCLA or CWA. The Department believes these provisions adequately protect against assessment of exempt releases and discharges.

G. Reasonable Costs of Assessments

Comment: One commenter thought that the definition of "reasonable cost," set forth at § 11.14(ee) of the existing rule, should not require costs to be less than damages. This commenter suggested that all assessment costs should be considered reasonable so long as the assessment is performed in a prudent and cost-efficient manner.

Response: The definition of "reasonable cost," which would not be affected by the proposed rule, was upheld by *Ohio* v. *Interior* after thorough review.

Comment: A few commenters asked the Department to specify that reasonable assessment costs include attorneys' fees. Two of these commenters thought that trustees should be able to recover attorneys' fees both for services rendered during an assessment and for services rendered in preparation and litigation of a natural resource damage claim.

Response: Section 11.15(a)(3)(ii) of the existing rule specifies different types of expenses that constitute reasonable and necessary costs of an assessment. The only proposed revision to § 11.15(a)(3)(ii) is a substitution of the old terminology of "restoration" with the new terminology of "restoration, rehabilitation, replacement, and/or acquisition of equivalent resources." Additional changes to § 11.15(a)(3)(ii) are beyond the scope of this rulemaking. As noted in the August 1, 1986 preamble, the Department believes that trustee agencies will generally need the assistance of an interdisciplinary team of experts when performing natural resource damage assessments. Therefore, the rule does not restrict recoverable assessment costs to the expenses of particular types of professionals. However, the Department notes that trustees may only recover those costs that are associated with the actual assessment and that satisfy the definition of "reasonable cost" set forth at § 11.14(ee) of the existing rule.

Comment: Another commenter stated that the rule should allow trustees to recover the costs of preliminary planning, design or feasibility studies used to determine the costs and benefits of different methodologies for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

Response: The definition of "reasonable cost" requires that all phases of an assessment bear a well-defined relationship to each other. In other words, all studies must be directed toward the single goal of developing a damage figure. Under the proposed rule, one of the factors to consider during selection of a methodology for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources would be the relationship of expected costs to expected benefits. Therefore, the cost of studies designed to evaluate the costs and benefits of different methodologies could be recovered so long as anticipated assessment costs are less than anticipated damages and the anticipated increment of benefits obtained by using a particular study exceeds the anticipated increment of extra cost associated with that study.

H. Calculation of Baseline

Comment: There were a variety of comments about the calculation of the baseline. A number of commenters stated that the April 29, 1991 preamble referred to the baseline as the conditions that existed prior to the discharge or release. These commenters complained that this characterization fails to account for situations in which the level of services provided by a resource would have increased but for the release or discharge.

Response: The Department agrees that the baseline should reflect changes that would have occurred in the absence of the spill or discharge. Therefore, although the baseline will most often represent conditions occurring prior to the discharge or release, it need not be limited to those conditions. The definition of baseline, which would not be affected by the proposed rule, is set forth at § 11.14(e):

> Baseline means the condition or conditions that would have existed at the assessment area had the discharge of oil or the release of the hazardous substance under investigation not occurred.

The statements in the preamble to the proposed rule characterizing baseline as pre-release conditions were not intended to affect this definition. The Department intends to revise § 11.82(b)(1)(i) of the proposed rule, which describes restoration and rehabilitation actions as actions taken to return a resource to baseline as measured by "the services previously provided" to conform with the definition in § 11.14(e). Further, the Department notes that although the commenters have focused on situations where conditions were improving, the definition of baseline takes into account decreases, as well as increases, in the level of services that would have been provided in the absence of the discharge or release.

Comment: Several commenters stated that when calculating the baseline, trustee officials should not be restricted to collecting only those data that can be obtained at a reasonable cost. These commenters stated that scientific accuracy, not cost, should determine the scope of data collection. A few of these commenters thought that placing a cost restriction on the collection of data would put trustee officials at a

disadvantage because PRPs are not subject to such a restriction. One commenter stated that limiting data collection based on cost considerations is contrary to *Ohio* v. *Interior* and the language and legislative history of CERCLA.

Response: The requirement that trustees restrict their collection of baseline data to those data that are required in order to perform the assessment at a reasonable cost would not be affected by the proposed rule. The Department believes that this requirement is not only consistent with but also necessitated by the language of CERCLA. Section 107(a)(4)(C) of CERCLA authorizes trustees to recover their assessment costs but only if those costs are reasonable. The requirement concerning collection of baseline data merely incorporates this statutory limitation on recoverable costs. Moreover, this requirement should not put trustees at a disadvantage since assessments performed in accordance with the rule are afforded a rebuttable presumption.

Comment: One commenter expressed concern that the proposed rule could be read to require trustees to prove that their assessment costs, including the costs of collecting baseline data, are reasonable.

Response: The rule was designed to ensure that the costs of assessments performed in accordance with the rule are reasonable. So long as an assessment complies with the rule, trustees will obtain a rebuttable presumption that the cost of the assessment was reasonable. The language of the proposed rule concerning baseline collection of data was not intended to affect that rebuttable presumption.

Comment: One commenter stated that unless the condition of a resource had actually been evaluated before a spill, determination of an accurate baseline may be very difficult. Therefore, this commenter suggested that the Department develop guidelines for the calculation and use of baseline, including criteria for identifying and measuring pre-existing contamination, services lost to the public, resumption of partial services and seasonal use of services.

Response: The Department notes that § 11.72 of the existing rule provides significant guidance on the calculation of baseline that would not be affected by the proposed rule.

Comment: Another commenter expressed concern that defining baseline in terms of levels of services could unduly limit damages for natural resource injuries. This commenter stated that a spill might kill a number of birds without causing any perceivable reduction in overall services provided by the species. The commenter thought that in such a case the rule could be interpreted to mean that there had been no decrease from baseline and, thus, no damages.

Response: The Department notes that "services," as defined in § 11.14(nn) of the existing rule, include functions performed by one resource for another or for humans. Thus, services may include any number of resource-to-resource functions or interactions. For example, in addition to providing birdwatching and hunting opportunities to humans, birds are links in ecological food webs; they disseminate seeds; and they pollinate flowers.

In light of the broad scope of services provided by birds, the Department would anticipate any loss of birds to cause some measurable reduction in the level of services. It may be difficult to discover small population losses and then quantify the resulting reduction in service levels. Furthermore, the costs of assessing such small losses may not always satisfy the definition of "reasonable costs." However, assuming that the trustees can quantify it at a reasonable cost, any reduction in service levels, regardless of the magnitude, may serve as a basis for damages.

I. Restoration, Rehabilitation, Replacement, and/or Acquisition of Equivalent Services Versus Resources

Comment: There appeared to be considerable confusion among commenters over whether the Department intended restoration, rehabilitation, replacement, and/or acquisition of equivalent resources to be measured in terms of the services provided by a resource, the resource itself or both. Several commenters noted apparent inconsistencies in the rule.

Some commenters stated that the Department should specify that damages are based on the cost of restoring, rehabilitating, replacing, and/or acquiring the equivalent of both the services provided by a resource and the resource itself. These commenters stated that focusing on services alone would not result in full restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. These commenters also stated that the Department's references to restoration of the resource or the services represented an inappropriate attempt to resurrect the "lesser of" concept of damages that was rejected in *Ohio* v. *Interior*.

Other commenters believed that restoration, rehabilitation, replacement, and/or acquisition of the equivalent should be limited to the services provided by the resource. For example, the commenters stated that if an injured rock formation provided services such as shelter and a food source for animals, insects and plants, PRPs should only be liable for the costs of restoring, rehabilitating, replacing, and/or the equivalent of those services, not for the costs of recreating the rock formation itself. Similarly, commenters believed that if an injured stream was used for fishing and nothing else, PRPs should only be liable for the cost of cleaning that stream to the point where fishing opportunities are returned to baseline.

These commenters thought that focusing on services would fully compensate the public because the public values natural resources solely in terms of services. According to these commenters, requiring restoration, rehabilitation, replacement, and/or acquisition of the equivalent of both services and the resource itself would create economic inefficiencies. Also, the commenters stated that any restoration, rehabilitation, replacement, and/or acquisition of the equivalent beyond the point where services are returned to baseline would simply constitute restoration for restoration's sake, which would be inconsistent with CERCLA. Some commenters expressed concern that allowing recovery for restoration, rehabilitation, replacement, and/or acquisition of the equivalent of both services and the physical, chemical or biological condition of a resource would lead to double recovery. Other commenters believed that if Congress had intended damages to be based on restoration of the resource itself, it would not have authorized use of damages for acquisition of substitute resources, which by definition does not entail restoration of the actual resource that was injured. Finally, the commenters stated that references in the April 29, 1991 preamble and proposed rule to restoration of services and/or the resource represented an unexplained departure from the existing rule that was not required by the court remand.

Response: The Department did not intend to change the focus of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources in the proposed rule. The Department has always intended "restoration, rehabilitation, replacement, and/or acquisition of the equivalent" to refer to those actions taken to return a resource to baseline. As evidenced by the statutory provision allowing trustees to acquire equivalent natural resources, Congress did not envision that trustees would or could recreate the exact same injured resources. However, the Department

does not believe that Congress intended to allow trustee agencies to simply restore the abstract services provided by a resource, which could conceivably be done through an artificial mechanism. For example, nothing in the language or legislative history of CERCLA suggests that replacement of a spring with a water pipeline would constitute "restoration, rehabilitation, replacement, and/or acquisition of equivalent resources." CERCLA requires that natural resource damages be based on the cost of restoring, rehabilitating, replacing and/or acquiring the equivalent of an actual natural resource.

Apparent inconsistencies in the rule arise because trustee officials need a means of measuring injury in order to determine when restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is complete, and the concept of services provides that means. As was stated in the August 1, 1986 preamble.

> Traditionally humans have valued natural resources in monetary terms on the basis of services provided by the resources. This method logically may be extended to valuing damages to an injured resource on the basis of changes in services. This rule establishes the link between measured adverse changes in the condition of the resource, the injury, and the damages through the measurement of changes in the services provided by the injured resource. 51 FR 27686.

In other words, although it is the natural resource that trustees are restoring, restoration of that resource causes an increase in services, and that increase in services is used to measure the level of restoration.

Further confusion may have been generated by the fact that §§ 11.71(b) and 11.71(f), which would not be affected by the proposed rule, allow trustees to quantify changes in service levels either by direct measurement or by indirect measurement based on changes in the physical, chemical or biological quality of the resource. As was stated in the August 1, 1986 preamble:

> In some cases it may be possible to measure services directly, and provision has been made for such measurement (§ 11.71(f)), but the Department does not believe total reliance can always be placed on direct measurement. 51 FR 27713.

Therefore, in the hypothetical case of the injured rock formation, the PRPs would not be liable for the cost of recreating an identical formation. However, the PRPs would be liable for the cost of some sort of restoration, rehabilitation, replacement, and/or acquisition of an actual natural resource that provides a level of services equivalent to the baseline level of services provided by the rock formation.

Moreover, the Department notes that services include functions provided not only to humans but also to other resources. For example, wildlife may provide both recreational services to humans and food web services to other organisms. Thus, in the hypothetical case of the injured stream, it is unlikely that the only service provided by the resource is the service of supporting fishing.

J. Other Aspects of the Definition of "Restoration, Rehabilitation, Replacement, and/or Acquisition of Equivalent Resources"

Comment: There were a number of comments about the term "restoration, rehabilitation, replacement, and/or acquisition of equivalent resources." Apparently there was some confusion over the components of this term. One commenter expressed concern that use of "and/or" improperly implied a preference for alternatives that incorporate all four possible components. Another commenter stated that use of "and/or" could be interpreted to allow trustee agencies to recover the costs of acquiring equivalent resources even if they have already obtained the cost of full restoration.

Response: As a result of the new emphasis on restoration under the proposed measure of damages, the Department introduced the term "restoration, rehabilitation, replacement and/or acquisition of equivalent resources" to represent the full range of possible "restoration" actions trustee agencies may take. The term was derived from the language of section 107(f) of CERCLA. "And/or" was included in simple recognition of the fact that trustee officials may select one, all, or any combination of the different types of actions as a basis for calculating overall costs. The Department did not intend to express a preference for alternatives that incorporate all the different components of the term. Also, the term "restoration, rehabilitation, replacement, and/or acquisition of equivalent resources" does not authorize trustees to obtain both the cost of full restoration and the cost of acquiring equivalent resources in violation of the prohibition on double recovery.

Comment: Some commenters thought that the term "restoration, rehabilitation, replacement, and/or acquisition of equivalent resources" correctly reflected that each component or combination of components provides an equally appropriate basis for damages. However, other commenters thought that the rule should not grant acquisition of equivalent resources the same status as restoration. These commenters stated that CERCLA and *Ohio* v. *Interior* establish a clear preference for using restoration or replacement costs, as opposed to acquisition costs, as the measure of damages. The commenters stated that section 107(f)(1) of CERCLA first lists three legitimate uses of natural resource damage awards: restoration, replacement or acquisition of equivalent resources. The statute then provides that the measure of damages shall not be limited by restoration and replacement costs. According to the commenters, these statutory provisions indicate, and the court in *Ohio* v. *Interior* recognized, that amounts recovered must be spent first on feasible restoration or replacement actions and any excess funds are then to be spent on acquisition of equivalent resources.

Response: The term "restoration, rehabilitation, replacement, and/or acquisition of equivalent resources" was introduced to emphasize that trustee agencies may select among a wide range of methods. The term was not intended to create rigid categories of acceptable trustee actions. The Department does not believe that the rule should establish a preference for restoration as opposed to acquisition of equivalent resources. "Acquisition of equivalent resources" encompasses more than just the purchase of land; it covers the purchase of the full range of different resources. Restoration and rehabilitation actions may often require the acquisition of various biological and geological resources. Therefore, the Department does not think it is appropriate or feasible to draw a distinction between acquisition of equivalent resources and restoration.

Moreover, CERCLA explicitly mentions use of recovered funds for restoration, rehabilitation, replacement or acquisition of equivalent resources. The "shall not be limited by" language quoted by the commenters simply provides that trustees may obtain damages in excess of restoration costs. The statutory language does not require that damages be based on acquisition costs only if restoration is infeasible. Further, the court in *Ohio* v. *Interior* did not establish any preference for restoration as opposed to acquisition of equivalent resources. In fact, the court specifically stated that its use of the term "restoration" was intended as shorthand for restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured resources. 880 F.2d at 441. Therefore, the Department has proposed to include all statutorily-

recognized forms of actions within the range of possible "restoration" measures.

Section 11.82(d)(8) of the proposed rule does indicate that Federal trustees generally should only acquire equivalent land when restoration, rehabilitation or replacement is not possible. However, this provision does not apply to acquisition of resources other than land. Further, as was noted in the August 1, 1986 preamble:

> This restriction was placed in the proposed rule after extensive consultation with other Federal agencies. The purpose of this limitation is to limit the acquisition of private lands for Federal management under CERCLA, by eliminating the possibility of expanding the Federal estate without Congressional approval. 51 FR 27719.

Comment: Some commenters expressed concern that the proposed rule required trustee agencies to analyze methodologies for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources on a resource-by-resource basis. One commenter noted that proposed §§ 11.82(b)(1)(i) and 11.82(b)(1)(ii) refer to "an injured resource." The commenter stated that the phrase "an injured resource" should be changed to "injured resources" to encompass those situations where more than one injured resource is involved.

Response: The language of the proposed rule was not intended to require trustee officials to examine alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources on a resource-specific basis. Resources are highly interdependent. Therefore, trustee officials will often need to simultaneously evaluate all injured resources when selecting an alternative. To avoid any confusion on this point, the Department intends to revise the language of proposed §§ 11.82(b)(1)(i) and 11.82(b)(1)(ii) to refer to "resources" rather than "resource."

Comment: One commenter asked the Department to clarify that PRPs are only liable for the cost of restoring, rehabilitating, replacing, and/or acquiring the equivalent of an injured resource to the point where baseline levels of actual and committed uses are returned. This commenter offered an example of contaminated groundwater that was only used for irrigation. According to this commenter, the PRP should not be liable for the cost of restoring, rehabilitating, replacing, and/or acquiring equivalent groundwater to the point were it was potable. Another commenter stated that the concept of committed use should not apply to restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

Response: The concept of "committed use" is discussed in § 11.84(b)(2), which would not be affected by the proposed rule. Section 11.84(b)(2) does not address restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Further clarification is beyond the scope of this rulemaking.

Comment: A few commenters thought that the Department should provide additional guidance on the goal of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. One commenter stated that the Department should make clear that the primary aim of trustee agencies should be to achieve the best possible overall restoration of resources. Another commenter stated that restoration actions should attain functional equivalency to the original resource and produce a resource that is self-perpetuating and self-repairing.

Response: Section 11.82(a) of the proposed rule provides that trustee officials should base their damage claims on the combination of actions that they conclude are most appropriate in light of the factors set forth at § 11.82(d). Furthermore, the required level of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources would be measured by the baseline. The Department believes that this guidance adequately clarifies the goal of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and that additional efforts to define a goal would unduly restrict trustees' discretion and could generate greater confusion.

For example, the Department is unsure what is meant by "best possible overall restoration" and how a particular action would be judged under this standard. Also, the notion of "functional equivalency" is already captured by the requirement that restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is designed to return the baseline conditions.

Comment: Several commenters expressed concern that simply restoring rehabilitating, replacing, and/or acquiring equivalent resources to baseline conditions would not achieve a healthy environment. Some of these commenters thought that the rule should allow trustee officials to take actions that enhance conditions above baseline, so long as PRPs are only charged for the cost of returning the baseline conditions.

Response: The natural resource damage assessment regulations are designed to measure the damages for which PRPs are liable. They are not intended as a general method for quantifying and resolving other forms of natural resource degradation. Nothing in the rule prevents trustees from using their own funds to improve conditions beyond baseline. However, when developing a Restoration and Compensation Determination Plan, trustee agencies are restricted to considering only those methodologies that will restore, rehabilitate, replace, and/or acquire equivalent resources to the point that baseline conditions are returned.

Comment: A few commenters stated the need for additional guidance on available restoration technology.

Response: The Department acknowledges that additional technical information on available restoration methodologies may be helpful to trustee officials and intends to develop such information at a later date.

K. Range of Alternatives Considered

Comment: Several commenters agreed with the provision in the proposed rule that would grant trustees the discretion to determine what constitutes a reasonable number of alternatives for restoration, rehabilitation, and/or acquisition of equivalent resources. These commenters thought that such discretion was appropriate in light of the expertise of trustee agencies. However, other commenters stated that the rule should impose standards for the range of alternatives that must be considered.

Response: The number of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources will likely vary greatly depending on the extent and nature of the injuries. For large, complex assessments involving a variety of resources, there may exist a great number of possible alternatives. For smaller assessments, there may only be few possible alternatives. Furthermore, CERCLA authorizes trustee agencies, to use damages for restoration, rehabilitation, replacement and/or acquisition of equivalent resources and does not express a preference for any one of these types of actions. Therefore, the Department believes that trustees should have discretion to determine what constitutes a reasonable range of alternatives on a case-by-case basis.

Comment: There were also a few comments on consideration of a no-action alternative. These commenters supported the requirement that trustee

officials consider a no-action alternative. However, one commenter thought that this requirement was not sufficiently explicit in the proposed rule.

Response: Section 11.82(c)(2) of the proposed rule would explicitly require trustees to consider a "No Action-Natural Recovery" alternative in recognition of the statutory requirement that the natural resource damage assessment regulations take into consideration the "ability of the ecosystem or resource to recover."

Comment: One commenter expressed concern that proposed § 11.82(c)(2) could be interpreted to mean that a no-action alternative need only be considered after a determination that natural recovery would occur within a definite time period.

Response: The proposed rule does provide that the natural recovery alternative be based on the "No Action-Natural Recovery" determination made under proposed § 11.73(a)(1). However, proposed § 11.73(a)(1) would require trustee officials to estimate the amount of time needed for natural recovery in all cases. Therefore, natural recovery alternative will always be available for consideration.

L. Ranking of Selection Factors

Comment: There were numerous comments on the overall set of factors for selection of an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. One commenter stated that the proposed rule placed too may restraints upon trustees' selection of an alternative. Several other commenters thought that the proposed rule afforded trustees the appropriate degree of discretion by providing factors for consideration but leaving the question of how to weigh those factors up to the trustee agencies.

However, a number of other commenters thought that the Department had provided trustees with too much discretion over selection of an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Some commenters stated that the Department should at a minimum require trustee officials to consider all of the listed factors. A few commenters requested that the Department provide interpretive guidance on use of the selection factors.

Other commenters thought that the Department should rank the factors and suggested a variety of ways of doing so. A number of commenters suggested that the rule divide the factors into categories such a threshold factors, balancing factors and modifying factors. Technical feasibility, cost-benefit considerations and cost-effectiveness were most often proposed as the threshold factors.

Response: The Department believes that the factors listed in the proposed rule should be considered in all cases and is considering revising the rule accordingly. Of course, some factors may not be relevant in a particular situation. For example, the factor concerning the results of any actual or planned response action is of little relevance when no response actions are to be taken. In those cases, trustees could satisfy the requirement to consider all factors by simply making, and documenting, a determination that the particular factor was inapplicable.

Although the Department may require trustees to consider all listed factors, it does not intend to mandate compliance with each factor or dictate the relative weight of each factor. In light of the wide range of possible natural resource damage cases, the Department believes that trustee agencies must have flexibility when selecting an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Trustee agencies would, however, be required to document their rationale for selecting a particular alternative in the Restoration and Compensation Determination Plan, which is subject to public review and comment. Also, after the damages have been recovered, trustee officials must develop a Restoration Plan detailing how they will actually use those damages. Under the proposed rule, this Restoration Plan would be based on the methodologies selected in the Restoration and Compensation Determination Plan that was developed as part of the Assessment Plan. The Department believes that these two requirements will adequately ensure that trustee officials do not abuse their discretion when selecting an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources to serve as the basis for damages.

M. Specific Selection Factors

1. Technical Feasibility

Comment: There were a number of comments about the technical feasibility factor. Several commenters addressed the definition of "technical feasibility." Some commenters supported the portion of the definition that provides that a technology must be "well known." On the other hand, a number of commenters stated that this provision would unduly restrict the use of innovative restoration methodologies. The commenters stated that because the science of restoration is still developing, in many situations there will be no well-known technologies available. Further, these commenters feared that the definition would discourage the development of new technologies.

Response: The proposed rule would make no substantive revisions to the definition of "technical feasibility." The proposed rule would merely substitute the term "Restoration and Compensation Determination Plan" for the new obsolete term "Restoration Methodology Plan." The Department believes that the definition is appropriate.

Damages are in large part determined by the methodologies trustees select for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Therefore, when selecting an alternative, trustee agencies should consider whether the methodologies involved are well known or still experimental. The Department acknowledges that the level of technical knowledge may vary. However, technical feasibility is just one factor that trustees must consider and the relative weight of this factor is left to the discretion of the trustees. Further, as more research is performed, more methodologies will become well known. The Department does not believe that this definition will hinder that research, instead the definition merely establishes a standard for determining how familiar a technique must be before it can be considered technically feasible.

Comment: One commenter thought that the phrase "an acceptable period of time" was vague and unnecessary. Another commenter stated that the definition should require a "substantial likelihood," rather than "reasonable chance," of success. Also a few commenters thought that a requirement of practicability should be added to the definition.

Response: Technical feasibility depends on the particular facts of a given case. Therefore, the Department does not believe that further delineation of the term "an acceptable period of time" is warranted. Further, the Department does not think that substitution of the phrase "substantial likelihood of success" or inclusion of a requirement of practicability would provide any additional meaningful guidance to trustee agencies.

Comment: Several commenters thought that technical feasibility should be a mandatory criterion for selection of an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

These commenters stated that the legislative history of CERCLA and *Ohio* v. *Interior* indicate that PRPs are not liable for the cost of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources when such actions are infeasible.

Response: The Department acknowledges that a trustee official would be unable to implement an alternative if it were absolutely infeasible. However, the technical feasibility factor focuses on the evaluation of the varying levels of technical feasibility rather than establishing a strict standard for acceptable alternatives. Different methodologies may possess different degrees of feasibility or infeasibility; therefore, the Department believes it would be impractical to dictate how much consideration a trustee official must give to technical feasibility. Moreover, the Department notes that CERCLA and *Ohio* v. *Interior* grant the Department the authority to develop exceptions to the general measure of damages in the case where restoration is infeasible but do not require the Department to do so.

2. Relationship of Expected Costs to Expected Benefits

Comment: Some commenters stated that the relationship between costs and benefits should be eliminated from the list of factors to be considered when selecting an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. These commenters expressed concern that inclusion of this factor would focus all assessments on a weighing of monetary costs and benefits, thus undermining the statutory preference for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. One commenter thought that inclusion of a cost/benefit factor was unnecessary in light of the cost-effectiveness factor.

On the other hand, a number of commenters stated that the cost/benefit factor was not accorded adequate weight. A number of commenters stated that the rule should explicitly require trustees to select the alternative that minimizes the sum of the expected net present value of the restoration, rehabilitation, replacement, and/or acquisition costs plus the expected net present value of lost compensable value.

Response: The Department believes that the relationship between costs and benefits is an appropriate factor to consider when selecting an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Trustees will use this factor to help select among different alternatives, not to determine whether restoration, rehabilitation, replacement, and/or acquisition of equivalent resources itself is warranted. Trustees should consider the full range of costs and benefits, both in terms of recovery of the resource and effects on the public. Therefore, inclusion of this factor would not undermine the statutory preference for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

Moreover, consideration of the relationship between costs and benefits is not rendered unnecessary by consideration of cost-effectiveness. The cost/benefit factor provides a means of comparing alternatives that pose both different costs and different benefits, whereas the cost-effectiveness factor is designed to evaluate alternatives that provide similar benefits.

As *Ohio* v. *Interior* recognized, cost considerations, although relevant, are not paramount under CERCLA. Therefore, the proposed rule would not require trustees to select the alternative that minimizes the sum of the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and compensable value. Nevertheless, selection of a particular alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources does determine the level of services lost pending completion of that alternative. Thus, when evaluating a particular alternative, trustees should consider the costs and benefits associated with both the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and the public use and nonuse of the services provided by those resources.

Comment: Some commenters stated that consideration of costs and benefits was acceptable so long as the rule clarified that such consideration was limited to identifying those alternatives that pose grossly disproportionate costs.

Response: Consideration of the relationship between costs and benefits is not an attempt solely to define which costs are "grossly disproportionate" to the value of lost services. The determination whether the costs of a particular alternative are grossly disproportionate to lost values should be based on consideration of all listed factors, not just the cost/benefit factor.

3. Cost-Effectiveness

Comment: A number of commenters thought that trustees should be required to select a cost-effective alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. These commenters stated that the court in *Ohio* v. *Interior* stated that CERCLA "requires that the assessment of damages and the restoration of injured resources take place as cost-effectively as possible." 880 F. 2d at 456. One commenter thought that allowing trustees to select an alternative that was not cost-effective would violate Executive Order 12291. Some commenters stated that, under the original version of the rule, whenever restoration costs were used as the measure of damages, such costs had to be based on a cost-effective restoration methodology. These commenters stated that the Department had provided no explanation for changing this requirement.

On the other hand, a number of commenters emphasized that cost-effectiveness should not be mandatory. One commenter expressed concern that if cost-effectiveness were mandatory, trustees would always be required to select natural recovery.

Response: The Department believes that trustees must still consider cost-effectiveness when selecting an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. However, under the proposed rule, evaluation of cost-effectiveness would not always be a straightforward exercise. Cost-effectiveness involves a comparison of activities that provide the same or similar levels of benefits. Under the proposed rule, the level of benefits provided by a specific alternative is determined in part by whether and how that alternative satisfies the other listed consideration factors, many of which are not quantifiable. Therefore, the Department does not believe that a strict requirement of cost-effectiveness would be appropriate.

Comment: One commenter stated that the definition of "cost-effectiveness' should be changed to refer to the "same" rather than "similar" levels of benefits, in order to ensure full restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

Response: Section 11.14(j) provides:

> "Cost-effective" or "cost-effectiveness" means that when two or more activities provide the same or a similar level of benefits, the least costly activity providing that level of benefits will be selected.

As noted in the August 1, 1986 preamble, "In many cases benefits may not be exactly the same, but may be similar in nature; cost-effectiveness should hold in these cases." 51 FR 27695. Revision of this definition is beyond the scope of this rulemaking.

4. Results of Response Actions

Comment: A few commenters thought that the rule should explicitly prohibit trustees from selecting any alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources that conflicts with or is duplicative of response actions. These commenters stated that such a prohibition was dictated by the fact that natural resource damages are only recoverable for injuries residual to response actions.

Response: Section 11.15(a)(1)(ii) of the existing rule, which would not be affected by the proposed rule, provides that natural resource damages are based on injuries from the onset of the discharge or release through the recovery period, less any mitigation of those injuries by response actions. Similarly § 11.84(c)(2), which would also be unaffected by the proposed rule, states that natural resource damages are "the residual to be determined by incorporating the effects, or anticipated effects, of any response actions." The Department believes that these provisions adequately ensure that natural resource damages are only recovered for residual injuries. Further, the purpose of a response action may differ from that of an action to restore, rehabilitate, replace, and/or acquire equivalent resources. Therefore, addition of a requirement that trustee officials select an alternative that is consistent with the response actions would be inappropriate.

5. Potential for Additional Injury

Comment: One commenter thought that when considering the potential for additional injury from the proposed actions, trustees should evaluate not only the long-term impacts on the injured resource but also the short-term impacts on the injured resource and the short- and long-term impacts on the environment. The commenter stated that these impacts would include violations of any applicable environmental standards or criteria.

Response: Section 11.82(d)(5) of the proposed rule provides that trustee officials should consider the "[p]otential for additional injury resulting from the proposed actions, including long-term and indirect impacts, to the injured resource or other resources." Reference to "long-term and indirect impacts" was not intended to prohibit consideration of short-term impacts. This factor is designed to address a broad range of possible effects on the injured resource and other resources, which collectively comprise the environment. Violations of environmental standards or criteria would be considered under the factor of consistency with applicable Federal and State laws, set forth in proposed § 11.82(d)(10).

6. Natural Recovery

Comment: One commenter suggested that consideration of natural recovery was given too much weight under the proposed rule. This commenter thought that selection of a natural recovery alternative will rarely be appropriate because it will not clean up the environment and will lead to very large compensable values. On the other hand, several commenters stated that the proposed rule appropriately recognized that restoration is often best accomplished by allowing nature to take its course. One commenter suggested that the rule require trustee agencies to select natural recovery when there is no technically feasible alternative or if the costs of all other alternatives are grossly disproportionate to their benefits.

Response: The Department does not believe that the proposed rule would place undue emphasis upon natural recovery. In some circumstances, natural recovery, including the minimal management actions necessary to allow natural recovery, may be the most appropriate form of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Also, section 301(c)(2) of CERCLA explicitly requires that the natural resource damage assessment regulations take into consideration the ability of the ecosystem or resources to recover. However, whether natural recovery is the most appropriate course of action will depend on the specific facts of the case. Therefore, the proposed rule requires trustees to consider a "No Action, Natural Recovery" alternative but does not dictate when that alternative should be selected.

Comment: Another commenter thought that the Department should provide trustees with additional guidance on evaluation of natural recovery, including standards on what constitutes a reasonable time frame for natural recovery.

Response: The reasonable time frame for natural recovery will vary from case to case, thus the Department does not think that additional clarification is appropriate or advisable.

7. Ability To Recover

Comment: One commenter thought that the Department should clarify its discussion of the ability of a resource to recover. In the April 29, 1991 preamble, the Department stated:

> The trustee should consider the ability of the resource to recover naturally and/or with assistance by various actions. This consideration encompasses whether all important and measurable services of the lost or injured resources are being restored. 56 FR 19762.

The commenter requested that the Department specify whether "measurable" refers to measurement of the injury to the service or measurement of the value of the service. According to this commenter, in the absence of clarification, some trustees may evaluate the time necessary to return the injured resource to baseline while others may consider the time necessary to return the resource to its baseline economic value.

Response: For purposes of calculating the recovery period, it is the actual level of services that must be measurable, not the economic value of those services. However, the Department notes that when calculating compensable values, trustee agencies will need to measure the value of the services that the public will lose during the recovery period.

Comment: Another commenter thought that this factor should be modified to address situations in which elements other than the release or discharge would render irrelevant any efforts to restore, rehabilitate, replace, and/or acquire the equivalent of the injured resource. The commenter offered the example of a river which not only contains sediment contaminated with a hazardous substance but also receives sewer overflows. Assuming that the fish in the river will not be edible so long as the overflows continue, this commenter stated that any form of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources would be pointless and should not serve as a basis for damages.

Response: The recovery period is based on the time needed to return baseline conditions, which are the conditions that would have existed had the release or discharge not occurred. Therefore, when evaluating a resource's ability to recover, trustee agencies must take into consideration the conditions that already exist at the assessment area. In the hypothetical case offered by the commenter, the presence of sewer overflows would not render restoration, rehabilitation, replacement, and/or acquisition of equivalent resources pointless; however, it would affect the baseline condition that must be re-established.

8. Federal Land Acquisition

Comment: There were a number of comments about the factor regarding Federal land acquisition. There appeared to be considerable confusion over whether this factor was meant to

restrict State and tribal trustees' ability to acquire land. Several commenters asked the Department to clarify that State and tribal trustees, not just Federal trustees, have the authority to acquire land. Other commenters thought that the factor improperly suggested that land was the only resource that trustees could acquire.

Some commenters agreed that Federal land acquisition should be restricted but asked that State and tribal land acquisition also be limited. One of these commenters thought that restrictions on land acquisition were necessary, because a particular tract of land may contain many more resources than those affected by the discharge or release.

Response: The restriction on Federal land acquisition has been in the regulations since the August 1, 1986 rulemaking. This provision was solely designed to limit the authority of Federal trustees to select an alternative that involves acquisition of land. The provision places no restrictions on the authority of State and tribal trustees to select alternatives that involve acquisition of land. Further, the provision was not meant to prohibit any Federal, State or tribal trustee from considering acquisition of resources other than land.

As discussed in the August 1, 1986 preamble, this provision was added out of concern over expansion of the Federal estate without Congressional approval. In the absence of similar concerns about State and tribal land acquisition, the Department does not believe that parallel restrictions on State and tribal trustees are warranted. Further, the rule provides that trustees may only consider alternatives that restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources to no more than baseline. Therefore, trustees are already prohibited from acquiring land that does not contain equivalent resources.

Comment: Another commenter sought further guidance on the implications of land acquisitions by trustees. The commenter, noting the limited supply of pristine land, asked the Department to clarify the extent of a PRP's liability for restoring acquired land that is itself contaminated. The commenter also requested clarification of whether a PRP would be liable for response costs at a site acquired by a trustee if contamination were discovered after the acquisition. Further, the commenter asked whether a PRP would be charged for the cost of a pre-acquisition environmental survey.

Response: The proposed rule would allow trustees to base their damage calculations on any combination of actions that restore, rehabilitate, replace, and/or acquire equivalent resources. Thus a trustee agency may select an alternative that involves acquiring contaminated land that contains equivalent resources and then restoring or rehabilitating those resources to the point where they provide the same baseline level of services as the resources being assessed. In such a case, damages would include both the estimated acquisition costs and the estimated costs of restoring or rehabilitating the acquired resources.

Subject to certain defenses, liability for cleanup costs is governed by section 107(a) of CERCLA, which establishes four categories of potentially responsible parties. One of those categories is the owner or operator of a facility. If a release of a hazardous substance were discovered after a trustee had acquired a piece of land, then the trustee, as an owner, might be liable for resulting response costs. Unless the natural resource damage settlement or judgment provided otherwise, the PRP who had paid the natural resource damages used to acquire the land would only be liable for response costs if it too fell under one of the section 107(a) categories with respect to the acquired site.

Trustee officials who consider acquiring land must determine whether the land contains equivalent resources that provide the same baseline level of services as the injured resources. Therefore, trustee officials will probably need to perform pre-acquisition environmental surveys, including surveys to determine the presence of contamination. The cost of these surveys would be recoverable either as part of the costs of acquiring equivalent resources or as part of the reasonable costs of the assessment.

9. Human Health and Safety

Comment: A few commenters thought the rule should prohibit trustees from implementing any alternative that posed a significant risk to human health and safety.

Response: As discussed above, the wide range of possible natural resource damage cases dictates that trustee agencies be provided the flexibility to weight each factor as they see fit. Therefore, the Department does not believe that compliance with any factor should be mandated. Further, the Department notes that § 11.17(a), which would not be affected by the proposed rule, already provides that when acting under these regulations, trustees must observe all worker health and safety considerations specified in the National Contingency Plan.

10. Other Laws and Policies

Comment: Some commenters stated that proposed § 11.82(c)(10) should be modified to clarify that policies should not be given the same degree of consideration as laws.

Response: The Department believes that the proper degree of consideration to be given to policies as opposed to laws should be left to the discretion of the trustee agencies, which are in the best position to evaluate the significance of a particular policy in a specific case. Nonetheless, the Department agrees that consideration of compliance with applicable Federal and State laws should be distinguished from consideration of consistency with relevant Federal and State policies. Therefore, the Department intends to revise the language of the proposed rule to list these two factors separately.

Comment: Another commenter expressed concern that proposed § 11.82(c)(10) not be interpreted as stringently as the CERCLA requirement that remedial actions meet all "applicable or relevant and appropriate requirements."

Response: Proposed § 11.82(d)(10) is not a requirement that each alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources satisfy all applicable or relevant and appropriate laws and policies. Instead, this provision is a factor for trustees to consider when deciding which method of restoration, rehabilitation, replacement and/or acquisition of equivalent resources is the most appropriate basis for a damage claim. The Department believes the weight to be assigned to the factor should be left to the discretion of the trustees. Nevertheless, the Department notes that the natural resource damage assessment regulations do not absolve trustee agencies from compliance with any applicable laws.

11. Additional Suggested Factors

Comment: Several commenters suggested that the Department add a factor of timeliness. These commenters stated that such a factor was consistent with Congressional concern about expeditious cleanup and restoration. One commenter stated that the Department should add a factor of preexisting trends to ensure that trustee officials consider situations in which the level of services provided by a resource would have declined regardless of the discharge or release. Another commenter stated that the Department should include a factor of reasonableness.

Response: The list of factors set forth at proposed § 11.82(d) is not exclusive. Trustees may consider any other relevant considerations. However, the Department does not believe that the additional factors proposed by commenters need to be added to proposed § 11.82(d). Consideration of timeliness is implicit in proposed §§ 11.82(d)(6) and 11.82(d)(7), which deal with the natural recovery period for a resource and the resource's ability to recover. Also, trustee agencies already evaluate the effect or pre-existing trends when they calculate baseline. Further, the Department believes that the factors listed in proposed § 11.82(d), when taken as a whole, embody the elements of reasonableness.

N. Assessment Plan

Comment: There were a few comments about the content of the Assessment Plan. One commenter requested that the Assessment Plan include quality assurance and quality control (QA/QC) procedures. Another commenter correctly noted that proposed § 11.31(c)(4) would require the inclusion of QA/QC procedures but stated that the provision requiring compliance with Environmental Protection Agency (EPA) guidance on QA/QC was too onerous.

A number of commenters expressed concern about the requirement that the Assessment Plan include information on sampling size, design and location and estimated recovery period. Commenters stated that inclusion of such information so early in the process was impractical and unnecessary.

Finally, one commenter stated that the Assessment Plan should include a summary of the nature and extent of contamination to ensure that the approach used to assess damages is commensurate with the potential impact on resources.

Response: With the exception of requiring inclusion of a statement of the basis of trusteeship and a Restoration and Compensation Determination Plan, the proposed rule would not affect the content of the Assessment Plan. Additional revisions are beyond the scope of this rulemaking. Moreover, as noted in the August 1, 1986 preamble, the Department believes that EPA's QA/QC procedures provide a well-established standard. Further, the Assessment Plan is designed to ensure that only the reasonable costs of assessment are incurred; therefore, inclusion of information about sampling is necessary. Finally, since a natural resource damage assessment focuses on the actual injuries to resources instead of the level of chemical present, a discussion of the nature and extent of contamination is not needed.

O. Restoration and Compensation Determination Plan

Comment: A number of commenters offered suggestions about the Restoration and Compensation Determination Plan. Two commenters requested guidance on coordination of the Restoration and Compensation Determination Plan and the Remedial Investigation/Feasibility Study (RI/FS). These commenters expressed concern that the Restoration and Compensation Determination Plan not be duplicative of or as detailed as the RI/FS.

Response: The Department agrees that trustee agencies should coordinate their development of the Restoration and Compensation Determination Plan with the development of any RI/FS by EPA and/or the States equivalent. Trustee agencies should work with EPA or the State equivalent to ensure that they are aware of potential natural resource damage issues. Also, the Department encourages trustee officials to make full use of relevant information in any RI/FS that has been prepared.

Nevertheless, although coordination of the Restoration and Compensation Determination Plan and the RI/FS is desirable, trustees should bear in mind that the goal of a natural resource damage assessment differs from that of a response action. Most response actions are designed to clean up on-site hazardous substances until they no longer pose an actual or potential risk to human health, welfare or the environment. The particular level of cleanup is determined by applicable or relevant and appropriate environmental standards and other site-specific standards. Natural resource damage assessments, on the other hand, focus on injured natural resources, regardless of their location, and are designed to re-establish a baseline. Therefore, an RI/FS is neither a model nor a substitute for a Restoration and Compensation Determination Plan. Conflicts between the RI/FS and the Restoration and Compensation Determination Plan may well arise and will have to be dealt with on a case-by-case basis.

Because of the differing objectives of the Restoration and Compensation Determination Plan and the RI/FS it cannot be specified whether one should be more or less detailed than the other. The level of detail required in a Restoration and Compensation Determination Plan will likely vary depending upon the nature and extent of the injuries. The Restoration and Compensation Determination Plan is used to compute damages; therefore, it need not contain the level of detail required to implement a restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. However, proposed § 11.81(a)(2) would require the Restoration and Compensation Determination Plan to provide sufficient detail to allow an evaluation of the various alternative methods of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

Comment: There were some comments on the timing of the Restoration and Compensation Determination Plan. A number of commenters stated that the information needed to determine the required level of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources might not be available at the time the Assessment Plan is made available for public review. Two of these commenters sought additional clarification that preparation of the Restoration and Compensation Determination Plan may be delayed so long as it is developed before completion of the Quantification phase. Another commenter suggested that trustees be allowed to delay preparation of the Restoration and Compensation Determination Plan until completion of the Quantification phase.

On the other hand, one commenter expressed concern that allowing preparation of the Restoration and Compensation Determination Plan to be delayed would lead trustee officials to engage in "fishing" expeditions for any conceivably relevant evidence of damages. This commenter also stated that failure to require early preparation of the Restoration and Compensation Determination Plan would allow trustees to delay disclosure of inconsistent technical information until it was too late for PRPs and the public to perform their own studies. The commenter thought that at a minimum the rule should require trustee agencies to use their best efforts to prepare the Restoration and Compensation Determination Plan at the same time as the rest of the Assessment Plan.

Response: The Department believes that the provisions of the proposed rule governing the timing of the Restoration and Compensation Determination Plan are necessary to ensure that the cost of assessments is reasonable. The definition of "reasonable cost," which would not be affected by the proposed rule, includes a requirement that the Injury Determination, Quantification and Damage Determination phases of the assessment bear a well-defined relationship to each other. The Assessment Plan, which includes the

Restoration and Compensation Determination Plan, is designed to coordinate the three phases of the assessment. Therefore, the Restoration and Compensation Determination Plan should be prepared as early as possible. In most cases trustees should be able to develop an initial Restoration and Compensation Determination Plan based on estimates of the extent and nature of the injuries and then make revisions as needed. Section 11.32(e)(1) of the rule, which would not be affected by the proposed rule, authorizes trustees to modify any part of the Assessment Plan at any stage of the assessment as new information becomes available.

However, the Department recognizes that selection of alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources depends in part upon the extent and nature of the injuries, which will not be fully known at the outset of an assessment. Therefore, there may be cases where even a preliminary attempt to evaluate alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources would be meaningless unless Injury Determination or Quantification had begun. In these cases, premature preparation of the Restoration and Compensation Determination Plan could temporarily misdirect the Injury Determination and Quantification phases. Therefore, the proposed rule provides that in those cases where existing data are insufficient to develop a Restoration and Compensation Determination Plan at the time that the rest of the Assessment Plan is prepared, the Restoration and Compensation Determination Plan may be developed later. Nevertheless, the Restoration and Compensation Determination Plan must always be developed before completion of the Quantification phase in order to ensure that the Quantification phase is correlated with the Damage Determination phase.

The Department believes that it is unnecessary to add a requirement that trustee officials use their "best efforts" to prepare the Restoration and Compensation Determination Plan along with the rest of the Assessment Plan. Such a requirement is ambiguous and could result in placing an unfair burden of proof upon trustees. Nevertheless, the Department emphasizes that trustee agencies should only delay development of the Restoration and Compensation Determination Plan when existing data are insufficient to develop even a rough estimate of the extent of the injuries. Once they have obtained sufficient data, trustees should complete the Restoration and Compensation Determination Plan.

Comment: Another commenter stated that requiring trustees to wait until expiration of the public comment period before implementing the cost estimating and valuation methodologies selected in the Restoration and Compensation Determination Plan would cause an unnecessary delay.

Response: Calculation of natural resource damages is largely driven by the cost estimating and valuation methodologies selected in the Restoration and Compensation Determination Plan. The Department believes that the public has a right to review and comment on such a crucial element of the assessment. The opportunity for public review of the Restoration and Compensation Determination Plan provides an important check on the discretion of trustee agencies. Allowing trustees to begin implementation of the selected methodologies before the end of the public comment period could make it less likely that public comments will receive a full and fair review. Therefore, the Department does not believe that the 30-day comment period poses an unreasonable or unnecessary delay.

P. Scope of Recoverable Costs of Restoration, Rehabilitation, Replacement, and/or Acquisition of Equivalent Resources

Comment: There were a number of comments about the scope of recoverable costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. A few commenters stated that the rule should specify that recoverable costs include the cost of long-term monitoring, the cost of periodic environmental reviews and the cost of obtaining any necessary permits.

Response: The Department agrees that the recoverable costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources include the cost of long-term monitoring, the cost of periodic environmental reviews and the cost of obtaining any necessary permits. The Department does not believe any revisions to the language of the proposed rule are needed to clarify this point.

Comment: Several other comments addressed the issue of indirect costs. These commenters stated that the issue of the recoverability of indirect costs was not addressed in *Ohio* v. *Interior* and, thus, is beyond the scope of this rulemaking. The commenters stated that inclusion of indirect costs represented a change in position that the Department had inadequately explained.

Response: The Department does not believe that discussion of the recoverability of indirect costs is beyond the scope of this rulemaking. As a result of *Ohio* v. *Interior*, costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources will now be a part of the measure of damages in all natural resource damage cases. Therefore, the Department believes it is appropriate to provide additional guidance on the scope of recoverable costs. Further, inclusion of indirect costs within the measure of damages is merely intended as a clarification of existing provisions not a revision of the regulations.

Comment: Some commenters also stated that the issue of the recoverability of indirect costs arises under section 107(a)(4) of CERCLA, which EPA, not the Department, has authority to interpret. Further, these commenters believed that indirect costs are not recoverable in natural resource damage cases as a matter of law. The commenters acknowledged that courts have awarded indirect costs of response actions under CERCLA. However, the commenters stated that those cases relied on the language of section 107(a)(4)(A), which authorizes recovery of "all costs of removal or remedial action."

Response: The Department believes it has full authority to clarify the scope of recoverable costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. The Department has been delegated the responsibility of developing regulations for the assessment of natural resource damages under section 301(c) of CERCLA. Since those damages include costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, the Department has the duty to develop procedures for calculating such costs. Part of that duty involves clarifying what constitutes a cost of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Further, inclusion of indirect costs is consistent with the legislative history of CERCLA and *Ohio* v. *Interior*, which emphasize development of a damage figure that will make the public whole. 880 F.2d at 445.

Comment: One commenter expressed concern about the Department's statement in the preamble to the proposed rule that costs of policy formulation and reporting costs are recoverable indirect costs. The commenter thought that the language of section 107(a)(4)(C), which refers to

injuries to natural resources "resulting from" a release, requires trustee officials to establish a causal connection between indirect costs and restoration, rehabilitation, replacement, and/or acquisition activities. According to this commenter, costs of policy formulation and reporting costs are not sufficiently causally related to a specific release and, thus, should not be recoverable.

Response: The Department agrees that PRPs are only liable for those indirect costs that are connected to a specific release or discharge. However, the Department believes that in some cases certain policy formulation and reporting activities would not take place but for the occurrence of a specific release or discharge. Only in those cases would the costs of policy formulation and reporting be recoverable.

Comment: Some commenters thought that in order to prevent potential abuse, the Department should provide additional guidance on how to allocate indirect costs and how to develop an indirect cost rate. Another commenter thought that trustees should be required to document how they calculated indirect costs.

Response: The proposed rule contains guidance on calculation of indirect costs. The Department thinks that imposition of mandatory procedures for calculation of indirect costs could unduly hamper trustees' ability to respond to the broad range of natural resource damage cases.

The proposed rule contains a number of provisions that should protect against potential abuses of discretion. Trustee agencies would be required to document their calculation of indirect costs in the Restoration and Compensation and Determination Plan, which is subject to public review and comment. Proposed § 11.83(a)(2)(iv) would require trustees to describe their selection of methodologies, including their methodologies for calculating indirect costs. Also, whenever trustee officials used an indirect cost rate, proposed § 11.83(b)(1)(iii) would require them to document the assumptions from which that rate was derived. This documentation would be subject to public review and comment as part of the Restoration and Compensation Determination Plan.

Comment: One commenter stated that the Department should specify that if an indirect cost rate is used, it should be multiplied by direct costs to derive an estimate of total cost.

Response: The Department acknowledges that some indirect cost rates are designed to be applied to direct costs but does not think it is appropriate to prohibit trustee officials from using other types of indirect cost rates.

Comment: Another commenter thought that trustee agencies should be prohibited from using indirect cost rates unless they already have in place generally accepted accounting practices for accumulating and allocating costs.

Response: As was noted in the preamble to the proposed rule, recovery of indirect costs is best accomplished when trustee agencies already have an established indirect cost rate. However, the Department does not believe it is appropriate to prevent trustee agencies without established indirect cost rates from developing such rates. Therefore, the proposed rule would not restrict use of indirect cost rates to those cases where trustee officials already have in place generally accepted accounting practices for accumulating and allocating costs.

Comment: Finally, commenters sought clarification of the meaning of the following language in proposed § 11.83(b)(1)(iii):

> When an indirect cost rate is used * * * [s]uch amounts determined in lieu of indirect costs shall be treated as an offset to the total indirect costs of the selected alternative before allocation to the remaining activities. The base upon which such remaining costs are allocated should be adjusted accordingly.

Response: The Department acknowledges the confusion generated by the last two sentences of proposed § 11.83(b)(1)(iii) and intends to delete them.

Q. Cost Estimating Methodologies

Comment: One commenter stated that by listing certain cost estimating methodologies the Department had expressed a preference that improperly restrained the discretion of trustee agencies. This commenter stated that trustees should have maximum flexibility to use any standard and accepted methodology so long as they document their rationale for selecting that methodology. On the other hand, several commenters expressed concern that the proposed rule provided inadequate guidance on selection and use of reliable cost estimating methodologies.

Response: The Department believes that proposed § 11.83 would strike an appropriate balance between trustees' need for flexibility when dealing with the wide range of possible natural resource damage scenarios and PRPs' concerns about abuse of discretion. The proposed rule would establish acceptance criteria that would have to be satisfied before any cost estimating methodology could be used. The proposed rule would list six available cost estimating methodologies. This list, which is not intended to be inclusive, merely provides some examples of methodologies that satisfy the acceptance criteria. The proposed rule would allow trustees to use any other standard and accepted methodology that satisfied the acceptance criteria. Further, the proposed rule would require trustee officials to document their selection of methodologies in the Restoration and Compensation Determination Plan, which is subject to public review and comment.

Comment: A number of commenters stated that trustees should not be required to use methodologies based on accounting practices. These commenters stated that accounting practices are generally developed to deal with past events and methodologies developed in other disciplines are better suited for estimating future expenses. The commenters suggested that trustees be allowed to use methodologies based on "standard and accepted professional practices" or simply "standard and accepted estimating practices," including engineering practices and public budgeting practices.

Response: The Department did not intend to limit trustee agencies to using only accounting practices. The Department intends to revise the language of proposed § 11.83(b)(3) to allow for the use of any standard and accepted estimating practices provided that the trustee officials can document that those practices satisfy the acceptance criteria.

Comment: One commenter stated that the rule should explicitly recognize the authority of trustees to use combinations of different cost estimating methodologies.

Response: The Department agrees that trustee officials should be allowed to use combinations of different methodologies, so long as they do not double count. The Department intends to revise the language of proposed § 11.83 to make this clear.

Comment: Several commenters thought that the proposed rule did not adequately account for the uncertainty involved in estimating costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

Response: Section 11.84(d), which governs incorporation of uncertainty into the damage determination, would not be substantively affected by the proposed rule. The proposed rule would merely revise § 11.84(d) to reflect the change in the measure of damages. Development of additional procedures and requirements for consideration of

uncertainty are beyond the scope of this rulemaking.

Comment: A few commenters believed that the rule should establish a standard for the acceptable range of variability of cost estimates.

Response: As noted in the preamble to the proposed rule, the Department believes that trustee officials should estimate costs as accurately as possible. However, the Department notes that the degree of accuracy possible in a particular case will vary depending on the quantity and quality of available information and the specific dictates of the mandate of reasonable assessment costs. Therefore, the Department does not believe that specification of an acceptable range of variability or establishment of a requirement of verification of cost estimates would be practical.

R. Compensable Value

Comment: A few commenters sought clarification of the meaning of proposed § 11.84(h), which provides that in assessments where the scope of the analysis is at the State level, only the compensable value to the State should be counted. These commenters expressed concern that this provision could be interpreted to mean that if a State recreational area were frequented by out-of-state visitors, the value of the lost use by those visitors would not be recoverable by the State. The commenters stated that such an interpretation would unfairly exonerate PRPs from compensating the public for the full value of lost use that they had caused.

Response: The "scope of analysis" provisions would not be substantively changed by the proposed rule. Virtually identical provisions were incorporated in § 11.84(i) during the August 1, 1986 rulemaking. The proposed rule would merely substitute the term "compensable value" for the term "use value." Further clarification is beyond the scope of this rulemaking.

Comment: One commenter thought that compensable value should be based not on the value of lost use and nonuse but on the cost of obtaining resources that will provide the same level of use and nonuse values as will be lost during the recovery period. This commenter stated that such a measure of compensable value was more consistent with the compensatory nature of natural resource damages under CERCLA and the command of CWA that damages be limited to amounts necessary to restore or replace lost resources.

Response: The Department agrees that natural resource damages are designed to be compensatory not punitive and believes that basing compensable value on the value of lost public use and nonuse allows for full compensation of the public loss. Also, the Department notes that CWA does not limit damages to amounts necessary to restore or replace lost resources. Instead, section 311(f)(4) of CWA provides that natural resource damages "include" any costs incurred in restoration or replacement.

Nevertheless, proposed § 11.84(f) would provide that when calculating compensable value, trustees should incorporate estimates of the ability of the public to substitute other services for those of the injured resource. This provision would only apply when the potential benefits from an increase in the accuracy of the compensable value calculation are greater than the potential costs of developing the estimate of substitutability.

Comment: There were a few comments about the period of time over which compensable values should be calculated. Two commenters noted inconsistencies between the language of the proposed rule and the preamble. Proposed § 11.83(c)(1) provides that compensable value would be calculated from the time of the discharge or release. However, in the April 29, 1991 preamble, the Department stated that "damages include compensation for the lost services from the time of the injury." 56 FR 19762. One commenter stated that the date of the release or discharge should be the only permissible starting point for compensable values because of the difficulties involved in determining the time of inception of injury.

Response: The correct starting point for calculation of compensable value, and the starting point that is identified in the proposed rule itself, would be the date of the release or discharge. The statement in the preamble was not intended to establish a different time frame for calculating compensable value. Instead, the preamble language was intended to reflect the requirement of § 11.61(e)(3) of the existing rule that a trustee official must establish that an injury has occurred in order to pursue a claim for damages. The Department notes, however, that calculation of compensable value is subject to § 11.24(b)(1), which would not be affected by the proposed rule. Section 11.24(b)(1) provides that there shall no recovery for natural resource damages if those damages and the release that caused those damages occurred wholly before December 11, 1980, the date on which CERCLA was enacted.

Comment: Another commenter stated that damages for compensable value should begin to run from the date that the release or discharge is disclosed and the public begins to react. The commenter stated that there can be no reduction in use until the public is aware of the contamination.

Response: The Department does not believe that damages for compensable value should begin to run from the date that the occurrence of a discharge or release is disclosed. There may well be cases in which the public will be unaffected by a release or discharge prior to public disclosure. In those cases, the portion of compensable value for the period prior to disclosure will be zero. However, there may also be situations in which a release or discharge adversely affects a resource and causes a reduction in public use before the adverse effect is linked to the release or discharge.

Comment: One commenter stated that reductions in consumer surplus should only be recoverable if they are associated with services directly provided to the public.

Response: The provision of the proposed rule authorizing recovery of reductions in consumer surplus is unchanged from the original version of the rule. The Department has always believed that only those reductions in consumer surplus that are associated with services provided to the public are recoverable. The Department does not believe that any revisions to the language of the proposed rule are necessary to make this clear.

Comment: One commenter requested clarification of what is meant by the term "economic rent." In particular, this commenter suggested that claims for compensable value related to economic rent should be limited to changes in economic rent accruing to trustees from various uses of the injured resource.

Response: The provision of the proposed rule authorizing recovery of reductions in economic rent is unchanged from the original version of the rule. In the August 1, 1986 preamble, the Department described economic rent as:

> * * * the excess of total earnings of a producer of a good or service over the payment required to induce that producer to supply the same quantity currently being supplied, accruing to private individuals engaged in commercial ventures because the government does not charge the producer a price or fee for the private use of the public resource. 51 FR 27691.

Further clarification of this term is beyond the scope of this rulemaking.

Comment: There were several comments about the provision of the proposed rule that excludes "secondary economic impacts" from the definition of "compensable value." Commenters

offered different views of what constitutes a "secondary economic impact" and sought additional clarification.

Response: The Department believes that introducing the term "secondary economic impacts" into the regulations would create unnecessary confusion. Therefore, the Department intends to revise the proposed rule to eliminate the term. Nevertheless, the Department notes that all recoverable values must be traceable to a loss of services provided to the public.

Comment: One commenter stated that PRPs should only be held liable for the value of those reductions in public use of the resource that are proximately caused by the release or discharge.

Response: The Department does not believe that addition of a proximate causation requirement to the definition of compensable value is warranted. The Department believes that the regulations establish adequate standards for linking natural resource damages to an occurrence of a release or discharge.

Comment: A couple of commenters stated that the Department should have considered the value of lost services to other resources when it developed the definition of "compensable value." These commenters noted that the regulations recognize that a resource can provide services not only to humans but also to other resources. According to these commenters, a full measure of damages would include both the value of services that are lost to the public and the value of services that are lost to other resources pending restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

Response: As was stated in the August 1, 1986 preamble, "only when a service has a human recipient can it be classified as a use per se." 51 FR 27719. Therefore, compensable value, which is based on lost use and nonuse, does not explicitly address the loss of services to other resources. Revision of the concept of use is beyond the scope of this rulemaking.

S. Nonuse Values and CVM

Comment: There were numerous comments about the estimation and recovery of lost nonuse values. The comments were widely divergent but generally fell into two primary schools of thought.

One set of commenters thought that trustee officials should have the discretion to decide on a case-by-case basis when nonuse values should be included in a damage claim. These commenters objected to the statement in the April 29, 1991 preamble that nonuse values "are most significant for irreversible or long-lasting changes to well-known, unique natural resources." 51 FR 10760. The commenters also stated that the Department should not have cited the Grand Canyon as an example of a resource with large potential existence value because of the implication that lesser-known resources do not have significant nonuse values. Several examples were given by these commenters of resources that do not share the Grand Canyon's renown but, nevertheless, could have significant nonuse values (e.g., Pugent Sound, tribal resources on lands owned by Native Americans). These commenters stated that nonuse values can exist for any resource. Further, some of these commenters thought that the holding in *Ohio* v. *Interior* mandated the inclusion of nonuse values in natural resource damage assessments.

Those commenters who supported granting trustees full discretion to seek recovery of nonuse values also stated the CVM is a reliable methodology for calculating those values. Some commenters stated that *Ohio* v. *Interior* already upheld CVM as a best available procedure, and thus the rule should not limit recovery of nonuse values. A number of commenters thought that the Department had unfairly singled out CVM since there are reliability problems associated with all of the listed methodologies, not just CVM.

The other set of commenters thought that the rule should place more restrictions on the recovery of nonuse values. These commenters stated that nonuse values cannot be reliably measured and, therefore, recovery of such values should be prohibited or at least restricted. Some commenters suggested that the Department incorporate the statement in the April 29, 1991 preamble concerning irreversible or long-lasting changes to well-known, unique resources into the regulation itself.

These commenters expressed several reasons why nonuser values cannot be reliably measured. First, many commenters stated that attempts to measure "willingness to pay" for nonuse values for specific injuries to natural resources will instead tend to measure willingness to pay for larger environmental issues. For example, when measuring the willingness to pay for nonuse values for injury to a specific section of coastline, these commenters thought that respondents will often state their willingness to pay for clean oceans in general. Thus, according to these commenters, part of what is being measured in broader ideological or "good-cause" values instead of just the value of the specific resources injured. Several studies supporting this concern were cited. Further, many commenters stated that the respondents in a CVM study might feel that the PRP should be reprimanded for the discharge or release, and thus the stated willingness to pay would include punitive as well as compensatory damages.

According to some commenters, CVM respondents are likely to inflate their willingness to pay since they know they will not be expected to provide actual dollars. Other commenters expressed concern that the very process of taking a CVM survey might generate inflated willingness-to-pay estimates by focusing the respondents' attention on an event that was previously unknown to the respondents or that seemed insignificant to respondents prior to the survey.

Some commenters thought that CVM is apt to produce unreliable measurements of nonuse values because it fails to meet commonly accepted reference operating conditions. Although the exact specifications of the reference operating conditions varied from commenter to commenter, two key principles were expressed:

(1) The respondents to a CVM survey must be familiar with the resource in question; and

(2) The respondents must have had (or be allowed to obtain) prior experience in valuing different levels of quality or availability of the resource over the range in question. These commenters stated that nonuse values often pertain to goods that are unfamiliar and with which respondents usually have not had prior valuation experience.

Therefore, the commenters believed that CVM surveys of nonuse values are apt to be unreliable.

Further, a number of commenters noted that because CVM is the only method available for the express purpose of estimating nonuse values, there is no way to cross-check the accuracy of CVM estimates of nonuse values.

Response: The original version of the rule provided that nonuse values could only be recovered if no use values could be determined. In the August 1, 1986 preamble, the Department explained this provision as follows:

> The Department notes that § 11.83(b) has been changed to explicitly state that option and existence values may be estimated in lieu of use values only when use values cannot be determined. Ordinarily, option and existence values would be added to use values. However, section 301(c) of CERCLA mentions only use values. Therefore, the primary emphasis in this section is on the estimation of use values. 51 FR 27719.

Ohio v. *Interior* held that the Department had "erroneously construed the statute," stating:

> [S]ection 301(c)(2) requires Interior to "take into consideration factors including, *but not limited to* * * * use value." 42 U.S.C. § 9651(c)(2) (emphasis added). The statute's command is expressly not limited to use value; if anything, the language implies that DOI is to include in its regulations other factors in addition to use value. 880 F.2d at 464.

The court went on to say that the Department "is entitled to rank methodologies according to its view of their reliability, but it cannot base its complete exclusion of option and existence values on an incorrect reading of the statute." Id. Therefore, *Ohio* v. *Interior* does not mandate the inclusion of nonuse values in natural resource damage claims. Instead, the decision simply requires that any limitation on recovery of nonuse values be based on considerations of reliability rather than an improper interpretation of statutory language. In light of this requirement, the Department must carefully consider whether nonuse values can be reliably calculated and, if so, under what conditions.

CVM is currently the only method available for the express purpose of estimating all nonuse values. CVM can also be used to calculate use values. *Ohio* v. *Interior* held that the Department's decision to include CVM in the original version of the rule was not improper. Id. at 478. However, the court did not appear to require the Department to allow unlimited use of CVM. Moreover, the court did not address the difference between use of CVM to calculate use values and use of CVM to calculate nonuse values.

The Department has previously considered CVM to be less reliable for quantifying nonuse values than for quantifying use values. As was stated in the August 1, 1986 preamble:

> [M]ore is known about the determination of use values than option and existence values. Option and existence values are less well-defined and more uncertainty surrounds their measurement. 51 FR 27719.

After reviewing the comments on the proposed rule, the Department remains concerned about the reliability of CVM in calculating nonuse values.

The potential for bias in a CVM survey of nonuse values is of concern to the Department. The Department recognizes that there are potential reliability problems associated with any of the valuation methodologies listed in the proposed rule. However, these other techniques do not have the same potential to change the aggregate estimate of lost compensable value to the same degree that CVM does particularly when used to quantify nonuse values. For use values, the population that suffers a loss is limited to those who directly use the resource. The population of direct users is usually a small fraction of the total population. Thus, even if a use value methodology does contain a per-person bias, that bias will only be multiplied by a relatively limited number of users. This serves as a check on the absolute amount of bias contained in the aggregate estimate. On the other hand, if CVM as applied to nonuse values has exactly the same amount of per-person bias, that bias could be multiplied by the entire population. This will introduce more absolute bias into the aggregate estimate of compensable value than would be introduced by the use value methodology.

Furthermore, when use values are being calculated, the results obtained through one methodology can be compared with those obtained by another methodology. For nonuse values, however, there are no alternative techniques available, at this time, against which to check the results of a CVM survey.

Nevertheless, the Department recognizes that nonuse values may be significant in some situations and recovery of nonuse values in these cases is necessary to fully compensate the public. Also, the Department believes that a well-designed CVM survey can satisfy many of the reference operating conditions cited by the commenters and discussed above.

The most compelling argument for the existence of nonuse values seems to be that individuals derive benefits by simply knowing that a particular resource or category of resources exists; by preserving the option of using the resource in the future; and by leaving the resource as a legacy for future generations. There could be certain cases where the death of individual members of a species would cause a significant loss in nonuse values even though species levels return to baseline within a short time. However, in other cases involving temporary injury, individuals are not likely to experience a significant sense of loss because the resource's existence is not threatened. Further, after restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is complete, the resource will still be available for future use and can still be left as a legacy to future generations.

Similarly, if the injury is to a resource with many substitutes, then the substitute resources will greatly mitigate the loss of nonuse values. This is true for use values as well, but in the case of nonuse values the location of the resource is less critical because the services it provides are not being directly used by the public. For example, if the existence of a certain type of habitat is important and a release or discharge only affected one of numerous occurrences of that habitat type, then that habitat type will continue to exist regardless of whether the affect on the particular occurrence of that habitat is permanent or long lasting.

In light of these concerns, the Department requests comments on whether trustee officials should be required to document that there have been long-lasting injuries to natural resources with few substitutes before implementing a CVM study of nonuse values. The Department notes that incorporation of such a requirement in the regulations would not affect the authority of trustee agencies to recover damages for lost nonuse values in cases where injury is not long-lasting or where there are many substitutes. In those cases, trustee officials could still seek recovery of damages for lost nonuse values; their assessment of those particular damages would simply not be afforded a rebuttable presumption.

The Department also requests comments on whether it should provide guidance or establish criteria for how trustees are to design, implement and test the results of specific CVM studies of nonuse values. Commenters should consider issues such as: Whether standards should be imposed on the wording of CVM survey questions; whether focus groups should be required to test the efficacy of the survey instrument; whether certain types of payment vehicles should be used, or avoided, in the survey; whether survey questions should be open- or close-ended; whether surveys should be administered in person, over the phone or by mail; whether certain types of orientation information or follow-up questions should be required; and whether the results of the survey should be tested to ensure consistency with standard economic theory.

In responding to this request, commenters should focus on three separate, but related, issues. The first issue is the types of requirements, if any, that the Department should impose on: The resource being evaluated by the CVM study; the design of the CVM instrument; the performance of the CVM study; and/or the analysis of the results of the CVM study.

The second issue is the level of specificity of any requirements the Department may develop to ensure that

a CVM study of nonuse values provides reliable results. The range of possible levels of specificity runs from strict criteria to broad guidance.

The third issue is the placement of any requirements (from criteria to guidance) concerning CVM studies of nonuse values. If the Department places any requirements in the rule itself, then those requirements would have to be followed in order for any assessment using CVM to gain a rebuttable presumption, in accordance with section 107(f) of CERCLA. If the Department places requirements in the preamble to the rule or in a technical information document, then adherence to those requirements might not be mandatory for a claim based on the use of CVM to gain a rebuttable presumption.

Finally, comments on the circumstances under which any requirements developed by the Department ought to apply to assure that CVM studies are cost-effective and can be performed at a reasonable cost are also requested.

Comment: Several commenters thought that the Department's characterization of CVM as the least reliable methodology was inaccurate. These commenters noted that there are no methods for calculating nonuse values that are more reliable than CVM.

Response: The Department realizes that since CVM is the only method available for the express purpose of estimating nonuse values, it could be characterized as the most reliable method for estimating such values. However, the reliability ranking in the rule focuses on the reliability of the aggregate estimate of compensable value. CVM, when used to calculate nonuse values, was listed as the least reliable methodology in the proposed rule because calculations of total compensable value will be least reliable when they include estimates of nonuse values derived from CVM surveys.

Comment: A few commenters expressed the view that CVM is not the only tool for measuring nonuse values. These commenters cited the purchase of insurance policies as an alternative means of estimating option value and voluntary contributions to organizations as a means of estimating existence value.

Response: Proposed § 11.83(c)(3) would allow trustee officials to use any valuation methodology, regardless of whether it is explicitly listed, provided it measures the public's willingness to pay and satisfies the acceptance criteria set forth at proposed § 11.83(a)(3). The Department is currently unaware of any methodology available for the express purpose of estimating nonuse values of specific injured resources, other than CVM, that meets these specifications.

Comment: There were a number of comments about the definition of "nonuse value." Some commenters stated that the definition of "nonuse value" as the difference between compensable value and use value was circular. Other commenters suggested that the term "nonuse" be replaced with the term "passive use" or "nonconsumptive use." Another commenter stated that the definition of "nonuse value" should be explicitly linked to a loss of services.

Response: The phrase "compensable value" was proposed to provide a convenient term for all recoverable lost public values; it was not designed to effect any substantive change. There are many different categories of nonuse values, such as existence value and bequest value. There has been considerable debate among economists over the precise scope of these different categories. As a practical matter, it will usually not be necessary to categorize particular nonuse values during a natural resource damage assessment. Therefore, although the Department recognizes that the definition is somewhat circular, the Department believes it is appropriate to define "nonuse value" as the difference between compensable value (i.e., total value) and use value.

The Department does not believe that substitution of the term "passive use" or "nonconsumptive use" for "nonuse" would provide greater clarity. Also, the Department notes that "nonuse value" is defined in reference to "compensable value" and "use value," which are already defined in terms of a loss of services to the public. Therefore, the Department does not believe it is necessary to include an explicit reference to services in the definition of "nonuse value."

Comment: One commenter expressed concern that if the rule lists option, existence and bequest values separately, trustees will be inclined to perform separate valuations of each category of value. This commenter thought that current economics literature suggests that the different categories of nonuse values are not additive.

Response: The Department believes that trustee officials should not perform separate valuations of the different categories of nonuse values. The Department notes that proposed § 11.83(a)(3)(iii) would already provide that when selecting a valuation methodology, trustee officials must ensure that there will be no double counting. Therefore, the Department does not believe that additional revisions to the proposed rule are necessary.

Comment: Some commenters stated that trustees should not be allowed to recover for past losses of nonuse values because of the difficulty of quantifying these damages.

Response: The Department sees no justification for such an exclusion. Where little time has elapsed since the occurrence of a past lost nonuse, the trustee officials might conclude that CVM respondents' willingness to pay is not likely to have changed significantly. In cases where more time has elapsed, it still would be possible to develop estimates of past lost nonuse values that are as reliable as estimates of current lost nonuse values, provided the study design can take into account the changing tastes and preferences of subjects.

T. Other Valuation Methodologies

Comment: A number of commenters stated that by ranking valuation methodologies according to reliability, the proposed rule established a hierarchy in violation of *Ohio* v. *Interior*. Other commenters thought that the ranking was an appropriate exercise of the Department's statutory duty to determine the "best available procedures" for assessing damages. Some commenters went so far as to state that the rules should require trustees to use the most reliable method available.

Response: The Department believes that the proposed ranking of the methodologies complies with *Ohio* v. *Interior*. Under the original version of the rule, trustees could only use non-market-based methodologies to value lost public use of services if none of the market-based methodologies were appropriate. Further, trustees could only use CVM to measure nonuse values if no use values could be determined. *Ohio* v. *Interior* held that the mandatory hierarchy violated Congressional intent by establishing a presumption in favor of market-based methodologies. The proposed rule would eliminate the requirement that trustee agencies choose methodologies according to a hierarchy; trustees would be able to use any of the listed methodologies, at any time. Any attempt to mandate use of one listed methodology over another would be a violation of *Ohio* v. *Interior*.

Nevertheless, *Ohio* v. *Interior* also noted that the Department "is entitled to rank methodologies according to its view of their reliability * * *." 880 F.2d at 464. The Department does not believe that all of the listed valuation methodologies are equally reliable. Thus, the Department believes that the

proposed reliability ranking is appropriate. Trustees should generally use the most reliable methodology available. However, the reliability of a methodology in a particular case may depend on the data available. Moreover, when selecting a valuation methodology, trustees must also consider the cost-effectiveness of the methodologies and the need to perform the assessment at a reasonable cost. Therefore, § 11.83(a)(3) of the proposed rule would provide trustees with discretion to select which methodologies they will use provided they include documentation in the Restoration and Compensation Determination Plan that each selected methodology is feasible and reliable; can be performed at a reasonable cost; will avoid double counting; and is cost-effective.

Comment: Many commenters indicated that the Department should provide more guidance on the implementation of the valuation methodologies.

Response: Although additional guidance would be desirable, development of such guidance is beyond the scope of this rulemaking. The Department is considering issuing technical assistance on the application of each listed methodologies in the future. In the mean time, trustees can consult the Type B Technical Information Document: Techniques to Measure Damages to Natural Resources, which was made available on November 16, 1987 (52 FR 43763) through the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (703) 487–4650.

Comment: Two commenters raised concerns about the possibility of double counting if a hedonic pricing methodology is used. The commenters requested that the rule specify that the methodology should not be used in conjunction with any other valuation methodology.

Response: The hedonic pricing methodology has been included in the rule since the August 1, 1986 rulemaking. Under proposed § 11.83(a)(3)(iii), trustees would have to ensure that there will be no double counting under the selected valuation methodologies. The Department believes that additional guidance on use of the hedonic pricing methodology is beyond the scope of this rulemaking.

Comment: There were a few comments about the travel cost methodology. One commenter noted that § 11.83(c)(2)(B) of the proposed rule states, "When regional travel cost models exist, they may be used if appropriate." This commenter stated that this statement incorrectly implied that regional cost models were more appropriate than other models. Another commenter stated that use of the travel costs methodology should not be allowed because the results of a travel cost model can be skewed by the actions of one unusually avid traveler.

Response: The reference to regional cost models was intended as an example of the types of models that could be used rather than a preference for that model. The travel cost methodology has been included in the rule since the August 1, 1986 rulemaking. The Department believes that a well-designed travel cost model will not produce biased results. Limitation of the use of the travel cost methodology is beyond the scope of this rulemaking.

Comment: A few commenters noted that proposed § 11.83(c)(3) would allow trustee agencies to use valuation methodologies other than those listed so long as they measure the public's willingness to pay in a cost-effective manner. These commenters stated that trustees should also be allowed to use methodologies based on willingness to accept.

Response: The Department believes that revision of proposed § 11.83(c)(3) to permit use of methodologies based on willingness to accept is beyond the scope of this rulemaking. The provision in proposed § 11.83(c)(3) concerning willingness to pay was incorporated in § 11.83(d)(7) of the original version of the rule. As was stated in the August 1, 1986 preamble:

> The Department maintains that willingness to pay and willingness to accept are both theoretically valid criteria for estimating damages to nonmarketed natural resources. In addition, the Department continues to maintain that willingness to accept may be the criterion most germane to natural resource damages, since the public has the property right to the injured natural resource. However, the Department also agrees with many of the comments that recognize that the application of the willingness-to-accept criterion can lead to more technical difficulties and uncertainties than the willingness-to-pay criterion. In recognition of these difficulties and of the fact that the authorized official will obtain a rebuttable presumption, the Department, therefore, is modifying the acceptance criteria in § 11.83(d)(7) to include only the willingness-to-pay criterion. 51 FR 27721.

U. Use of Damages Collected

Comment: There were a few comments about the handling and use of natural resource damage awards. One commenter believed that the rule should require trustees to hold any collected damages in a separate interest-bearing account.

Response: Section 11.92(a) of the existing rule, which would not be affected by the proposed rule, contains considerable guidance on the types of accounts in which awarded funds can be placed. Additional guidance is beyond the scope of this rulemaking.

Comment: Two commenters stated that trustee agencies should be required to spend all collected damages on implementation of the alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources selected in the Restoration and Compensation Determination Plan. These commenters thought that without such a requirement trustees would likely select the most expensive alternative for purposes of calculating damages but then implement a less costly method and keep the additional money as a windfall.

Response: The Department disagrees that the rule should explicitly require collected damages to be spent on implementation of the exact alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources selected in the Restoration and Compensation Determination Plan. Section 11.93(a) of the proposed rule would provide that upon award of natural resource damages, trustee officials must prepare a Restoration Plan describing how the funds will be used. Under proposed § 11.93(a) states that the Restoration Plan would be based on the Restoration and Compensation Determination Plan. The Restoration Plan is intended to be a detailed description of the implementation of the alternative selected in the Restoration and Compensation Determination Plan. However, the Department recognizes that there may be unforeseeable changes in the condition of the natural resources between the time the Restoration and Compensation Determination Plan is prepared and the time the trustee officials actually collect damages. Also, the amount of damages ultimately collected may differ from the amount of damages claimed. Finally, the actual cost of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured resources may differ from the estimated cost. Therefore, trustees may need to revise the alternative selected in the Restoration and Compensation Determination Plan.

The Department does not believe that absence of a requirement that trustee officials implement the same exact alternative selected in the Restoration and Compensation Determination Plan will create unfair windfalls for trustees. Section 107(f)(1) of CERCLA requires all

funds recovered for natural resource damages to be used for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Furthermore, the rule provides an opportunity for public review and comment on the Restoration Plan, which should protect against arbitrary revisions of the alternative selected in the Restoration and Compensation Determination Plan.

Comment: Another commenter thought that the rule should provide additional standards for the use of funds recovered for compensable value. The commenter believed that the rule should not allow use of compensable value damages to supply services other than those lost. The commenter further stated that such funds should be spent only on site-related improvements. The commenter was particularly concerned about potential inequities when a public PRP passes along damages to local citizens at the same time that those damages are being spent to improve natural resources in other areas. Also, the commenter questioned how money recovered for lost nonuses would be spent.

Response: The Department does not believe that additional standards for use of funds awarded for compensable value are needed. The proposed rule would require that use of awards for compensable value be related to the services lost by the public. Section 11.92(e) of the existing rule provides that recovered funds may only be spent in accordance with the restoration Plan. Under proposed § 11.93(a), the Restoration Plan, which is subject to public review and comment, would contain a description of how the damages attributable to compensable value will be used to address the services lost to the public pending completion of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

In light of the wide array of possible lost uses and nonuses and the possible means of mitigating those lost uses and nonuses, the Department believes it would be impractical to develop additional standards for the use of damage awards. For example, there may be cases where it is impossible to supply the precise uses or nonuses that have been lost. Also, the Department agrees that use of awarded funds should benefit the same public that suffered the loss of services provided by the injured resource. However, the Department disagrees that the rule should specifically require compensable value damages to be spent at the site of the injury, because, for one thing, it may not be possible to supply lost uses on the same site that is being restored, rehabilitated or replaced.

Comment: Finally, two commenters stated that any portion of collected damages that is not spent to restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources or to supply lost uses should be returned to the PRPs.

Response: The Department does not believe there is any need to require trustees to return to PRPs any portion of collected damages not spent on restoration, rehabilitation, replacement, and/or acquisition of equivalent resources or replacement of lost uses and nonuses. CERCLA requires that all damages collected for injury to natural resources be spent on restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, which includes mitigation of the public loss of services during the recovery period. Therefore, there should never be excess funds after completion of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

V. Date of Promulgation

Comment: There were numerous comments on § 11.91(e) of the proposed rule concerning the date of promulgation of the natural resource damage assessment regulations. Several commenters supported proposed § 11.91(e). However, a number of other commenters thought that section 301(c) of CERCLA merely directs the Department to develop technical procedures for assessing natural resource damages. Thus, according to these commenters, the Department has no authority to issue interpretations of purely legal matters, such as the statute of limitations, that arise under unrelated statutory provisions.

Response: The Department believes that it has full authority to issue proposed § 11.91(e). Section 301(c) of CERCLA authorizes the Department to "promulgate regulations for the assessment of damages for injury to * * * natural resources." Section 113(g)(1) of CERCLA creates a statute of limitations based on the date that those regulations are "promulgated." After *Ohio* v. *Interior* and *Colorado* v. *Interior* were issued, there was considerable confusion over the statute of limitations. Nothing in the language or legislative history of CERCLA explicitly defines "promulgation." As the agency given authority to develop procedures for assessing natural resource damages, the Department believes it is in the best position to evaluate when regulations establishing full procedures have been promulgated. Therefore, the Department proposed § 11.91(e), not to amend the CERCLA statute of limitations, but merely to clarify an unclear term. Far from being a purely legal issue unrelated to the Department's technical duties, the determination of when the natural resource damage assessment regulations have been promulgated is well within the scope of the Department's expertise and statutory grant of authority.

Comment: Several commenters thought that the Department's proposal was consistent with Congressional intent. These commenters noted legislative history indicating that section 113(g)(1) was added to CERCLA out of concern that the absence of final natural resource damage assessment regulations had impaired the ability of trustees to pursue claims. According to these commenters, trustees were just as handicapped after *Ohio* v. *Interior* and *Colorado* v. *Interior* as they were when section 113(g)(1) was passed, because those cases invalidated important elements of the regulations.

However, other commenters stated that proposed § 11.91(e) violated Congressional intent. These commenters noted that section 113(g)(1) of CERCLA was added in 1986 in recognition of the Department's failure to meet an earlier statutory deadline for promulgation of final natural resource damage assessment regulations. According to these commenters, Congress merely intended to provide a temporary grace period for filing natural resource damage claims pending issuance of guidance on how to assess damages.

These commenters point out that the bulk of the rule was upheld in *Ohio* v. *Interior*, thus trustee agencies have had ample guidance on identification and valuation of injuries to natural resources. The commenters also observed that the Department's rule is optional and that trustees' ability to bring suit does not depend on the Department's rule. In fact, some trustee agencies have already brought suit and most of them have opted not to use the Department's rule. Therefore, according to these commenters, Congressional concerns about the ability of trustees to bring claims have already been satisfied.

A few commenters noted that if Congress had intended to link the statute of limitations to every modification of the regulations, it would not have required biennial review of the regulations. Some commenters also stated that under the Department's proposed line of reasoning, if the rule implementing *Ohio* v. *Interior* were challenged and remanded, the limitations period could again be

restarted and the deadline for filing claims could be extended ad infinitum.

Further, some commenters pointed out that if the Department's proposed position were correct and *Ohio* v. *Interior* had upheld the rule in its entirety, then the statute of limitations would have expired shortly thereafter. These commenters stated that Congress could not have intended to base the deadline for filing claims on something as uncertain as the outcome of a court challenge.

Response: The Department believes that proposed § 11.91(e) is completely consistent with Congressional intent. The Department acknowledges that *Ohio* v. *Interior* did not overturn the regulations in their entirety. However, the court did remand extremely critical components of the rule, including the measure of damages. Although *Ohio* v. *Interior* held that restoration costs are the preferred measure of damages and that all reliably calculated values should also be recoverable, the court also acknowledged that the Department has considerable authority and discretion to shape the specific scope of the damage calculus. Thus until the Department revises the regulations, no valid damage formula exists. The legislative history of SARA indicates that section 113(g)(1) was added to CERCLA because Congress believed that so long as trustees lacked procedures for assessing natural resource damages they were handicapped in their ability to bring suit. In the absence of a valid damage formula, the very purpose of the natural resource damage assessment rule, namely the derivation of a monetary damage figure, is thwarted.

The Department agrees that use of the natural resource damage assessment regulations is optional. However, the legislative history demonstrates that Congress keyed the limitations period to the date of promulgation of the regulations in order to allow trustees the opportunity to gain the benefit of the rebuttable presumption under section 107(f)(2)(C) of CERCLA. When it passed section 113(g)(1) of CERCLA, Congress determined that even though trustees could bring suit without the regulations, availability of the rebuttable presumption was so essential for successful pursuit of natural resource damage claims that the statute of limitations should be extended until three years after the regulations were promulgated. In the absence of natural resource damage assessment regulations that include a valid measure of damages, trustees are deprived of the full benefit of the rebuttable presumption.

Moreover, the Department is not suggesting that the period for filing claims should restart after every court-ordered or biennial modification to the rule. The Department is merely stating that until a valid measure of damages is in place, a complete regulatory procedure for assessing natural resource damages does not exist. Therefore, the natural resource damage assessment regulations have not been promulgated for statute of limitations purposes until regulations implementing *Ohio* v. *Interior* and *Colorado* v. *Interior* become effective.

Also, the Department believes that proposed § 11.91(e) would not base the date of promulgation on an uncertain event but instead provide greater certainty about the deadline for filing natural resource damage claims.

Comment: Some commenters stated that proposed § 11.91(e) was contrary to judicial precedent. Commenters cited case law for the proposition that "promulgation" occurs when a regulation is made public, not when it has cleared judicial hurdles. *United Technologies Corp.* v. *Occupational Safety and Health Administration*, 836 F.2d 52, 54 (2d Cir. 1987) (*UTC* v. *OSHA*); *American Petroleum Inst.* v. *Costle*, 609 F.2d 20, 23–24 (D.C. Cir. 1979) (*API* v. *Costle*). The commenters further noted that *Ohio* v. *Interior* did not void the rule or overturn it in its entirety; instead, the court merely remanded three specific issues. Therefore, natural resource damage assessment regulations have been continuously in effect since the effective date of the original version of the type B rule. According to these commenters, although the Department is required to modify the regulations, it is neither promulgating new regulations nor repromulgating existing regulations. These commenters further stated that *United States* v. *City of Seattle* specifically held that for statute of limitations purposes, the type B rule was promulgated on August 1, 1986, and the type A rule on March 20, 1987. No. C90–395WD, slip. op. at 2 (W.D. Wash. Jan. 28, 1991) (*U.S.* v. *Seattle*).

Response: The Department believes that the cases cited by commenters for the proposition that "promulgation" occurs when a regulation is made public are inapposite. *API* v. *Costle* involved the interpretation of a provision of the Clean Air Act that prohibited the inclusion of documents in a rulemaking docket after the date of promulgation. 609 F.2d at 22. Noting that the statutory provision was designed to ensure adequate opportunity for public review and to prevent post hoc rationalizations, the court held that the date of promulgation was the date the final rule was first released to the public as opposed to the date of publication in the **Federal Register**. *Id.* at 23–24.

UTC v. *OSHA* involved the statute of limitations period for filing a challenge to an OSHA standard. 836 F.2d at 53. The statute provided that any challenges to a standard issued by OSHA had to be brought within 60 days after the standard was promulgated. *Id.* OSHA regulations defined "the date of issuance" as the time of filing in the Office of the Federal Register but did not define "promulgation." Nevertheless, OSHA argued that the date of promulgation should also be the date of filing with the Office of the Federal Register. The court noted that Congress, by using two different terms, must have intended the date of issuance to differ from the date of promulgation. *Id.* Therefore, the court held that the date of promulgation was the date of publication in the **Federal Register**. *Id.* at 54.

Neither *API* v. *Costle* nor *UTC* v. *OSHA* purport to define "promulgation" for all purposes. In fact, the cases reveal that the definition of "promulgation" can vary, depending on Congressional intent. The cases also do not address the specific question of the effect of a judicial remand on the date of promulgation for statute of limitation purposes. Further, the court in *UTC* v. *OSHA* recognized an agency's authority to determine when its regulations had been promulgated, stating that "[t]he agency is certainly entitled to adopt a definition of 'promulgated', and it may well have the power to equate 'promulgated' with 'issued', if it chooses to." *Id.* at 53. The problem in that case was that the agency had not issued a regulation defining "promulgation."

U.S. v. *Seattle* involved a motion to dismiss a natural resource damage case on statute of limitations grounds. The defendant had argued that the statute of limitations began to run on August 1, 1986, the date the type B rule was first published. In an unpublished opinion, the court denied the motion to dismiss and held that the statute of limitations did not begin to run until both type A and type B rules had been promulgated. Slip op. at 1. Because the case had been filed within three years of March 20, 1987, the date the type A rule was first published, the court did not need to reach, and did not address, the issue of the effect of *Ohio* v. *Interior* and *Colorado* v. *Interior* on the date of promulgation.

Comment: A few commenters thought that the Department should eliminate the requirement that the revisions to both the type A and type B rules must

become effective before the statute of limitations begins to run. These commenters stated that such a requirement was unnecessary and would cause undue delay in filing claims. One commenter acknowledged that the court in the *U.S.* v. *Seattle* held that the statute of limitations did not begin to run until the promulgation of both the type A and type B rules. However, the court made clear that the type A rule had "direct application" to the coastal and marine environment involved in that case and thus the trustee "would need to consider the type A procedures." *U.S.* v. *Seattle*, slip. op. at 2–3. According to this commenter, there is no justification for tying the statute of limitations to the revision of the type A rule in those cases where the type A rule is inapplicable.

One commenter requested that the Department clarify which models it will include in the type A rule for statute of limitations purposes. Another commenter expressed the view that basing the statute of limitations on promulgation of type A rules other than the NRDAM/CME would be contrary to Congressional intent.

Response: The Department agrees with the analysis in the *U.S.* v. *Seattle* that the statute of limitations does not begin to run until both the type B and the type A rules have been promulgated. Section 113(g)(1) of CERCLA ties the statute of limitations to "the date on which regulations are promulgated under section 301(c)." The regulations promulgated under section 301(c) must contain both: (A) standard procedures for simplified assessments, the so-called "type A rule;" and (B) alternative protocols for conducting assessments in individual cases, the so-called "type B rule." Therefore, regardless of whether the type A rule could be used in a particular case, under the language of CERCLA, section 301(c) regulations have not been fully promulgated until both type A and type B rules have been issued. Further, the date of promulgation of the type A rule will be the effective date of revisions to the NRDAM/CME in compliance with *Colorado* v. *Interior*.

Comment: Finally, two commenters requested that the Department specify that the statute of limitations for tribal claims, which is set forth at section 126(d) of CERCLA, differs from that for nontribal claims.

Response: Section 11.15(e), which would not be affected by the proposed rule, provides that natural resource damage claims must comply with the statute of limitations set forth in section 126(d) of CERCLA, where applicable. Section 126(d) provides that tribal claims must be brought by the later of: (1) The expiration of the applicable period of limitations; or (2) two years after the United States, in its capacity as trustee for the tribe, gives written notice to the tribe that it will not present a claim or commence an action on behalf of the tribe or fails to present a claim or commence an action within the period of limitations.

W. Impact of the Rule

Comment: Once commenter disagreed with the Department's statement that the rule is not "major" under Executive Order 12291 and, thus, does not require preparation of a Regulatory Impact Analysis. The commenter stated that the rule establishes a new measure of damages which trustee agencies will use to determine liability. According to the commenter, this new measure of damages effectively increases PRPs' liability for natural resource damages and, therefore, will have a direct, substantive effect on PRPs. The commenter also thought that the elimination of the requirement that trustee officials select a cost-effective alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources could, in and of itself, have an effect in excess of $100 million in a single case. Therefore, the proposed rule as a whole is likely to have an annual effect on all PRPs well in excess of $100 million.

Response: The proposed rule does not establish the extent of liability for natural resource damages; such liability derives directly from the terms of CERCLA, CWA and OPA as interpreted by the courts. In fact, the proposed rule would not impose any requirements on anyone. Instead, the proposed rule would merely revise optional technical and procedural guidance for use by trustees when assessing natural resource damages.

Therefore, any analysis of the potential economic impact of the proposed rule should focus on the marginal impact of the proposed changes not overall liability. The Department has prepared a Determination of Effects for the proposed rule. That Determination concluded that although more trustee agencies may consider using the natural resource damage assessment regulations once they have been revised, the revisions are not likely to affect the incremental average cost of performing an assessment. As a result, the rule is not likely to result in either: (a) An annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, government agencies or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of domestic enterprises to compete with foreign enterprises. Therefore, this rulemaking is not "major" under Executive Order 12291 and does not require preparation of a Regulatory Impact Analysis.

Comment: Similarly, two commenters stated that the Department should perform a regulatory flexibility analysis of the rule under the Regulatory Flexibility Act. These commenters stated that the substantial number of small businesses, including many oil and gas lessees, are potentially subject to liability for natural resource damages and the proposed revisions would have a direct impact on those businesses.

Response: In light of the limited impacts on the overall economy, the proposed rule is also not expected to have a significant economic impact upon a substantial number of small entities. Moreover, the chemical and petroleum industries are concerns that are most often involved in natural resource damage cases, and these industries are dominated by large firms. Thus the Department need not prepare an analysis under the Regulatory Flexibility Act.

X. Miscellaneous Issues

1. Double Counting

Comment: One commenter requested additional clarification on what is meant by "double counting."

Response: Section 107(f) of CERCLA, which is incorporated in § 11.15(d) of the existing rule, prohibits double recovery of damages and assessment costs. As noted in the August 1, 1986 preamble, the risk of double recovery most commonly arise when trustees with overlapping authority develop separate damage figures for the same resource; when trustees assert claims for losses that are recoverable by private parties; and when trustees count the value of a particular lost use or nonuse more than once when calculating compensable value. Further clarification is beyond the scope of this rulemaking.

2. Threat of Release

Comment: Two commenters stated that the rule should allow recovery for damages caused by the threat of a release. The commenters offered an example of a threatened release to a body of water that deters use of the water for fishing.

Response: As noted in the August 1, 1986 preamble, the natural resource damage assessment regulations may not be used to assess damages caused by a

mere threat of a release. Section 301(c) of CERCLA authorizes the Department to develop regulations for assessment of "damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance." Therefore, the rule may only be used when there has been an actual release, as opposed to a threat of a release, and an actual injury to a natural resource, as opposed to a mere reduction in use of a resource. Further clarification is beyond the scope of this rulemaking.

3. Coordination With Remedial Activities

Comment: There were a few comments on coordination of natural resource damage assessments with response activities. One commenter stated that the rule should impose a limit on the time allowed to conduct an assessment in order to avoid potential conflicts with EPA settlement negotiations. Another commenter requested additional guidance on coordination of restoration planning and remedial action planning.

Response: The August 1, 1986 preamble contains considerable discussion of the relationship between response actions and natural resource damage assessments. 51 FR 27681, 27692–27693. Further clarification of the issue is beyond the scope of this rulemaking.

4. Covenants Not To Sue

Comment: One commenter suggested that the rule refer to the trustees' authority to issue a covenant not to sue.

Response: In the February 22, 1988 preamble, the Department discussed its decision not to address the provisions of section 122(j) of CERCLA, which deal with the authority to issue covenants not to sue, in the natural damage assessment regulations. 53 FR 5168–5169. The regulations were developed to create an optional procedure that trustee agencies could use to obtain a rebuttable presumption in a judicial or administrative proceeding. The Department strongly supports and encourages negotiated settlement of natural resource damage claims; however, it believes that discussions of settlement procedures, including issuance of covenants not to sue, are beyond the scope of the rule.

5. National Environmental Policy Act

Comment: One commenter stated that the Department should specify that the National Environmental Policy Act (NEPA) does not apply to assessments or restorations performed in accordance with this rule.

Response: In the August 1, 1986 preamble, the Department described the Restoration Methodology Plan, the predecessor document to the proposed Restoration and Compensation Determination Plan, as follows:

> The Restoration Methodology Plan is designed, in particular, to satisfy the requirements of NEPA without additional analysis at this stage * * * The information in the Restoration Methodology Plan] has been designed to fulfill the same information requirements as NEPA, with equivalent opportunities for public input. Thus if an [Environmental Assessment] or [Environmental Impact Statement] were determined to be necessary for a particular restoration or other activity planned in satisfaction of a particular claim, appropriate and timely information would be available. 51 FR 27691 & 27725.

Further clarification of the applicability of NEPA is beyond the scope of this rulemaking.

6. Restoration Plan

Comment: One commenter sought clarification of the requirement of proposed § 11.93(a) that the Restoration Plan be prepared in accordance with the guidance set forth in proposed § 11.81. Specifically, the commenter expressed concern that this requirement would subject the Restoration Plan to a separate comment and review period.

Response: Proposed §§ 11.81 and 11.93(a) do subject the Restoration Plan to a separate public review and comment period in compliance with the explicit requirement of section 111(i) of CERCLA.

7. Rebuttable Presumption for State and Tribal Trustees

Comment: One commenter stated that the Department should revise its rule to extend the rebuttable presumption to assessments performed by State and tribal trustees.

Response: Section 11.91(c) of the rule was revised in 1988 to reflect the SARA amendment to CERCLA granting a rebuttable presumption to natural resource damage assessments performed by State trustees. SARA did not extend the rebuttable presumption to assessments performed by tribal trustees. However, as noted in the preamble to the 1988 rulmaking, assessments performed jointly by Federal trustees and tribal trustees or by State trustees and tribal trustees would qualify for a rebuttable presumption. 53 FR 5166, 5168 (February 22, 1988).

Dated: April 7, 1993.

Brad Leonard,

Acting Assistant Secretary, Policy, Management and Budget.

[FR Doc. 93–17176 Filed 7–21–93; 8:45 am]

BILLING CODE 4310–RG–M

federal register

Thursday
July 22, 1993

Part IV

Department of Defense

Office of the Secretary

32 CFR Part 341, et al.
Redesignation of Parts; Organization, Functions, and Authority Delegations; Final Rules

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 354, 355, 356, 357, 358, 359, 360, 361, 364, 377, 385, 386, 387, 393, 398, and 399

Redesignation of Parts

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document assigns administrative redesignations to several parts in title 32 of the Code of Federal Regulations. The intention of this action is to group the parts in the order of their lead part numbers and organizational structure.

EFFECTIVE DATE: July 22, 1993.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Correspondence and Directives Directorate, Washington Headquarters Services, Pentagon, Washington, DC 20301–1155, telephone (703) 697–4111.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Parts 354, 355, 356, 357, 358, 359, 360, 361, 364, 377, 385, 386, 387, 393, 398, and 399

Defense Department, Organization and functions (Government agencies).

Accordingly, by the authority of 10 U.S.C. 134, title 32, chapter I, of the Code of Federal Regulations is amended as follows:

PARTS 364, 385, 386, and 387—[REMOVED]

1. 32 CFR parts 364, 385, 386, and 387 are removed.

2. 32 CFR parts 354, 355, 356, 357, 358, 359, 360, and 361 are redesignated in the table shown below.

REDESIGNATION TABLE

Old part number	New part number
354	385
355	386
356	364
357	387
358	393
359	398
360	399
361	377

3. All internal references within the parts redesignated in the table are revised accordingly.

PART 377—[AMENDED]

4. Newly redesignated 377 is amended by revising the narrative for footnote 1 to read "Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161." and the narrative for footnotes 2 through 4 to read "See footnote 1 to § 377.4(b)."

PART 385—[AMENDED]

5. Newly redesignated part 385 is amended as follows:

a. The narrative for footnote 1 is revised to read: "Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161."

§ 385.6 [Amended]

b. Section 385.6(d) is amended by redesignating footnote "1" as footnote "2" and by revising the narrative to read "See footnote 1 to § 385.3."

§ 385.7 [Amended]

c. Section 385.7 is amended as follows:

1. Paragraph (m) by redesignating footnote "1" as footnote "3" and by revising the narrative to read "See footnote 1 to § 385.3."

2. Paragraph (p) by redesignating footnote "1" as footnote "4" and by revising the narrative to read "See footnote 1 to § 385.3."

3. Paragraph (q) by redesignating footnote "1" as footnote "5" and by adding the narrative to read "See footnote 1 to § 385.3."

PART 386—[AMENDED]

6. Newly redesignated part 386 is amended by revising the narrative for footnotes 2, 4, and 5 to read "See footnote 1 to § 386.1(a)."

PART 387—[AMENDED]

§ 387.5 [Amended]

7. Newly redesignated § 387.5 is amended as follows:

a. Paragraph (c) is amended by revising "5,000.19" to read "5000.19"

b. The narrative for footnote 1 is revised to read: "Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161."

PART 393—[AMENDED]

8. Newly redesignated part 393 is amended as follows:

a. The heading is revised to read "Part 393—Advanced Research Projects Agency (ARPA)"

§ 393.1 [Amended]

b. Section 393.1 is amended by revising "Defense Advanced Research Projects Agency (DARPA)" to read "Advanced Research Projects Agency (ARPA)"

§§ 393.3, 393.4, 393.5, 393.6, and 393.7 [Amended]

c. Sections 393.3, 393.4 introductory text, 393.4 (a), (b), (c), (d), (g); 393.5 introductory text, 393.5 (b), (c), (g); 393.6(a) introductory text, (a)(2), (b)(1), (b)(2); 393.7 (a), (b), (c), and (d); Appendix to part 393, introductory text, sections 1., 2., 3.a., 3.b., 3.c., 4., 6., 8., 9., 10., 12., and 13 are amended by revising "DARPA" to read "ARPA".

PART 398—[AMENDED]

9. Newly redesignated 398 is amended by revising the narrative for footnote 1 to read "Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161."

PART 399—[AMENDED]

10. Newly redesignated 399 is amended by revising the narrative for footnote 3 to read "See footnote 1 to § 399.4(f)" and the narrative for footnote 4 to read "See footnote 1 to § 399.4(g)."

Dated: July 13, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–17034 Filed 7–21–93; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

32 CFR Part 361

[DoD Directive 5111.9]

Director of Net Assessment

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document updates the responsibilities, functions, relationships and authorities of the Director of Net Assessment. The Director of Net Assessment is the principal staff assistant and advisor to the Assistant Secretary of Defense for Policy, the Under Secretary of Defense for Policy, and the Secretary of Defense on net assessment matters.

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, Office of Organizational and Management Planning, telephone 703–695–4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 361

Organization and functions (Government agencies).

Accordingly, 32 CFR part 361 is added to read as follows:

PART 361—DIRECTOR OF NET ASSESSMENT

Sec.
361.1 Purpose.
361.2 Applicability.
361.3 Responsibilities and functions.
361.4 Relationships.
361.5 Authorities.

Authority: 10 U.S.C. 113.

§361.1 Purpose.

Under the authority vested in the Secretary of Defense by 10 U.S.C. 113, this part updates the responsibilities, functions, relationships, and authorities, as prescribed herein.

§361.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§361.3 Responsibilities and functions.

The Director of Net Assessment is the principal staff assistant and advisor to the Assistant Secretary of Defense for Policy and Plans (ASD(P&P)), the Under Secretary of Defense for Policy (USD(P)), and the Secretary of Defense on net assessment matters. In this capacity, the Director of Net Assessment shall:

(a) Develop and coordinate net assessments of the standing, trends, and future prospects of U.S. military capabilities and military potential in comparison with that of other countries or group of countries so as to identify emerging or future threats or opportunities for the United States. This shall include, as required, net assessments of:

(1) Current and projected U.S. and foreign military capabilities by theater, region, function, or mission; and

(2) Specific current and projected U.S. and foreign capabilities, operational tactics, doctrine, and major categories of weapon systems.

(b) Develop, advise, and consult on the net assessment portion of the Annual Report of the Secretary of Defense to the President and Congress, congressional testimony, and foreign government discussions; and provide guidance for the preparation of net assessments by the Chairman of the Joint Chiefs of Staff.

(c) Provide guidance and staff assistance, and represent the ASD(P&P) and the USD(P) in the development of national net assessments by the National Security Council, and act as the primary OSD focal point for joint efforts with the Intelligence Community to produce net assessments.

(d) Provide support for the improvement and development of net assessments within the Department of Defense, including, but not limited to, the maintenance of a library of historical all-source intelligence and friendly force data.

(e) Provide objective analyses of policy, doctrine, strategy, goals, and objectives as requested or determined necessary.

(f) Coordinate with DoD officials, as necessary, to ensure that Departmental documents, deliberations, and discussions reflect appropriate, up-to-date assessment information.

(g) Perform such other functions as the ASD(P&P), USD(P), or the Secretary of Defense may prescribe.

§361.4 Relationships.

In the performance of assigned functions and responsibilities, the Director of Net Assessment shall serve under the authority, direction, and control of the ASD(P&P), and shall:

(a) Report through the ASD(P&P) to the USD(P) and the Secretary of Defense.

(b) Exchange information with other OSD officials, heads of the DoD Components, and other Federal officials having collateral or related functions.

(c) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and to achieve maximum efficiency and economy.

(d) Other OSD officials and heads of DoD Components shall coordinate with the Director of Net Assessment on all matters related to the responsibilities and functions cited in §361.3.

§361.5 Authorities.

The Director of Net Assessment is hereby delegated authority to:

(a) Obtain reports, information, advice, and assistance, consistent with DoD Directive 8910.1,[1] as necessary to carry out assigned functions.

(b) Communicate directly with the heads of the DoD Components. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(c) Communicate with other Government officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

Dated: July 15, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-17240 Filed 7-21-93; 8:45 am]

BILLING CODE 5000-04-M

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

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32 CFR Part 360

[DoD Directive 5111.8]

Assistant Secretary of Defense for Strategy, Requirements, and Resources

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document reflects organizational changes by establishing the position of the Assistant Secretary of Defense for Strategy, Requirements, and Resources (ASD(SR&R)). The ASD(SR&R) is the principal staff assistant and advisor to the Under Secretary of Defense for Policy and the Secretary of Defense on national security strategy and defense strategy; and the resources, forces, and contingency plans necessary to implement that strategy.

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, Office of Organizational and Management Planning, telephone 703-695-4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 360

Organization and functions (Government agencies).

Accordingly, 32 CFR part 360 is added to read as follows:

PART 360—ASSISTANT SECRETARY OF DEFENSE FOR STRATEGY, REQUIREMENTS, AND RESOURCES (ASD(SR&R))

Sec.
360.1 Purpose.
360.2 Applicability.
360.3 Responsibilities and functions.
360.4 Relationships.
360.5 Authorities.

Authority: 10 U.S.C. 113 and 136.

§360.1 Purpose.

Under the authority vested in the Secretary of Defense by 10 U.S.C. 113

and 136, this part establishes the position of ASD(S&R) with the responsibilities, functions, relationships, and authorities, as prescribed herein.

§ 360.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 360.3 Responsibilities and functions.

The Assistant Secretary of Defense for Strategy, Requirements, and Resources is the principal staff assistant and advisor to the Under Secretary of Defense for Policy (USD(P)) and the Secretary of Defense on national security strategy and defense strategy; and the resources, forces, and contingency plans necessary to implement that strategy. In this capacity, the ASD(SR&R) shall:

(a) Analyze and develop national security strategy and defense strategy. Ensure their integration into the Department's resource allocation, force structure development, weapons system acquisition planning, and budgetary processes.

(b) Lead the development of the Defense Planning Guidance (DPG), in coordination with the Assistant Secretary of Defense for Policy and Plans. Ensure the DPG priorities and objectives are appropriately represented throughout the Planning, Programming, and Budgeting System and the Acquisition Management System.

(c) Develop the Contingency Planning Guidance. Review contingency plans, major force deployments, and military operational plans to advise the USD(P) in meeting the statutory requirement to integrate plans.

(d) Evaluate the capability of forces to accomplish defense strategy. Develop alternative force structures to meet changing requirements and strategy.

(e) Analyze the Military Departments' program and budget submissions to ensure they adequately support the DPG strategy and program guidance. Recommend specific programmatic initiatives where appropriate.

(f) Monitor and provide policy input to the military requirements and the Acquisition Management System in terms of policy and strategy-driven requirements for major program Research, Development, Test, and Evaluation and procurement. Ensure linkage to the DPG strategy and program guidance.

(g) Prepare the strategy section of the Annual Report of the Secretary of Defense to the President and Congress and coordinate USD(P) input to and comments on the document. Provide coordinated strategy input to Secretary and Deputy Secretary of Defense and USD(P) budget testimony to Congress. Serve as the lead office for coordinating DoD input to and comments on the President's National Security Strategy.

(h) Develop planning assumptions for a range of theater conflicts and crises. Conduct force evaluations to help identify the appropriate U.S. military force posture to carry out military strategies. Identify critical tasks needed to carry out these strategies, and assess the capability of current and programmed forces to perform these critical tasks.

(i) Guide the Advance Planning Group within the Crisis Management System for effective crisis management.

(j) Represent the USD(P) and the Secretary of Defense in interagency deliberations and international negotiations dealing with assigned areas of responsibility.

(k) Perform such other functions as the USD(P) and the Secretary of Defense may prescribe.

§ 360.4 Relationships.

(a) In the performance of assigned functions and responsibilities, the ASD(SR&R) shall serve under the authority, direction, and control of the USD(P), and shall:

(1) Report directly to the USD(P).

(2) Coordinate and exchange information with other OSD officials, heads of the DoD Components, and other Federal officials having collateral or related functions.

(3) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and to achieve maximum efficiency and economy.

(b) Other OSD officials and heads of DoD Components shall coordinate with the ASD(SR&R) on all matters related to the responsibilities and functions cited in § 360.3.

§ 360.5 Authorities.

The ASD(SR&R) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1-M [1], that implement policy approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified or Specified Combatant Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 8910.1 [2], as necessary to carry out assigned functions.

(c) Communicate directly with the heads of the DoD Components. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(d) Communicate with other Government officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

Dated: July 15, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-17241 Filed 7-21-93; 8:45 am]

BILLING CODE 5000-04-M

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 360.5 (a).

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32 CFR Part 359

[DoD Directive 5111.7]

Assistant Secretary of Defense for Regional Security Affairs

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document reflects organizational changes by establishing the position of the Assistant Secretary of Defense for Regional Security Affairs (ASD(RSA)) and replaces the position of the Assistant Secretary of Defense for International Security Affairs. The ASD(RSA) is the principal staff assistant and advisor to the Under Secretary of Defense for Policy and the Secretary of Defense on the formulation and coordination of regional security strategy and policy, and political-military policy on issues of DoD interest that relate to foreign governments and their defense establishments, except the states of the former Soviet Union.

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, Office of Organizational and Management Planning, telephone 703-695-4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 359

Organization and functions (Government agencies).

Accordingly, 32 CFR part 359 is added to read as follows:

PART 359—ASSISTANT SECRETARY OF DEFENSE FOR REGIONAL SECURITY AFFAIRS (ASD(RSA))

Sec.
359.1 Purpose.
359.2 Applicability.
359.3 Responsibilities and functions.
359.4 Relationships.
359.5 Authorities.

Authority: 10 U.S.C. 113 and 136.

§ 359.1 Purpose.

Under the authority vested in the Secretary of Defense by 10 U.S.C. 113 and 136, this part establishes the position of ASD(RSA) with the responsibilities, functions, relationships, and authorities, as prescribed herein

§ 359.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 359.3 Responsibilities and functions.

The Assistant Secretary of Defense for Regional Security Affairs is the principal staff assistant and advisor to the Under Secretary of Defense for Policy (USD(P)) and the Secretary of Defense for the formulation and coordination of regional security strategy and policy, and political-military policy on issues of DoD interest that relate to foreign governments and their defense establishments, except the states of the former Soviet Union. In this capacity, the ASD(RSA) shall:

(a) Develop, coordinate, and oversee the implementation of:

(1) Defense security policy and manage defense and military relations with all foreign countries except the states of the former Soviet Union.

(2) Policy and activities related to the North Atlantic Treaty Organization (NATO) and the member countries of NATO, the countries of Central and Eastern Europe formerly in the Warsaw Pact, and the three Baltic States.

(3) Policy relating to Prisoner of War and/or Missing in Action matters and represent the Department of Defense on such matters in interagency processes.

(b) Develop DoD positions and recommendations, and coordinate policy matters concerning security assistance, Military Assistance Advisory Groups, and other missions pertaining to security assistance.

(c) Develop, negotiate, and monitor defense cooperation agreements such as base rights, access and prepositioning, exchange programs, security assistance, and Status of Forces Agreements with foreign governments in assigned geographic areas of responsibility. Coordinate with the Under Secretary of Defense for Acquisition on those programs which fall within the purview of DoD Directive 5530.3 [1], such as industrial cooperation and coproduction agreements.

(d) Conduct and manage day-to-day bilateral relations with all foreign governments in assigned areas of responsibility.

(e) In coordination with the Under Secretary of Defense for Acquisition, develop industrial cooperation and coproduction arrangements for countries in assigned geographic areas of responsibility.

(f) Negotiate and implement agreements with other nations in assigned geographical areas regarding U.S. military facilities, access and operating rights, status of forces and international political-military matters, international agreements, and legal status of U.S. military personnel, including comparable arrangements governing friendly forces in the United States.

(g) Participate in those planning, programming, and budgeting activities that relate to assigned areas of responsibility.

(h) Represent the USD(P) and the Secretary of Defense in interagency deliberations and international negotiations dealing with assigned areas of responsibility.

(i) Perform such other functions as the USD(P) and the Secretary of Defense may prescribe.

§ 359.4 Relationships.

(a) In the performance of assigned functions and responsibilities, the ASD(RSA) shall serve under the authority, direction, and control of the USD(P), and shall:

(1) Report directly to the USD(P).

(2) Exercise authority, direction, and control over the Director, Defense Security Assistance Agency.

(3) Coordinate and exchange information with other OSD officials, heads of the DOD Components, and Federal officials having collateral or related functions.

(4) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and to achieve maximum efficiency and economy.

(b) Other OSD officials and heads of the DOD Components shall coordinate with the ASD(RSA) on all matters related to the responsibilities and functions cited in § 359.3.

§ 359.5 Authorities.

The ASD(RSA) is hereby delegated authority to:

(a) Issue DOD Instructions, DOD publications, and one-time directive-type memoranda, consistent with DOD 5025.1–M [2], that implement policy approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified or Specified Combatant Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(b) Obtain reports, information, advice, and assistance, consistent with DOD Directive 8910.1,[3] as necessary to carry out assigned functions.

(c) Communicate directly with the heads of the DOD Components. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(d) Communicate with other Government officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

Dated: July 15, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–17242 Filed 7–21–93; 8:45 am]

BILLING CODE 5000–04–M

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32 CFR Part 358

[DOD Directive 5111.6]

Assistant Secretary of Defense for Policy and Plans

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: This part reflects organizational changes by establishing the position of the Assistant Secretary of

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 359.3 (a).

[3] See footnote 1 to § 359.3 (a).

Defense for Policy and Plans (ASD(P&P)) as the principal staff assistant and advisor to the Under Secretary of Defense for Policy (USD(P)) and the Secretary of Defense on mid- to long-range planning on strategic security matters and emerging national security issues, defense policy priorities, and net assessments; formulates and coordinates security strategy and policy and political-military policy on issues of DoD interest that relate to foreign governments and their defense establishments in Russia, Ukraine, and the other states of the former Soviet Union (not including the Baltic States); and manages the USD(P) research program and Defense Policy Board activities and programs.

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, Office of Organizational and Management Planning, telephone 703–695–4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 358

Organization and functions (Government agencies).

Accordingly, 32 CFR part 358 is added to read as follows:

PART 358—ASSISTANT SECRETARY OF DEFENSE FOR POLICY AND PLANS (ASD(P&P))

Sec.
358.1 Purpose.
358.2 Applicability.
358.3 Responsibilities and functions.
358.4 Relationships.
358.5 Authorities.

Authority: 10 U.S.C. 113 and 136.

§ 358.1 Purpose.

Under the authority vested in the Secretary of Defense by 10 U.S.C. 113 and 136, this part establishes the position of ASD(P&P) with the responsibilities, functions, relationships, and authorities, as prescribed herein.

§ 358.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 358.3 Responsibilities and functions.

The Assistant Secretary of Defense for Policy and Plans is the principal staff assistant and advisor to the Under Secretary of Defense for Policy (USD(P)) and the Secretary of Defense on mid- to long-range planning on strategic security matters and emerging national security issues, defense policy priorities, and net assessments. In addition, the ASD(P&P) formulates and coordinates security strategy and policy and political-military policy on issues of DoD interest that relate to foreign governments and their defense establishments in Russia, Ukraine, and the other states of the former Soviet Union (not including the Baltic States). Responsibilities also include managing the USD(P) research program and Defense Policy Board activities and programs. In this capacity, the ASD(P&P) shall:

(a) Analyze from a policy planning perspective—namely, a mid- to long-term perspective that relates key national interests to the critical analytical questions that determine policy options and choices—the full range of defense and foreign policy issues of concern to the USD(P) and the Secretary of Defense. Analyze from a mid- to long-term perspective national security issues and develop plans and policy to address them, with particular emphasis on regional and transnational issues. Assist in the development and management of policy guidance for USD(P) representatives in the interagency process.

(b) Prepare the portions of the Defense Planning Guidance that address the security environment, threat, interests, and policy rationale and objectives, in coordination with the Assistant Secretary of Defense for Strategy, Requirements, and Resources. Also prepare other documents containing similar subject matter, such as the Annual Report of the Secretary of Defense to the President and Congress, and coordinate with cognizant DoD officials to ensure that over-arching defense policy rationale is reflected in the DoD Planning, Programming, and Budgeting System.

(c) Develop, coordinate, and oversee the implementation of a comprehensive strategy toward Russia, Ukraine, and other newly independent states of Eurasia; develop and oversee defense security policy and military relations with the former Soviet republics (other than the Baltic States); develop DoD positions and recommendations, and coordinate policy matters concerning security assistance, defense conversion, and military-to-military contacts pertaining to these states, and oversee DoD activities to that end in coordination with the Assistant Security of Defense for Nuclear Security and Counterprolification. Develop policy and plans intended to help these states consolidate democracy, reform their economic systems, and establish smaller, defensively oriented, democratically accountable armed forces in coordination with the Assistant Secretary of Defense for Democracy and Peacekeeping.

(d) Analyze the unique challenges and problems of the post-Cold War security environment, including such topics as defining responsibility-sharing in addressing global security problems.

(e) Develop and coordinate net assessments of the standing, trends, and future prospects of U.S. military capability and military potential in comparison with that of other countries or groups of countries so as to identify emerging or future threats or opportunities for the United States. Coordinate with cognizant DoD officials to ensure that departmental documents, deliberations, and discussions reflect appropriate, up-to-date assessment information.

(f) Develop policy and monitor activities related to the development of advanced non-nuclear science and defense technology and analyses of the unfolding military-technical revolution. Represent the USD(P) on matters concerning nonnuclear technology policy and future development of technology to meet defense needs.

(g) Develop overall policy and oversee activities relating to policy research for the USD(P) and Secretary of Defense that integrate the needs of all officials in the office of the USD(P). Formulate plans and manage the provisions of external analysis and its integration into defense policy-making.

(h) Provide policy guidance to intelligence tasking, collection, and analysis in areas of responsibility, in conjunction with the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence.

(i) Participate in those planning, programming, and budgeting activities that relate to assigned areas of responsibility.

(j) Represent the USD(P) and the Secretary of Defense in interagency deliberations, meetings with foreign officials and outside experts, and international negotiations dealing with assigned areas of responsibility.

(k) Perform such other functions as the USD(P) and the Secretary of Defense may prescribe.

§ 358.4 Relationships.

(a) In the performance of assigned functions and responsibilities, the ASD(P&P) shall serve under the authority, direction, and control of the USD(P), and shall:

(1) Report directly to the USD(P).

(2) Exercise authority, direction, and control over the Director of Net Assessment.

(3) Coordinate and exchange information with other OSD officials, heads of the DoD Components, and other Federal officials having collateral or related functions.

(4) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and to achieve maximum efficiency and economy.

(b) Other OSD officials and heads of DoD Components shall coordinate with the ASD(P&P) on all matters related to the responsibilities and functions cited in § 358.3.

§ 358.5 Authorities.

The ASD(P&P) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M [1], that implement policy approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified or Specified Combatant Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 8910.1 [2], as necessary to carry out assigned functions.

(c) Communicate directly with the heads of the DoD Components. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(d) Communicate with other Government officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

Dated: July 15, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–17243 Filed 7–21–93; 8:45 am]

BILLING CODE 5000–04–M

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 358.5 (a).

32 CFR Part 357

[DoD Directive 5111.5]

Assistant Secretary of Defense for Nuclear Security and Counterproliferation

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part reflects organizational changes by establishing the position of the Assistant Secretary of Defense for Nuclear Security and Counterproliferation (ASD(NS&CP)) and replaces the position of the Assistant Secretary of Defense for International Security Policy. The ASD (NS&CP) is the principal staff assistant and advisor to the Under Secretary of Defense for Policy and the Secretary of Defense on reducing and countering nuclear, biological, chemical, and missile threats to the United States and its forces and allies; arms control negotiations, implementation, and verification policy; denuclearization, threat reduction, and nuclear safety, security, and dismantlement in the states of the former Soviet Union; counterproliferation; and policy and strategy for U.S. nuclear weapons, space systems, and selected advanced conventional weapons; and technology transfer.

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, Office of Organizational and Management Planning, telephone 703–695–4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 357

Organization and functions (Government agencies).

Accordingly, title 32 of the Code of Federal Regulations, chapter I, subchapter R, is amended to add part 357 to read as follows:

PART 357—ASSISTANT SECRETARY OF DEFENSE FOR NUCLEAR SECURITY AND COUNTERPROLIFERATION (ASD(NS&CP))

Sec.
357.1 Purpose.
357.2 Applicability.
357.3 Responsibilities and functions.
357.4 Relationships.
357.5 Authorities.

Authority: 10 U.S.C. 113 and 136.

§ 357.1 Purpose.

Under the authority vested in the Secretary of Defense by 10 U.S.C. 113 and 136, this part establishes the position of ASD(NS&CP) with the responsibilities, functions, relationships, and authorities, as prescribed herein.

§ 357.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 357.3 Responsibilities and functions.

The Assistant Secretary of Defense for Nuclear Security and Counterproliferation is the principal staff assistant and advisor to the Under Secretary of Defense for Policy (USD(P)) and the Secretary of Defense on reducing and countering nuclear, biological, chemical, and missile threats to the United States and its forces and allies; arms control negotiations, implementation, and verification policy; denuclearization, threat reduction, and nuclear safety, security, and dismantlement in the states of the former Soviet Union; counterproliferation; and policy and strategy for U.S. nuclear weapons, space systems, and selected advanced conventional weapons; and technology transfer. In this capacity, the ASD(NS&CP) shall:

(a) Develop, coordinate, and oversee the implementation of:

(1) Policy related to arms control negotiations, implementation, and verification, including cooperative threat reduction and safety, security, and dismantlement, in the states of the former Soviet Union.

(2) Policy for denuclearization in the states of the former Soviet Union, in coordination with the Assistant Secretary of Defense for Policy and Plans.

(3) Policy related to nuclear forces and strategy.

(4) Policy related to U.S. Government counterproliferation activities.

(5) Policy related to nuclear offensive and defensive forces, including the structure, requirements, and posture of strategic forces, strategic reserve forces, theater nuclear forces, warning systems, and space systems and their employment; surety, reliability, safety, and security of nuclear forces; and strategic and theater missile defense. Provide policy guidance to the Director of the Ballistic Missile Defense Organization.

(6) DoD space policy, and review and evaluate programs, plans, and systems

requirements relating to the use of outer space.

(b) Develop DoD policy positions and recommendations regarding non-proliferation and arms control policy for nuclear, chemical, biological, missile, advanced conventional weapons, and international technology transfers. Additionally, develop DoD policy positions and recommendations regarding arms control and disarmament negotiations, to include multilateral negotiations within these areas.

(c) Provide policy guidance for strategic development of new defense technology through the stage of technology demonstration.

(d) Provide policy guidance to intelligence tasking, collection, and analysis in areas of assigned responsibility, in conjunction with the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence. Integrate proliferation intelligence information, proliferation threat assessments, and proliferation-related information received from other sources into the USD(P) policy formulation process.

(e) Manage and provide policy guidance to the Defense Technology Security Administration; and develop, coordinate, and oversee the implementation of DoD policy for international technology transfers.

(f) Promote coordination, cooperation, and joint planning on nuclear armaments and strategy with North Atlantic Treaty Organization (NATO) allies, including responsibilities regarding the NATO Nuclear Planning Group and the High Level Group.

(g) Participate in those planning, programming, and budgeting activities that relate to assigned areas of responsibility.

(h) Represent the USD(P) and the Secretary of Defense in interagency deliberations and international negotiations dealing with assigned areas of responsibility.

(i) Perform such other functions as the USD(P) and the Secretary of Defense may prescribe.

§ 357.4 Relationships.

(a) In the performance of assigned functions and responsibilities, the ASD(NS&CP) shall serve under the authority, direction, and control of the USD(P), and shall:

(1) Report directly to the USD(P).

(2) Exercise authority, direction, and control over the Director, Defense Technology Security Administration, established by DoD Directive 5105.51 [1].

(3) Coordinate and exchange information with other OSD officials, heads of the DoD Components, and Federal officials having collateral or related functions.

(4) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and to achieve maximum efficiency and economy.

(b) Other OSD officials and heads of the DoD Components shall coordinate with the ASD(NS&CP) on all matters related to the responsibilities and functions cited in § 357.3.

§ 357.5 Authorities.

The ASD(NS&CP) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1-M [2], that implement policy approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified or Specified Combatant Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 8910.1 [3], as necessary to carry out assigned functions.

(c) Communicate directly with the heads of the DoD Components. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(d) Communicate with other Government officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

Dated: July 15, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-17244 Filed 7-21-93; 8:45 am]

BILLING CODE 5000-04-M

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 357.4 (a) (2).

[3] See footnote 1 to § 357.4 (a) (2).

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32 CFR Part 356

[DoD Directive 5111.4]

Assistant Secretary of Defense for Democracy and Peacekeeping

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part reflects organizational changes by establishing the position of the Assistant Secretary of Defense for Democracy and Peacekeeping (ASD(D&P)), as the principal staff assistant and advisor to the Under Secretary of Defense for Policy and the Secretary of Defense on DoD policy and planning for the promotion of democracy and the defense of human rights throughout the world, U.S. participation in international peacekeeping and peace-enforcement activities, DoD provision of humanitarian assistance, refugee affairs, and U.S. international information programs.

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, Office of Organizational and Management Planning, telephone 703-695-4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 356

Organization and functions (Government agencies).

Accordingly, 32 CFR part 356 is added to read as follows:

PART 356—ASSISTANT SECRETARY OF DEFENSE FOR DEMOCRACY AND PEACEKEEPING (ASD(D&P))

Sec.
356.1 Purpose.
356.2 Applicability.
356.3 Responsibilities and functions.
356.4 Relationships.
356.5 Authorities.

Authority: 10 U.S.C. 113 and 136.

§ 356.1 Purpose.

Under the authority vested in the Secretary of Defense by 10 U.S.C. 113 and 136, this part establishes the position of ASD(D&P) with the responsibilities, functions, relationships, and authorities, as prescribed herein.

§ 356.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 356.3 Responsibilities and functions.

(a) The Assistant Secretary of Defense for Democracy and Peacekeeping is the principal staff assistant and advisor to the Under Secretary of Defense for Policy (USD(P)) and the Secretary of Defense on DoD policy and planning for

the promotion of democracy and the defense of human rights throughout the world, U.S. participation in international peacekeeping and peace-enforcement activities, DoD provision of humanitarian assistance, refugee affairs, and U.S. international information programs. In these capacities, the ASD(D&P) shall:

(1) Develop, coordinate, and oversee the implementation of policy and plans for matters related to:

(i) The promotion of democracy and democratic values, including the appropriate role of the military in constitutional democracies, the protection of democratic processes, and respect for human rights.

(ii) The use of DoD resources to encourage the strengthening and development of democracy and respect for human rights throughout the world.

(iii) The participation of U.S. Armed Forces and other DoD resources in United Nations and other international peacekeeping or peace-enforcement activities, including the development of policy related to creating, identifying, training, exercising, and committing military forces for such purposes.

(iv) The use of DoD resources and Armed Forces to respond to humanitarian situations, including those involving refugees, throughout the world.

(v) DoD participation in international activities supporting U.S. international information programs.

(2) Administer the National Security Education Program to provide scholarships, fellowships, and grants that improve the teaching and learning of subjects in the fields of foreign language, area studies and other international fields, pursuant to Public Law 102–183.

(b) The ASD(D&P) serves as the DoD Coordinator for Drug Enforcement Policy and Support and is the principal staff assistant and advisor to the Under Secretary of Defense (USD(P)) and the Secretary of Defense for drug control policy, requirements, priorities, systems, resources, and programs. In this capacity, the ASD(D&P) shall:

(1) Develop policy, conduct analyses, provide advice, make recommendations, and issue guidance on DoD drug control plans and programs.

(2) Develop systems and standards for the administration and management of approved DoD drug control plans and programs.

(3) Promulgate plans, programs, actions, and taskings pertaining to the drug control program, consistent with the national drug control strategy and DoD drug control policy and objectives.

(4) Review, evaluate, coordinate, and monitor DoD drug control plans and programs to ensure adherence to approved policy and standards.

(5) Promote coordination, cooperation, and mutual understanding concerning DoD drug control activities within the Department of Defense and Congress, and between the Department of Defense and other Federal Agencies, State and local governments, and the civilian community.

(6) Serve on boards, committees, and other groups pertaining to assigned drug control functions, and represent the USD(P) and Secretary of Defense on drug control matters outside the Department.

(7) Serve as the DoD point of contact for the Office of the Director of National Drug Control Policy, and other Federal and State agencies as appropriate.

(8) Participate in, oversee, and monitor planning, programming, and budgeting for the DoD counterdrug mission, in coordination with OSD officials, the Chairman of the Joint Chiefs of Staff, and appropriate DoD Components.

(9) Coordinate and monitor DoD support to civilian drug law enforcement agencies.

(10) Coordinate and monitor interagency efforts to promote the detection and monitoring of the maritime and aerial transit of illegal drugs into the United States.

(11) Coordinate and monitor, in conjunction with the Assistant Secretary of Defense for Reserve Affairs, National Guard support to State drug law enforcement operations and to the Department of Defense, as required.

(12) Coordinate and monitor, in conjunction with the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, DoD intelligence and communications support to the Department of Defense and State drug law enforcement operations.

(c) In so far as the exercise of ASD(D&P) responsibilities and functions defined in paragraphs (a) and (b) of this section, uniquely affect or are conducted in specific geographic regions of the world, the ASD(D&P) shall exercise those responsibilities and functions in cooperation and association with the Assistant Secretary of Defense that is assigned responsibility for overall U.S. defense policy in that region.

(d) Participate in those planning, programming, and budgeting activities that relate to assigned areas of responsibility.

(e) Represent the USD(P) and the Secretary of Defense in interagency deliberations and international negotiations dealing with assigned areas of responsibility.

(f) Perform such other functions as the USD(P) and the Secretary of Defense may prescribe.

§ 356.4 Relationships.

(a) In the performance of assigned functions and responsibilities, the ASD(D&P) shall serve under the authority, direction, and control of the USD(P), and shall:

(1) Report directly to the USD(P).

(2) Coordinate and exchange information with other OSD officials, heads of the DoD Components, and other Federal officials having collateral or related functions.

(c) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and to achieve maximum efficiency and economy.

(d) Other OSD officials and heads of DoD Components shall coordinate with the ASD(D&P) on all matters related to the responsibilities and functions cited in § 356.3.

§ 356.5 Authorities.

The ASD(D&P) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M [1], that implement policy approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified and Specified Combatant Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 8910.1 [2], as necessary to carry out assigned functions.

(c) Communicate directly with the heads of the DoD Components. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(d) Communicate with other Government officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 356.5(a).

Dated: July 15, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-17245 Filed 7-21-93; 8:45 am]

BILLING CODE 5000-04-M

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32 CFR Part 355

[DoD Directive 5111.3]

Principal Deputy Under Secretary of Defense for Policy

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part reflects new organizational changes by establishing the position of the Principal Deputy Under Secretary of Defense for Policy (PSUSD(P)), as the primary assistant to the Under Secretary of Defense for Policy (USD(P)), advises and assists the USD(P) across the full range of responsibilities in providing staff advice and assistance to the Secretary and Deputy Secretary of Defense particularly with regard to strategy formulation, contingency planning, and the integration of DoD plans and policy with overall national security objectives, and by law is empowered to act in his stead.

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, Office of Organizational and Management Planning, telephone 703-695-4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 355

Organization and functions (Government agencies).

Accordingly, 32 CFR part 355 is added to read as follows:

PART 355—PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE FOR POLICY (PDUSD(P))

Sec.
355.1 Purpose.
355.2 Applicability.
355.3 Responsibilities, functions, relationships, and authorities.

Authority: 10 U.S.C. 134a

§355.1 Purpose.

Pursuant to 10 U.S.C. 134a and the authority vested in the Secretary of Defense under 10 U.S.C. 113, this part establishes the position of PDUSD(P) with the responsibilities, functions, relationships, and authorities, as prescribed herein.

§355.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities.

§355.3 Responsibilities, functions, relationships, and authorities.

The Principal Deputy Under Secretary of Defense for Policy, as the primary assistant of the Under Secretary of Defense for Policy (USD(P)), advises and assists the USD(P) across the full range of responsibilities in providing staff advice and assistance to the Secretary and Deputy Secretary of Defense particularly with regard to strategy formulation, contingency planning, and the integration of DoD plans and policy with overall national security objectives, and by law is empowered to act in his stead. As such, the PDUSD(P) shall:

(a) Assist the USD(P) in carrying out the responsibilities, functions, relationships, and authorities contained in law and in 32 CFR part 354.

(b) Exercise full power and authority to act for the USD(P) and to exercise the powers of the USD(P) upon any and all matters concerning which the USD(P) is authorized to act pursuant to law and 32 CFR part 354. This all-inclusive authority may not be delegated in toto; however, the PDUSD(P) is authorized to make specific redelegations, as required.

Dated: July 15, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-17246 Filed 7-21-93; 8:45 am]

BILLING CODE 5000-04-M

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32 CFR Parts 341 and 369

[DoD Directive 5105.2]

Delegation of Authority to Deputy Secretary of Defense

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document provides for the delegation of authority from the Secretary of Defense to the Deputy Secretary of Defense empowering him to exercise the full range of statutory and administrative powers of the Secretary's office. It redesignates the delegation document to another part number for clarity and consistency in the organizational structure.

EFFECTIVE DATE: March 8, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, Office of Organizational and Management Planning, telephone 703-695-4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Parts 341 and 369

Organization and functions (Government agencies).

Accordingly, title 32, chapter I, subchapter R, of the Code of Federal Regulations is amended by redesignating part 369 as part 341 and revised to read as follows:

PART 341—DELEGATION OF AUTHORITY TO DEPUTY SECRETARY OF DEFENSE

§341.1 Purpose.

(a) In accordance with the authorities contained in 10 U.S.C. 113, the Secretary of Defense has delegated Deputy Secretary of Defense William J. Perry full power and authority to act for the Secretary of Defense and to exercise the powers of the Secretary of Defense upon any and all matters concerning which the Secretary of Defense is authorized to act pursuant to law.

(b) The all-inclusive authority delegated herein may not be redelegated in toto; however, the Deputy Secretary is authorized to make specific redelegations, as required.

Authority: 10 U.S.C. 113.

Dated: July 15, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-17247 Filed 7-21-93; 8:45 am]

BILLING CODE 5000-04-M

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32 CFR Part 354

[DoD Directive 5111.1]

Under Secretary of Defense For Policy

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document updates the responsibilities, functions, relationships and authorities of the Under Secretary of Defense for Policy. This part assigns USD(P) the responsibility to develop, coordinate and oversee the implementation of policy for the promotion of democracy and human rights and drug control policy, including planning, programming, and budgeting for the DoD counter-drug mission. It places certain officials under the authority, direction, and control of the USD(P).

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, Office of Organizational and Management Planning, telephone 703-695-4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 354

Organization and functions (Government agencies).

Accordingly, 32 CFR part 354 is added to read as follows:

PART 354—UNDER SECRETARY OF DEFENSE FOR POLICY (USD(P))

Sec.
354.1 Purpose.
354.2 Applicability.
354.3 Responsibilities and functions.
354.4 Relationships.
354.5 Authorities.

Authority: 10 U.S.C. 134.

§354.1 Purpose.

Pursuant to 10 U.S.C. 134 and the authority vested in the Secretary of Defense by 10 U.S.C. 113, this part updates the responsibilities, functions, relationships, and authorities of the USD(P), as prescribed herein.

§354.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§354.3 Responsibilities and functions.

The Under Secretary of Defense for Policy (USD(P)) is the principal staff assistant and adviser to the Secretary and Deputy Secretary of Defense for all matters concerning the formulation of national security and defense policy and the integration and oversight of DoD policy and plans to achieve national security objectives. In the exercise of this responsibility, the USD(P) shall:

(a) Represent the Department of Defense, as directed, in matters involving the National Security Council (NSC), Department of State, and other Departments, Agencies, and interagency groups with responsibilities for national security policy.

(b) Serve as a member of the NSC Deputies Committee; serve as a member of the Deputies Committee for Crisis Management; and advise the Secretary of Defense on crisis prevention and management, including contingency planning for major areas of concern.

(c) Develop policy for defense-related international negotiations and represent the Department of Defense in those negotiations unless otherwise directed.

(d) Develop and coordinate DoD policy and positions for international negotiations on arms control implementation and/or compliance issues.

(e) Develop policy on the conduct of alliances and defense relationships with foreign governments, their military establishments, and international organizations; integrate and oversee plans and programs undertaken in conjunction with those alliances and defense relationships.

(f) Develop, coordinate, and oversee the implementation of regional security strategy and policy; political-military policy on issues of DoD interest that relate to foreign governments and their defense establishments, to include arrangements for United States military facilities, access and operation rights, and status of forces; and policy on all matters relating to prisoners of war and missing in action.

(g) Develop, coordinate, and oversee the implementation of policy and plans for defense security assistance.

(h) Develop, coordinate, and oversee the implementation of policy to reduce and counter the threat of the United States, its forces, and allies of weapons of mass destruction and other militarily significant technologies and force capabilities, to include counterproliferation policy, arms control policy, and security policy.

(i) Provide oversight of all DoD activities related to international technology transfer; develop, coordinate, and provide policy direction and overall management for the DoD Technology Security Program and policy related to international technology transfer, to include export controls, dual-use and munitions licensing, arms cooperation programs, and support for enforcement and intelligence systems.

(j) Develop, coordinate, and oversee the implementation of strategy and policy for strategic and theater nuclear offensive forces, strategic defensive forces, and space systems; and review and evaluate plans, programs, and systems requirements for such forces and systems to assure consistency with the strategy and policy.

(k) Assist the Secretary of Defense in development of national security and defense strategy; advise on the resources and forces necessary to implement that strategy, to include serving as the principal advisor for the planning phase of the DoD Planning, Programming, and Budgeting System and for monitoring the degree to which the DoD program and budget underwrite the strategy; and assist the Secretary of Defense in preparing written policy guidance for the preparation and review of operational and contingency plans, including those for nuclear and conventional forces, and in reviewing such plans.

(l) Develop policy guidance, provide overall supervision, and provide oversight of planning, programming, budgeting, and execution of special operations activities, including civil affairs and psychological operations, and of low-intensity conflict activities, including counterterrorism, counterinsurgency, support to insurgency, and contingency operations.

(m) Develop, coordinate, and oversee the implementation of policy for the promotion of democracy and human rights, participation in peacekeeping or peace-enforcement activities, and the provision of humanitarian assistance.

(n) Develop, coordinate, and oversee the implementation of drug control policy, including planning, programming, and budgeting for the DoD counter-drug mission.

(o) Provide mid- and long-range policy planning on strategic security matters and emerging national security issues; develop and oversee the implementation of a comprehensive strategy toward Russia, Ukraine, and other newly independent states of Eurasia; plan and conduct net assessments and policy research activities and programs.

(p) Develop, coordinate, and oversee the implementation of policy for international security countermeasures activities of the Department of Defense; administer for the Department of Defense the National Disclosure Policy, the Foreign Disclosure and Technical Information System, the Foreign Visits System, and the U.S. Visitor International Technology System. As the U.S. Security Authority for North Atlantic Treaty Organization, serve as the primary focal point for staff coordination on these matters both internal and external to the Department of Defense. Develop policy and exercise OSD management oversight for emergency planning and preparedness, crisis management, defense mobilization in emergency situations, military support to civil authorities, civil defense, and continuity of operations and government. Develop policy and coordinate DoD participation in and oversight of special activities, special access programs, sensitive support to non-DoD agencies, and the joint worldwide reconnaissance schedule.

(q) Perform such other functions as the Secretary of Defense may prescribe.

§ 354.4 Relationships.

(a) In the performance of assigned functions and responsibilities, the USD(P) shall:

(1) Report directly to the Secretary and Deputy Secretary of Defense.

(2) Exercise authority, direction, and control over:

(i) The Principal Deputy Under Secretary of Defense for Policy.

(ii) The Assistant Secretary of Defense for Regional Security Affairs.

(iii) The Assistant Secretary of Defense for Nuclear Security and Counterproliferation.

(iv) The Assistant Secretary of Defense for Strategy, Requirements, and Resources.

(v) The Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict.

(vi) The Assistant Secretary of Defense for Democracy and Peacekeeping.

(vii) The Assistant Secretary of Defense for Policy and Plans.

(viii) The Director, Defense Security Assistance Agency, through the Assistant Secretary of Defense for Regional Security Affairs.

(ix) The Director, Defense Technology Security Administration, through the Assistant Secretary of Defense for Nuclear Security and Counterproliferation.

(x) The Director of Net Assessment, through the Assistant Secretary of Defense for Policy and Plans.

(xii) Such other subordinate officials as may be assigned.

(3) Coordinate and exchange information with other OSD officials, heads of the DoD Components, and Federal officials having collateral or related functions.

(4) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and achieve maximum efficiency and economy.

(b) Other OSD officials and head of the DoD Components shall coordinate with the USD(P) on all matters related to the responsibilities and functions cited in § 354.3.

§ 354.5 Authorities.

The USD(P) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M,[1] that implement policy approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified or Specified Combatant Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 8910.1,[2] as necessary to carry out assigned functions.

(c) Communicate directly with the heads of the DoD Components. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(d) Communicate with other Government officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

Dated: July 15, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–17248 Filed 7–21–93; 8:45 am]

BILLING CODE 5000–04–M

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 354.5 (a).

federal register

Thursday
July 22, 1993

Part V

Department of Housing and Urban Development

Office of Assistant Secretary

Funding for HOPE for Elderly; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-93-3643; FR 3519-N-01]

Notice of Funding Availability (NOFA) for the HOPE for Elderly Independence Program for Fiscal Year (FY) 1993

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for Fiscal Year (FY) 1993.

SUMMARY: This notice (NOFA) announces the availability of funding for supportive services and section 8 rental vouchers for a national competition for FY 1993 for the HOPE for Elderly Independence Demonstration Program (Elderly Independence demonstration) to be administered by housing agencies (HAs). HAs must match the HUD supportive services funds with at least 50 percent of the total cost of the supportive services estimated to be necessary by the HA and approved by HUD. The purpose of the Elderly Independence demonstration is to test the effectiveness of providing rental vouchers and supportive services to frail elderly people who are living in the general community and not receiving rental subsidies, and who require this combined assistance to continue living independently and to avoid premature or unnecessary institutionalization. The NOFA contains information concerning the deadline for filing applications; eligibility of applicants; available amounts; selection criteria; and the application and selection process.

DATES: The due date for submission of applications in response to this NOFA is September 7, 1993. Application kits containing the application forms (Form HUD 52515, and Standard Forms 424 and 424A) may be obtained from the local HUD Field Office/Indian Program Office. Applications must be physically received in the local HUD Field Office/ Indian Programs Office on the due date by 3 p.m. local time. The local Field Offices are the official place of receipt for all applications. At the time of application submission, or immediately following application submission to the Field Office, the HA must also submit a copy of the application for funding under this NOFA to the following address: Mr. Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Department of Housing and Urban Development, room 4220, 451 Seventh Street, SW., Washington, DC 20410.

The above-stated application deadline is firm as to date and hour when applications must be submitted to the Field Offices. In the interest of fairness to all competing applicants, HUD will treat as ineligible for consideration any application that is not received on or before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4220, Washington, DC 20410-8000, telephone number (202) 708-0477. Hearing or speech impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. OMB has approved the section 8 information collection requirements under the assigned control number 2577-0123; OMB has approved the supportive services information collection requirements under the assigned control number 2577-0154.

I. Purpose and Substantive Description

(A) Authority

The Elderly Independence demonstration is authorized by section 803 of the National Affordable Housing Act (42 U.S.C. 8012) (NAHA). The HOPE for Elderly Independence Program Guidelines were published in the **Federal Register** on February 4, 1991 (56 FR 4506) (hereafter the "February 4, 1991 Guidelines"). The application submission and processing requirements contained in the February 4, 1991 Guidelines were amended by notice published in the **Federal Register** on May 29, 1992 (57 FR 22816). The regulations governing the rental voucher program are published at 24 CFR part 887.

(B) Background

The Elderly Independence demonstration is a five-year demonstration program, the purpose of which is to combine tenant-based rental vouchers with supportive services to assist frail elderly people living in the general community who are not receiving rental subsidies and who currently require this combined assistance to continue living independently and avoid premature or unnecessary institutionalization.

This NOFA announces the availability of funds for the Elderly Independence demonstration supportive services and section 8 rental vouchers. This NOFA invites interested HAs to submit applications for funds for supportive service grants and rental vouchers, provides instructions to HAs governing the submission of supportive service grant and rental voucher applications, and describes procedures for rating, ranking, and approving HA supportive service grant applications. HAs must match the HUD supportive services funds with at least 50 percent of the total cost of the supportive services estimated to be necessary by the HA and approved by HUD.

HAs selected through the national competition for Elderly Independence supportive services grants will be awarded funding for up to 150 section 8 rental vouchers. (The minimum number of rental vouchers for which an HA may apply is 25.) While the statute authorized both rental vouchers and rental certificates, the VA, HUD-Independent Agencies Appropriations Act of 1993 (Pub. L. 102-389, October 6, 1992) (the HUD Appropriations Act for FY 1993) only provides funding for rental vouchers, and for this reason only rental vouchers will be provided for the Elderly Independence demonstration for FY 1993.

The application submission and processing requirements contained in this NOFA are different from those set forth in the February 4, 1991 Guidelines. The application submission and processing requirements were amended on May 29, 1992 (57 FR 22816). This NOFA incorporates the amended application submission and processing requirements.

In order to ensure that applicants submit the required information in the application, HUD encourages all applicants to complete the Initial Screening Checklist provided as Attachment 2 of this NOFA. This checklist specifies the required information which must be submitted in the HA's application.

(C) Allocation Amounts

(1) HUD will make available up to $38,288,000 of the budget authority approved in the HUD Appropriations

Act for FY 1993 which will support an estimated 1,500 rental vouchers.

(2) The HUD Appropriations Act for FY 1993 also provided $10,000,000 for supportive services grants, which together with $125,077 in carry-over from FY 1992, provides a total of $10,125,077. This amount will support an approximate $6,750 per person Federal share of the supportive services costs.

These funds are available for a national competition in which the HAs that are selected to receive supportive services grants will also receive funding for section 8 rental vouchers. An annual contributions contract (ACC) for the section 8 funding will be executed by the HA and HUD after HUD approval of the HA's section 8 application and execution by the HA and HUD of the supportive services grant agreement.

(3) Family Self-Sufficiency (FSS) Program. Section 23 of the U.S. Housing Act of 1937, which established the Family Self-Sufficiency (FSS) Program, was amended by section 106 of the Housing and Community Development Act of 1992 and now requires that all public housing agencies (PHAs) receiving additional rental vouchers or certificates in FY 1993 must establish a local FSS program. For IHAs, section 106(j) made participation in the FSS program optional for FY 1993 and all future fiscal years. The program guidelines for the FSS program were published in the **Federal Register** on September 30, 1991 (56 FR 49592). The interim and final rules for the FSS program were published in the **Federal Register** on May 27, 1993 at 58 FR 30858, and 58 FR 30906, respectively. (The FSS final rule simply adopts the FSS interim rule as the FSS final regulations.) Unless specifically excepted by HUD, any rental voucher or rental certificate funding reserved in FY 93 (except funding for renewals or amendments) will be used to establish the minimum size of a PHA's FSS program.

If a PHA received an incentive award for the FSS program in response to the NOFA published on September 30, 1991 (56 FR 49612) and amended on January 3, 1992 (57 FR 312), the number of new units received in FY 93 will be added to the incentive awards received in FY 92 and this number will be the minimum size of the PHA's FSS program.

(D) HA Eligibility

Eligible applicants for the Elderly Independence demonstration supportive services grants and Elderly Independence demonstration rental vouchers are housing agencies (HAs). An HA is the entity defined in section 3(b)(6) of the United States Housing Act of 1937 (1937 Act), including Indian Housing Authorities as defined in section 3(b)(11) of the 1937 Act. Since this is a demonstration, only HAs which are currently administering a section 8 program may apply to participate in the Elderly Independence demonstration.

(E) Program Guidelines

Except for the additional language provided to the definition of "Activities of Daily Living" in this section I(E), the February 4, 1991 Guidelines, as amended on May 29, 1992, are applicable to the FY 1993 Elderly Independence demonstration.

To clarify the manner in which a person may meet the minimal level performance requirements of the Activities of Daily Living, the following paragraph is added to the definition of Activities of Daily Living set forth in the February 4, 1991 Guidelines at 56 FR 4509–4510 so that the definition reads in its entirety as follows:

"Activities of Daily Living (ADL)" as defined by the Secretary means eating, dressing, bathing, grooming and household management activities as further described below:

—Eating: May need assistance with cooking, preparing or serving food, but must be able to feed self;
—Bathing: May need assistance in getting in and out of the shower or tub, but must be able to wash self;
—Grooming: May need assistance in washing hair, but must be able to take care of personal appearance;
—Dressing: must be able to dress self, but may need occasional assistance;
—Home Management Activities: May need assistance in doing housework, grocery shopping or laundry, or getting to and from one location to another for activities such as going to the doctor and shopping, but must be mobile. The mobility requirement does not exclude persons in wheelchairs or those requiring mobility devices.

Each of the Activities of Daily Living noted above includes a requirement that a person must be able to perform at a specified minimal level (e.g., to satisfy the eating ADL, the person must be able to feed him/herself). The determination of whether a person meets this minimal level of performance must include consideration of those services that will be performed by a person's spouse, relatives or other attendants to be provided by the individual. For example, if a person requires assistance with cooking, preparing or serving food plus assistance in feeding *him/herself*, the individual would meet the minimal performance level and thus satisfy the eating ADL, if a spouse, relative or attendant provides assistance with feeding the person. Should such assistance become unavailable at any time, the Owner is not obligated at any time to provide individualized services beyond those offered to the resident population in general. The Activities of Daily Living analysis is relevant only to determine a person's eligibility to receive supportive services paid for under the Elderly Independence demonstration, and is not a determination of eligibility for occupancy.

II. Application Process

(A) Application Submission Deadline

HA applications must be received in the HUD Field Office/Indian Programs Office on September 7, 1993, by 3 p.m. local time. The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as ineligible for consideration any application that is not received on or before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept applications which are sent via facsimile (FAX) transmission.

(B) Selection Process

After the Field Office or Indian Programs Office has screened HA supportive services applications and disapproved any applications unacceptable for further processing (see section II(D) of this NOFA, the Field Office or Indian Programs Office will review and rate all approvable applications, utilizing the selection criteria and point assignments listed below. All scored applications and rating sheets in each Field Office will be sent to the Regional Public Housing Director. The Indian Programs Office will send each application and rating sheet to the Regional Public Housing Director that has jurisdiction over the State in which the Indian Housing Authority is located.

In order to ensure that ratings are consistent among the Field Offices within the region, the Regional Office of Public Housing will review and, as necessary, may re-rate these applications, utilizing the same selection criteria and point assignment listed below.

The Regional Office of Public Housing must send the rating sheets from the

Field Office or Indian Programs Office, and from the Regional Office to HUD Headquarters. Headquarters, in consultation with the U.S. Department of Health and Human Services (HHS), will review and may re-rate these applications, utilizing the same selection criteria and point assignment listed in this NOFA. Headquarters will fund the highest rated applications until the remaining supportive services grant funds or rental voucher funds are insufficient to fund the next highest rated application(s). In the event of tie scores, HUD Headquarters, in consultation with HHS, will rank the applications on the basis of selection criterion 2—supportive services capability; and selection criterion 3—quality of the proposed supportive services plan.

When remaining supportive service funds or rental voucher funds are insufficient to fund the next highest scoring application(s) in full, HUD Headquarters may reduce the requested amount to partially fund the final application(s). Each applicant must indicate in their application whether they wish to be considered for a reduced grant and the minimum number of units the applicant is willing to accept. Headquarters will skip over applicants who will not accept a reduced grant if assigning the remaining funding would result in a reduced grant or a grant below the minimum number the applicant is willing to accept. Successful applicants for the supportive services grants will be notified in writing by the HUD Field Office upon approval of the supportive services grants and applications for section 8 rental vouchers.

(C) Selection Criteria/Ranking Factors

(1) General

To provide each HA applicant with a fair and equitable opportunity to receive a supportive services grant and funding for rental vouchers under the Elderly Independence demonstration, HUD, in consultation with HHS, will utilize the objective selection criteria stated in this notice to rate all supportive services applications found acceptable for further processing.

(2) Selection Ranking Factors

Applicants will be rated on the following criteria:

(a) *Selection Criterion 1: HA Section 8 Administrative Capability (25 points)*—(i) Description: Overall HA administrative ability in the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs, as evidenced by factors such as leasing rates and correct administration of housing quality standards (HQS), portability of rental vouchers and rental certificates, compliance with Fair Housing and Equal Opportunity program requirements, assistance payment computation, and rent reasonableness requirements, is either excellent or good. If an HA is not administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, the HA is not eligible to participate in this demonstration program.

(ii) Rating: 16–25 points. Field Office/Indian Programs Office rates overall HA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs as excellent; there are no serious outstanding management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings (unless Office of Inspector General recommendation has been appealed by Field Office, Indian Programs Office or Regional Office); the HA is complying with the portability requirements under the rental voucher and rental certificate programs; not more than 15 percent of the units inspected by the Field Office/Indian Programs Office during the last management review failed to meet housing quality standards (HQS) or the Field Office is aware of actions taken by the HA to improve its inspection procedures; and the leasing rate for rental vouchers and rental certificates under Annual Contributions Contract (ACC) for one year or more was at least 95 percent as of September 30, 1992, unless Field Office/Indian Programs Office documents that September 30, 1992, report was not reflective of HA performance;

1–15 points. Field Office/Indian Programs Office rates overall HA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs as good; any management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings are being satisfactorily addressed; the Field Office is aware of some problems with HA administration of portability (e.g., not responding to billing promptly); not more than 25 percent of the units inspected by the Field Office/Indian Programs Office during the last management review failed to meet HQS or the Field Office is aware of actions taken by the HA to improve its inspection procedures; and the leasing rate for rental vouchers and rental certificates under ACC for one year or more was at least 85 percent as of September 30, 1992, unless the Field Office/Indian Programs Office documents that the September 30, 1992, report is not reflective of HA performance.

0 points. If neither of the above statements apply, assign 0 points.

(b) Selection Criterion 2: Supportive Services Capability (20 points)—(i) Description: Prior experience with delivery of effective supportive services programs by the HA or the HA's proposed subcontractor.

(ii) Rating: 11–20 points. HA or subcontractor currently administers or has past experience administering, an effective supportive service delivery program for frail elderly persons including minorities and women or currently administers an effective supportive service delivery program for other persons in need of such services including minorities and women.

1–10 points. HA or subcontractor has delivered supportive services in the past.

0 points. HA or subcontractor has no experience in the delivery of supportive services.

(c) *Selection Criterion 3: Quality of the proposed supportive services plan (25 points)*—(i) Description: The quality of the proposed supportive services plan and evidence that the proposed supportive services will be provided.

(ii) Ratings: 13–25 points. The HA's supportive services plan includes written commitments from the providers of supportive services necessary to address the needs identified in at least three of the five activities of daily living as defined in February 4, 1991 Guidelines, and revised in section I(E) of this NOFA; the HA has commitments from at least 3 qualified persons (one of which is a qualified medical professional) to serve as the professional assessment committee (PAC) or a commitment from an alternative entity agreeing to perform the functions of the PAC; and the HA's supportive services plan adequately addresses how the HA will match the funds needed to provide the minimum number of services that each frail elderly participant requires.

1–12 points. The HA's supportive services plan includes written commitments from the providers of supportive services necessary to address the needs identified in at least two of the five activities of daily living as defined in February 4, 1991 Guidelines and as revised in section I(E) of this NOFA; and the HA's supportive services plan adequately addresses how the HA will match the funds needed to provide the minimum number of services that each frail elderly participant requires. (PAC members or alternate entity need

not be selected at the time of HA application.)

0 points. The HA's supportive services plan fails to include written commitments from the providers of supportive services necessary to address the needs identified in at least two of the five daily activities of daily living as defined in the February 4, 1991 Guidelines, and as revised in section I(E) of this NOFA; or the HA's supportive services plan does not adequately address how the HA will match the funds needed to provide the minimum number of services that each frail elderly participant requires.

(d) *Selection Criterion 4: Supportive Services Funding (15 points)*—(i) Description: The extent to which the proposed funding for supportive services is or will be available throughout the five year demonstration period.

(ii) Rating: 8–15 points. There are reasonable assurances from supportive service providers that services will be continued during years 2–5 of the demonstration and the HA has a comprehensive plan for obtaining funding for the required 50–55 percent match for years 2–5 of the demonstration.

1–7 points. The HA has a plan to obtain funding for the required 50–55 percent match for years 2–5 of the demonstration.

0 points. There is no evidence of any plans for obtaining the required match after the first year of the demonstration.

(e) *Selection Criterion 5: Need for Frail Elderly Program (5 points)*—(i) Description: The need for a program providing both housing assistance and supportive services for frail elderly persons in the area to be served, as demonstrated by the HA's analysis of the size and characteristics of the population to be served.

(ii) Rating: 3–5 points. The HA has documented that there is a need in the HA jurisdiction for the Elderly Independence demonstration which is not being met through existing programs, and the documentation provides a thorough analysis of the size and characteristics including race, gender and ethnicity of the frail elderly population.

1–2 points. The HA has documented that there is a need in the HA jurisdiction for the Elderly Independence demonstration which is not being met through existing programs, but the documentation only provides a cursory analysis of the frail elderly population including race, gender and ethnicity.

0 points. There is no need for the Elderly Independence demonstration.

(f) *Selection Criterion 6: Involvement of Area Agency/State Agency on Aging (10 points)*—(i) Description: The extent to which the Area Agency/State Agency on Aging is playing an active role in the supportive services program.

(ii) Rating: 6–10 points. The letter from the Area Agency/State Agency on Aging indicates specifically *how* the agency was involved in the development of the proposed supportive services program and the assessment/case management system; indicates that the agency reviewed the application prior to submission to HUD; and indicates that the agency will be very involved in the ongoing operations of the project (if funded).

1–5 points. The letter from the Area Agency/State Agency on Aging indicates only minimal involvement in the development and review of the application and in the project's ongoing operations (if funded).

0 points. The letter only indicates general support for the proposal, without specific involvement by the Area Agency/State Agency on Aging.

(D) Unacceptable Applications

(1) Following the 14-day period provided to applicants to cure technical deficiencies in applications (see Section IV of this NOFA), the Field Office will disapprove HA applications that it determines are not acceptable for processing. The Field Office notification of rejection letter must state the basis for the Field Office decision.

Material to cure technical deficiencies which is received after close of business on the fourteenth calendar day after the date of HUD's written notice will not be accepted. If the HA has not cured all technical deficiencies by this deadline, the application will be rejected as incomplete.

Each HA is encouraged to review the initial screening checklist provided as Attachment 2 of this NOFA. The checklist identifies all technical requirements needed for application processing. Each HA is reminded that certain technical requirements listed in the February 4, 1991 Guidelines have been revised and should use the checklist provided in this NOFA to ensure that its application meets the necessary requirements.

An HA application must comply with the requirements of this NOFA (including the Drug-Free Workplace certification, the Anti-Lobbying certification and Disclosure of Lobbying Activities requirements and the Single Audit Act certification). Except for the technical deficiencies listed in Section IV of this NOFA, all application elements must be submitted to HUD by the application submission deadline. All technical deficiencies must be corrected by the end of the 14 calendar day technical deficiency correction period.

(2) Applications that fall into any of the following categories will not be processed:

(a) (i) The Department of Justice has brought a civil rights suit against the applicant HA, and the suit is pending;

(ii) There has been an adjudication of a civil rights violation in a civil action brought against the HA by a private individual, unless the HA is operating in compliance with court order, or implementing a HUD approved resident selection and assignment plan or compliance agreement designed to correct the areas of noncompliance.

(iii) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance;

(iv) HUD has deferred application processing by HUD under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1) or under section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57).

(b) The HA has serious, unaddressed, outstanding Inspector General audit findings or fair housing and equal opportunity monitoring review findings or Field Office management review findings for one or more of its Rental Certificate, Rental Voucher, or Moderate Rehabilitation programs.

(c) The leasing rate for Rental Certificates and Rental Vouchers under ACC for at least one year is less than 75 percent.

(d) The HA is involved in litigation and HUD determination that the litigation may seriously impede the ability of the HA to administer an additional increment of Rental Vouchers and the supportive services grant.

(e) The HA does not administer a rental voucher, certificate, or moderate rehabilitation program.

(f) The HA is not in compliance with the Single Audit Act, OMB Circular No. A–128 and HUD's regulations at 24 CFR part 44; or OMB Circular No. A–133, as applicable.

(E) Funding Award Process

In accordance with section 102 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's regulation at 24 CFR 12.16, HUD will notify the public by notice published in the **Federal Register** of all award decisions made by HUD under this competition. HUD and recipients of awards under this NOFA also shall comply with the provisions of section V(D) of this NOFA.

III. Checklist of Application Submission Requirements

(A) General

Applicants may apply for a maximum of $1,000,000 of the supportive services funds. HAs may apply for up to 150 rental vouchers but must apply for at least 25 rental vouchers. The application must include the number of efficiency and one bedroom rental vouchers the HA intends to apply for, and the estimated average monthly adjusted income for households needing these unit sizes, and HAs must indicate whether they would be willing to accept fewer units. Applications for less than 25 or more than 150 rental vouchers per HA will be rejected as non-responsive.

The HA application should include an explanation of how the application meets, or will meet, application selection criteria. Failure to submit a narrative description is not cause for application rejection; however, a Field Office can only rate and rank an application based on information it has on-hand.

(B) Forms

To assist HAs, the following are attached to this notice: Form HUD–52515, Application for Existing Housing [Attachment 1]; Checklist for Technical Requirements [Attachment 2]; Form SF–424, Application for Federal Assistance [Attachment 3]; Standard Form LLL, Disclosure of Lobbying Activities [Attachment 4]; the text for Certification Regarding Lobbying [Attachment 5]; HUD Form 2880, Applicant Disclosure Report [Attachment 6]; the text for the Maintenance of Effort certification [Attachment 7]; SF 424A and instructions for explaining and justifying the supportive services budget [Attachment 8]; the Certification for a Drug-Free Workplace [Attachment 9] and the text for Certification Regarding Compliance with the Single Audit Act [Attachment 10].

(C) Application Kits

HAs may obtain an application kit from the local HUD Field Office/Indian Programs Office. The application kit contains the forms and certifications provided at the end of this NOFA and the checklist for technical requirements [Attachment 2]. The application kit contains the identical information that is in the NOFA, however, some HAs may prefer to use the checklist, forms, and certifications in a package separate from the NOFA.

(D) Certification Regarding Drug-Free Workplace

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide a drug-free workplace. Thus, each HA must certify (even though it has done so previously) that it will comply with the drug-free workplace requirements in accordance with 24 CFR part 24 subpart F. [Attachment 9, Certificate for Drug-Free Workplace]

(E) Certification Regarding Lobbying

Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. HUD's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To assist HAs, the text for the Certification Regarding Lobbying [Attachment 5] and Standard Form LLL, "Disclosure Form to Report Lobbying" [Attachment 4] are attached. Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

(F) Checklist for Technical Requirements

The checklist [Attachment 2] specifies the required information which must be submitted in the HA's application. It is recommended but not required that the application contain a narrative explaining how the application meets the selection criteria.

(G) Compliance With the Single Audit Act

The HA must be in compliance with OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR part 44; or OMB Circular No. A–133, in order to be eligible for funding. The certification must include the period covered by the last audit conducted and submitted to HUD in accordance with these requirements, or the period covered by the audit currently under contract. Applicants who are not currently in compliance with the audit requirements will not be eligible for funding. To comply, an HA must submit a certification of its compliance with the Single Audit Act [Attachment 10].

IV. Corrections to Deficient Applications

To be eligible for processing, an application must be received by the Field Office no later than the application submission deadline date and time specified at section II(A) of the NOFA. The Field Office will initially screen all applications and notify HAs of technical deficiencies by letter. Field Office notification of HAs must be uniform.

The purpose of this process is to assist an applicant in completing a ratable proposal and not to provide for an applicant to improve substantively its application once it has been submitted. The following is a list of items that may be submitted by an HA during the technical correction period. This list is intended to be a complete list and only these items may be requested or submitted after the application submission deadline date:

Certifications for:

—Drug-Free Work Place

—Lobbying Certification Form

—Disclosure of Lobbying Activities, SF–LLL

—Maintenance of effort, consistent with the stipulations of section X of the February 4, 1991 Guidelines

—The applicant's financial management system for the supportive services grant meets the standards for fund control and accountability found at 24 CFR 85.20 or Attachment F of OMB Circular A–110, as applicable

—HUD Form 2880, Applicant Disclosure

—Compliance with Single Audit Act

All HAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency. Information received after close of business on the fourteenth day of the correction period will not be accepted and the application will be rejected on the basis of being incomplete. All HAs are encouraged to review the initial screening checklist provided in Attachment 2 of the notice. The checklist identifies all technical requirements needed for application processing.

V. Other Matters

(A) Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). 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 General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

(B) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have substantial, direct effects on the States, on their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government, because this NOFA would not substantially alter the established roles of HUD, the States and local governments, including HAs.

(C) Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this NOFA may have a significant impact on the maintenance and general well-being of some families. This NOFA provides FY 1993 funding for the Elderly Independence demonstration, the purpose of which is to provide decent and sanitary housing, and supportive services for frail elderly individuals. The supportive services provided by this demonstration are expected to prevent or postpone unnecessary or premature institutionalization, and reduce unnecessary stress and financial burden on participants' families. Since the impact on the family is considered beneficial, no further review is necessary.

(D) Accountability in the Provision of HUD Assistance

On March 14, 1991 (56 FR 11032), HUD published a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 16, 1992, HUD published at 57 FR 1942, additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

(1) Documentation and Public Assess

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(2) Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(E) Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the Statute's coverage.

(F) Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by HUD *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 29912). If readers are involved in any efforts to influence HUD in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions concerning the rule should be directed to the Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

(G) Prohibition Against Advance Information on Funding Decisions

Section 103 of the Reform Act proscribes the communication of certain

information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance that entails a competition for its distribution. HUD's regulations implementing section 103 are codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions under a competitive funding process are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

Dated: July 14, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210-33-M

Application for Existing Housing

Section 8 Housing Assistance Payments Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Attachment 1

Send the original and two copies of this application form and attachments to the local HUD Field Office

OMB Approval No. 2577-0169 (exp.9/30/95)

Public reporting burden for this collection of information is estimated to average 0.5 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 Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0169), Washington, D.C. 20503. Do not send the completed form to either of these addresses.

Name of the Public Housing Agency (PHA) requesting housing assistance payments:

Application/Project No. (HUD use only)

Mailing Address of the PHA

Requested housing assistance payments are for
How many Certificates? How many Vouchers?

Signature of PHA Officer authorized to sign this application

X

Have you submitted prior applications: No Yes
. . . for Section 8 Certificates? ☐ ☐
. . . for Section 8 Housing Vouchers? ☐ ☐

Title of PHA Officer authorized to sign this application

Phone Number

Date of Application

Legal Area of Operation (area in which the PHA determines that it may legally enter into Contracts)

A. Primary Area(s) from which families to be assisted will be drawn.

Locality (city, town, etc.)	County	Congressional District	Units

B. Proposed Assisted Dwelling Units

Housing Program	Number of Dwelling Units by Bedroom Count: Elderly, Handicapped, Disabled: Efficiency	1-BR	2-BR	Non-Elderly: 1-BR	2-BR	3-BR	4-BR	5-BR	6+BR	Total Dwelling Units
Certificates										
Housing Vouchers										

C. Need for Housing Assistance. Demonstrate that the project requested in this application is consistent with the applicable Housing Assistance Plan including the goals for meeting the housing needs of Lower-Income Families or, in the absence of such a Plan, that the proposed project is responsive to the condition of the housing stock in the community and the housing assistance needs of Lower-Income Families (including the elderly, handicapped and disabled, large families and those displaced or to be displaced) residing in or expected to reside in the community. (If additional space is needed, add separate pages.)

D. Qualification as a Public Housing Agency. Demonstrate that the applicant qualifies as a Public Housing Agency and is legally qualified and authorized to carry out the project applied for in this application. (check * the appropriate boxes)	Submitted with this application	Previously submitted
1. The relevant enabling legislation		
2. Any rules and regulations adopted or to be adopted by the agency to govern its operations		
3. A supporting opinion from the Public Housing Agency Counsel		

Retain this record for the term of the ACC.
Previous editions are obsolete

form HUD-52515 (7/88)
ref. handbook 7420.3

E. Financial and Administrative Capability. Describe the experience of the PHA in administering housing or other programs and provide other information which evidences present or potential management capability for the proposed program.

F. Housing Quality Standards. Provide a statement that the Housing Quality Standards to be used in the operation of the program will be as set forth in the program regulation or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.

G. Leasing Schedule. Provide a proposed schedule specifying the number of units to be leased by the end of each three-month period.

H. Average Monthly Adjusted Income (Housing Vouchers Only)

Efficiency	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR

I. Attachments. The following additional items must be submitted either with the application or after application approval, but no later than with the PHA executed ACC.

	Submitted with this application	To be submitted	Previously submitted
1. Equal Opportunity Housing Plan			
2. Equal Opportunity Certifications, Form HUD-916			
3. Estimates of Required Annual Contributions, forms HUD-52672 and HUD-52673			
4. Administrative Plan			
5. Proposed Schedule of Allowances for Utilities and Other Services, form HUD-52667, with a justification of the amounts proposed			

HUD Field Office Recommendations

Recommendation of Appropriate Reviewing Office	Signature and Title	Date

form HUD-52515

Attachment 2

Checklist for Technical Requirements.

The following checklist specifies the required information which must be submitted in the joint application.

Initial Screening Checklist

HA Yes	HA No	Field Office Yes	Field Office No	
☐	☐	☐	☐	1. The application contains a cover letter stating the total five year requested grant amount and indicates whether the applicant is willing to accept a reduced number and the minimum number of units the applicant is willing to accept.
☐	☐	☐	☐	2. The application contains the Form HUD-52515, application for section 8 rental voucher funding.
☐	☐	☐	☐	3. The application states the number of frail elderly participants the HA program will support and the number of efficiency and one-bedroom rental vouchers and the estimated monthly adjusted household income (see section H of HUD 52515) by bedroom size. The number requested must be between 25 and 150 rental vouchers per HA.
☐	☐	☐	☐	4. The application contains Standard form (SF) 424, Request for Federal Assistance (this is not to be used for intergovernmental review, but for financial tracking purposes). The HA completes all items following the instructions on the reverse of the form, except for items 2,3, and 4.
☐	☐	☐	☐	5. The application addresses the HA's past experience, if any, in delivery of supportive services to the frail elderly, and/or other relevant experience in the delivery of supportive services.

HA Yes	HA No	Field Office Yes	Field Office No	
☐	☐	☐	☐	6. The application contains a description of the size and characteristics of the frail elderly population in the HA's jurisdiction and their housing and supportive services needs.
☐	☐	☐	☐	7. The application contains a supportive services plan, including a supportive services budget consistent with Attachment 8. At a minimum, the following information must be included in the supportive services plan (check if included):
☐	☐	☐	☐	(A) A description of each proposed supportive service; the identity of the proposed services provider; a statement of qualifications of each proposed services provider; and an explanation why the service is needed to keep participants independent;
☐	☐	☐	☐	(B) A supportive services budget listing the first year cost for each supportive service and administrative costs for the supportive services program; cost estimates for services and administration expenses for years 2-5; and identification of the resources to be used to cover the HA match for the year one costs including the dollar value for in-kind items or donated time (Attachment 8 provides detailed instruction on required format of the supportive services budget);
☐	☐	☐	☐	(C) A firm commitment from each supportive service provider to make available all listed resources for that provider for the first year of the demonstration (HAs should note that while reasonable assurances of commitment from service providers for years 2-5 is not a technical requirement, applications which contain such assurances will receive higher scores under selection criterion 4);
☐	☐	☐	☐	(D) A description of the assessment and case management process, including the proposed method of determining whether a person qualifies as a frail elderly person (specifying any additional eligibility requirements proposed by the agency) and the mechanisms for developing housing and supportive services plans for each person and for monitoring that person's progress in meeting that plan;
☐	☐	☐	☐	(E) Procedures for the transition of participants out of the demonstration that become too frail to continue or well enough to discontinue the services component.
☐	☐	☐	☐	(F) A plan for coordinating housing assistance and supportive services.

HA Yes	HA No	Field Office Yes	Field Office No	
☐	☐	☐	☐	(G) A plan for the continuation of supportive services for program participants at the end of the demonstration period; and
☐	☐	☐	☐	(H) An explanation of the process for setting of participant fees and how the HA will monitor for collections.
☐	☐	☐	☐	8. The application contains a letter signed by the director of the HA that:
☐	☐	☐	☐	(A) Provides evidence to meet the local match requirement each year of the demonstration;
☐	☐	☐	☐	(B) Indicates the HA will create or has created a professional assessment committee (PAC) that includes at least 1 qualified medical professional and other persons professionally competent to appraise the functional abilities of the frail elderly, or will work with another entity which will assist the HA in identifying and providing only services that each frail elderly person needs to remain living independently. (HAs should note that applications which contain commitments from individuals to serve as the PAC or an alternative entity agreeing to perform the functions of the PAC will receive a higher score under selection criterion 3.);
☐	☐	☐	☐	(C) Provides assurances that the services listed in the HA application for the five years of the demonstration will be made available;
☐	☐	☐	☐	(D) States that in cases where participants are certified to pay less than 10% of the supportive service costs, the HA will share the cost of the difference, up to 50% of the shortfall; and
☐	☐	☐	☐	(E) Certifies that the application has been developed in consultation with the Area Agency on Aging (or the State Unit on Aging if that state is not subdivided) and that the HA will consult with this agency during the demonstration.
☐	☐	☐	☐	(9) The application contains a description of how the HA will ensure that the service providers are providing supportive services at a reasonable cost, adequate to meet the needs of the persons to be served.

HA Yes	HA No	Field Office Yes	Field Office No	
☐	☐	☐	☐	(10) The application contains a letter from the Area Agency on Aging (or the State Unit on Aging if that state is not subdivided) stating the involvement of the agency in the development of the application and the supportive services plan, and the proposed role that the Area Agency will have during the life of the grant, if funded. The letter shall also state whether the cost of each supportive service is reasonable and consistent with other service programs in that jurisdiction, and identify plans for ongoing agency involvement and for agency review of program operations at regular intervals.
☐	☐	☐	☐	(11) Certifications for:
☐	☐	☐	☐	(A) Drug-Free Work Place;
☐	☐	☐	☐	(B) Lobbying Certification form;
☐	☐	☐	☐	(C) Prohibition Against Lobbying, SF-LLL, if warranted;
☐	☐	☐	☐	(D) HUD Form 2880 (Applicant Disclosures) (See Section V(D)(2) of this NOFA.);
☐	☐	☐	☐	(E) The application meets the requirement that the applicant is in compliance with the Single Audit Act, OMB Circular No. A-128 and HUD's regulations at 24 CFR 44; or OMB Circular No. A-133. To comply, HAs must submit a Single Audit Act Certification (Attachment 10). HAs who are not currently in compliance with the audit requirements will not be eligible for funding.
☐	☐	☐	☐	(F) Agreement to participate in the HUD evaluation and cooperate with the evaluation team;
☐	☐	☐	☐	(G) Maintenance of effort, consistent with the stipulations of Section X of the guidelines (note that supportive service providers must also provide this certification); and
☐	☐	☐	☐	(H) The applicant's financial management system for the supportive services grant meets the standards for fund control and accountability found at 24 CFR 85.20 or Attachment F of OMB Circular A-110, as applicable.

If the HA exercises the option to limit the geographic area of the Elderly Independence demonstration, the following item is also required in the application submission.

HA		Field Office		
Yes	No	Yes	No	
☐	☐	☐	☐	(12) A justification of the decision to limit the demonstration to a geographic area, stating the limits of the service area of the service providers which it proposes to utilize, cost efficiency and effectiveness of such supportive service delivery, including maps with the relevant boundaries, and racial/ethnic description of the population, and a description of the nature and cost of housing in the specified area.

Application for Federal Assistance

Attachment 3

OMB Approval No. 0348-0043

1. Type of Submission: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. Date Submitted	Applicant Identifier
	3. Date Received by State	State Application Identifier
	4. Date Received by Federal Agency	Federal Identifier

5. Applicant Information

Legal Name	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. Employer Identification Number (EIN):

7. Type of Applicant: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify):

8. Type of Application:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. Name of Federal Agency:

10. Catalog of Federal Domestic Assistance Number:

Title:

11. Descriptive Title of Applicant's Project:

12. Areas Affected by Project (cities, counties, states, etc.):

13. Proposed Project:		14. Congressional Districts of:	
Start Date	Ending Date	a. Applicant	b. Project

15. Estimated Funding:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. Total	$	.00

16. Is Application Subject to Review by State Executive Order 12372 Process?

a. Yes. This preapplication/application was made available to the State Executive Order 12372 Process for review on:

Date:_____

b. No. ☐ Program is not covered by E.O. 12372

☐ or Program has not been selected by State for review.

17. Is the Applicant Delinquent on Any Federal Debt?

☐ Yes If "Yes," attach an explanation ☐ No

18. To the best of my knowledge and belief, all data in this application/preapplication are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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form SF-424 (4/88)
Prescribed by OMB Circular A-102

Instructions for the SF-424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item 1. Self-explanatory

Item 2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

Item 3. State use only (if applicable).

Item 4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

Item 5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

Item 6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

Item 7. Enter the appropriate letter in the space provided.

Item 8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
- "New" means a new assistance award.
- "Continuation" means an extension for an additional funding budget period for a project with a projected completion date.
- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

Item 9. Name of Federal agency from which assistance is being requested with this application.

Item 10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

Item 11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item 12. List only the largest political entities affected (e.g., State, counties, cities).

Item 13. Self-explanatory.

Item 14. List the applicant's Congressional District and any District(s) affected by the program or project.

Item 15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

Item 16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

Item 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

Item 18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

form SF-424 (4/88)
Prescribed by OMB Circular A-102

Disclosure of Lobbying Activities

Attachment 4

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse side for instructions and public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action:
- [ ] a. contract
- b. grant
- c. cooperative agreement
- d. loan
- e. loan guarantee
- f. loan insurance

2. Status of Federal Action:
- [ ] a. bid/offer/application
- b. initial award
- c. post-award

3. Report Type:
- [ ] a. initial filing
- b. material change

For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
[ ] Prime [ ] Subawardee Tier _____, if known:

Congressional District, if known:

5. If Reporting Entity in No. 4 is Subawardee, enter Name and Address of Prime:

Congressional District, if known:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable: _____

8. Federal Action Number, if known:

9. Award Amount, if known:
$

10a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services (including address if different from No. 10a.)
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (check all that apply):
$_____ [ ] actual [ ] planned

12. Form of Payment (check all that apply):
- [ ] a. cash
- [ ] b. in-kind; specify: nature _____
  value _____

13. Type of Payment (check all that apply):
- [ ] a. retainer
- [ ] b. one--time fee
- [ ] c. commission
- [ ] d. contingent fee
- [ ] e. deferred
- [ ] f. other; specify:

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: [ ] Yes [ ] No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ **Date:** _____

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Standard Form-LLL

Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5.If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient, Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9.For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a).

Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contracted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public Reporting Burden for this collection of information is estimated to average 30 minutes 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 Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

Disclosure of Lobbying Activities
Continuation Sheet

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form-LLL-A

BILLING CODE 4210-33-C

Attachment 5—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form –LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signed by: (Name, Title & Signature of Authorized HA Official)

(Name and Title)

(Signature & Date)

BILLING CODE 4210-33-M

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development
Office of Ethics

Attachment 6

OMB Approval No. 2535-0101 (exp. 12/31/94)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 4.)

Part I Applicant/Recipient Information

Indicate whether this is an Initial Report ☐ or an Update Report ☐

1. Applicant/Recipient Name, Address, and Phone (include area code)	Social Security Number or Employer ID Number

2. Project Assisted/ to be Assisted (Project/Activity name and/or number and its location by Street address, City, and State)

3. Assistance Requested/Received	4. HUD Program	5. Amount Requested/Received
		$

Part II. Threshold Determinations – Applicants Only

1. Are you requesting HUD assistance for a specific project or activity, as provided by 24 CFR Part 12, Subpart C, and have you received, or can you reasonably expect to receive, an aggregate amount of all forms of covered assistance from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sign the certification below and answer the next question.

   I hereby certify that this information is true. (Signature) _____ Date _____

2. Is this application for a specific housing project that involves other government assistance? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sigh this certification.

   I hereby certify that this information is true. (Signature) _____ Date _____

If your answers to both questions are No, you do not need to complete Parts III, IV, or V, but you must sign the certification at the end of the report.

Part III. Other Government Assistance Provided/Requested

Department/State/Local Agency Name and Address	Program	Type of Assistance	Amount Requested/Provided

Is there other government assistance that is reportable in this Part and in Part V, but that is reported only in Part V? ☐ Yes ☐ No

If there is no other government assistance, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

form HUD-2880 (3/92)

Part IV. Interested Parties

Alphabetical list of all persons with a reportable financial interest in the project or activity (for individuals, give the last name first)	Social Security Number or Employee ID Number	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

If there are no persons with a reportable financial interest, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

Part V. Report on Expected Sources and Uses of Funds

Source

If there are no sources of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

Use

If there are no uses of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosure of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

Signature	Date

form HUD-2880 (3/92)

Public reporting burden for this collection of information is estimated to average 2.5 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 Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2535-0101), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §12.34.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions (See Note 1 on last page.)

I. **Overview.** Subpart C of 24 CFR Part 12 provides for (1) initial reports from applicants for HUD assistance and (2) update reports from recipients of HUD assistance. An overview of these requirements follows.

A. **Applicant disclosure (initial) reports: General.** All applicants for assistance from HUD for a specific project or activity must make a number of disclosures, if the applicant meets a dollar threshold for the receipt of covered assistance during the fiscal year in which the application is submitted. The applicant must also make the disclosures if it requests assistance from HUD for a specific housing project that involves assistance from other governmental sources.

Applicants subject to Subpart C must make the following disclosures:

Assistance from other government sources in connection with the project,

The financial interests of persons in the project,

The sources of funds to be made available for the project, and

The uses to which the funds are to be put.

B. **Update reports: General.** All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

C. **Applicant disclosure reports: Specific guidance.** The applicant must complete all parts of this disclosure form if **either** of the following **two** circumstances in paragraph 1. or 2., below, applies:

1.a. Nature of Assistance. The applicant submits an application for assistance for a specific project or activity (See Note 2) in which:

HUD makes assistance available to a recipient for a specific project or activity; or

HUD makes assistance available to an entity (other than a State or a unit of general local government), such as a public housing agency (PHA), for a specific project or activity, where the application is required by statute or regulation to be submitted to HUD for any purpose; **and**

b. Dollar Threshold. The applicant has received, or can reasonably expect to receive, an aggregate amount of all forms of assistance (See Note 3) from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted. (See Note 4)

2. The applicant submits an application for assistance for a specific housing project that involves other government assistance. (See Note 5) Note: There is no dollar threshold for this criterion: **any** other government assistance triggers the requirement. (See Note 6)

If the Application meets **neither** of these two criteria, the applicant need only complete Parts I and II of this report, as well as the certification at the end of the report. If the Application meets **either** of these criteria, the applicant must complete the entire report.

The applicant disclosure report must be submitted with the application for the assistance involved.

D. **Update reports: Specific guidance.** During the period in which an application for covered assistance is pending, or in which the assistance is being provided (as indicated in the relevant grant or other agreement), the applicant must make the following additional disclosures:

1. Any information that should have been disclosed in connection with the application, but that was omitted.

2. Any information that would have been subject to disclosure in connection with the application, but that arose at a later time, including information concerning an interested party that now meets the applicable disclosure threshold referred to in Part IV, below.

3. For changes in previously disclosed other government assistance:

For programs administered by the Assistant Secretary for Community Planning and Development, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower).

For all other programs, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed.

4. For changes in previously disclosed financial interests, any change in the amount of the financial interest of a person that exceeds the amount of the previously disclosed interests by $50,000 or by 10 percent of such interests (whichever is lower).

5. For changes in previously disclosed sources or uses of funds:

a. For programs administered by the Assistant Secretary for Community Planning and Development:

Any change in a source of funds that exceeds the amount of all previously disclosed sources of funds by $250,000 or by 10 percent of those sources (whichever is lower); and

Any change in a use of funds under paragraph (b)(1)(iii) that exceeds the amount of all previously disclosed uses of funds by $250,000 or by 10 percent of those uses (whichever is lower).

b. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a source of funds that was previously disclosed.

For all other projects, any change in a source of funds that exceeds the lower of:

The amount previously disclosed for that source of funds by $250,000, or by 10 percent of the amount previously disclosed for that source, whichever is lower; or

The amount previously disclosed for all sources of funds by $250,000, or by 10 percent of the amount previously disclosed for all sources of funds, whichever is lower.

c. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a use of funds that was previously disclosed.

For all other projects, any change in a use of funds that exceeds the lower of:

The amount previously disclosed for that use of funds by $250,000, or by 10 percent of the amount previously disclosed for that use, whichever is lower; or

The amount previously disclosed for all uses of funds by $250,000, or by 10 percent of the amount previously disclosed for all uses of funds, whichever is lower.

Note: Update reports must be submitted within 30 days of the change requiring the update. The requirement to provide update reports only applies if the application for the underlying assistance was submitted on or after the effective date of Subpart C.

II. Line-by-Line Instructions.

A. Part I. Applicant/Recipient Information.

All applicants for HUD assistance specified in Section I.C.1.a., above, as well as all recipients required to submit an update report under Section I.D., above, must complete the information required by Part I. The applicant/recipient must indicate whether the disclosure is an initial or an update report. Line-by-line guidance for Part I follows:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.

2. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

3. Applicants describe the HUD assistance referred to in Section I.C.1.a. that is being requested. Recipients describe the HUD assistance to which the update report relates.

4. Applicants enter the HUD program name under which the assistance is being requested. Recipients enter the HUD program name under which the assistance, that relates to the update report, was provided.

5. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.

Note: In the case of Mortgage Insurance under 24 CFR Subtitle B, Chapter II, the mortgagor is responsible for making the applicant disclosures, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department. Update reports must be submitted directly to HUD by the mortgagor.

Note: In the case of the Project-Based Certificate program under 24 CFR Part 882, Subpart G, the owner is responsible for making the applicant disclosures, and the PHA is responsible for furnishing the owner's disclosures to HUD. Update reports must be submitted through the PHA by the owner.

B. Part II. Threshold Determinations — Applicants Only

Part II contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

1. The first question asks whether the applicant meets the Nature of Assistance and Dollar Threshold requirements set forth in Section I.C.1. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct, and to complete the next question.

2. The second question asks whether the application is for a specific housing project that involves other government assistance, as described in Section I.C.2. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct.

If the answer to both questions1 and 2 is No, the applicant need not complete Parts III, IV, or V of the report, but must sign the certification at the end of the form.

C. Part III. Other Government Assistance.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports. Applicants must report any other government assistance involved in the project or activity for which assistance is sought. Recipients must report any other government assistance involved in the project or activity, to the extent required under Section I.D.1., 2., or 3., above.

Other government assistance is defined in note 5 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there is reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available. Include at least one organizational level below the agency name. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

2. Enter the program name and any relevant identifying numbers, or other means of identification, for the other government assistance.

3. State the type of other government assistance (e.g., loan, grant, loan insurance).

4. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).

If the applicant has no other government assistance to disclose, it must certify that this assertion is correct.

To avoid duplication, if there is other government assistance under this Part and Part V, the applicant/recipient should check the appropriate box in this Part and list the information in Part V, clearly designating which sources are other government assistance.

D. Part IV. Interested Parties.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

Applicants must provide information on:

(1) All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity; and

(2) Any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Recipients must make the additional disclosures refferred to in Section I.D.1.,2., or 4, above.

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses of all persons referred to in paragraph (1) or (2) of this Part. If the person is an entity, the listing must include the full name of each officer, director, and principal stockholder of the entity. All names must be listed alphabetically, and the names of individuals must be shown with their last names first.

2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.

3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).

4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

If the applicant has no persons with financial interests to disclose, it must certify that this assertion is correct.

5. **Part V. Report on Sources and Uses of Funds.** This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

The applicant disclosure report must specify all expected sources of funds — both from HUD and from any other source — that have been, or are to be, made available for the project or activity. Non-HUD sources of funds typically include (but are not limited to) other government assistance referred to in Part III, equity, and amounts from foundations and private contributions. The report must also specify all expected uses to which funds are to be put. All sources and uses of funds must be listed, if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the source or use will be forthcoming.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

General Instructions — sources of funds

Each reportable source of funds must indicate:

a. The name and address, city, State, and zip code of the individual or entity making the assistance available. At least one organizational level below the agency name should be included. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

b. The program name and any relevant identifying numbers, or other means of identification, for the assistance.

c. The type of assistance (e.g., loan, grant, loan insurance).

Specific instructions — sources of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each source of funds must indicate the total amount of approved, and received; and must be listed in descending order according to the amount indicated.

(2) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each source of funds must indicate the total amount of funds involved, and must be listed in descending order according to the amount indicated.

(3) If Tax Credits are involved, the report must indicate all syndication proceeds and equity involved.

General instructions—uses of funds.

Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, evevators, exterior masonry, etc.

Specific instructions -- uses of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each use of funds must indicate the total amount of funds involved; must be broken down by amount committed, budgeted, and planned; and must be listed in descending order according to the amount indicated.

(ii) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each use of funds must indicate the total amount of funds involved and must be listed in descending order according to the amount involved.

(iii) If any program administered by the Assistant Secretary for Housing-Federal Housing Commissioner is involved, the report must indicate all uses paid from HUD sources and other sources, including syndication proceeds. Uses paid should include the following amounts.

AMPO
Architect's fee — design
Architect's fee — supervision
Bond premium
Builder's general overhead
Builder's profit
Construction interest
Consultant fee
Contingency Reserve
Cost certification audit fee
FHA examination fee
FHA inspection fee
FHA MIP
Financing fee
FNMA / GNMA fee
General requirements
Insurance
Legal — construction
Legal — organization
Other fees
Purchase price
Supplemental management fund
Taxes
Title and recordingOperating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve
Total land improvement
Total structures

Uses paid from syndication must include the following amounts:

Additional acquisition price and expenses
Bridge loan interest
Development fee
Operating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve

Footnotes:

1. All citations are to 24 CFR Part 12, which was published in the Federal Register on March 14, 1991 at 56 Fed. Reg. 11032.
2. A list of the covered assistance programs can be found at 24 CFR §12.30, or in the rules or administrative instructions governing the program involved. Note: The list of covered programs will be updated perodically.
3. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).
4. See 24 CFR §§12.32 (a)(2) and (3) for detailed guidance on how the threshold is calculated.
5. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
6. For further guidance on this criterion, and for a list of covered programs, see 24 CFR §12.50.
7. For purposes of Part 12, a person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

BILLING CODE 4210-33-C

Attachment 7—Text for the Maintenance of Effort Certification

The undersigned certifies that:

1. Those existing supportive services that a frail elderly person is already receiving and which the professional assessment committee (PAC) (or the entity performing the PAC's function) finds to be necessary to maintain the participant's independence will be maintained for the time that individual remains in the Elderly Independence demonstration, unless the PAC or other entity performing the assessment determines that those services are no longer needed.

2. Those services that frail elderly persons are already receiving before participating in the Elderly Independence demonstration will not be considered matching funds.

_____

(signature)

_____

(typed or printed name)

_____

(title, if any)

_____

(date)

BILLING CODE 4210-33-M

Attachment 8

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

BILLING CODE 4210-33-C

Attachment 9—Certification Regarding Drug-Free Workplace Requirements

(From 24 CFR 24, Appendix C)

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

A. Certification Regarding Drug-Free Workplace Requirements.

Alternate I

(a) The grantee certifies that it will provide a drug-free workplace by:

(i) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The grantee's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(vi) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(i) Taking appropriate personnel action against such an employee, up to and including termination; or

(ii) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

_____

(Name & Title)

_____

(Signature & Date)

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

Attachment 10—Certification Regarding Single Audit Act

The undersigned certifies that, to the best of his or her knowledge, the housing agency is currently in compliance with the audit requirements under the Single Audit Act, OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR Part 44; or OMB Circular No. A–133, as applicable. This certification includes the period [insert dates audit covers] which covers the last audit conducted and submitted to HUD in accordance with these requirements, or the period for audit currently under contract.

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

[FR Doc. 93–17350 Filed 7–21–93; 8:45 am]

BILLING CODE 4210–33–M

federal register

Thursday
July 22, 1993

Part VI

Department of Health and Human Services

Food and Drug Administration

Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93D-0236]

Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guideline entitled "Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs." This guideline provides new guidance on FDA's expectations regarding inclusion of both genders in drug development and revises the section "Women of Childbearing Potential" in the 1977 guideline entitled, "General Considerations for the Clinical Evaluation of Drugs" (HEW Publication No. (FDA) 77-3040).

DATES: Written comments by November 19, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Copies of this notice, which includes the text of the new guideline, and of the other guidelines mentioned in this document, are available from the Center for Drug Evaluation and Research (HFD-8), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT: Patrick J. Savino, CDER Executive Secretariat Staff (HFD-8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8012.

SUPPLEMENTARY INFORMATION:

I. Introduction

In this document, FDA is publishing a new guideline on FDA's expectations regarding inclusion of patients of both genders in drug development, analyses of clinical data by gender, assessment of potential pharmacokinetic differences between genders, and conduct of specific additional studies in women, where indicated. This guideline revises the section of the 1977 guideline, entitled "General Considerations for the Clinical Evaluation of Drugs," that excluded women of childbearing potential from participation in early studies of drugs. For the purpose of this document, the agency will refer to the "General Considerations for the Clinical Evaluation of Drugs" as the "1977 guideline."

Although the new guideline outlines in some detail the specific considerations related to the evaluation of gender differences during evaluation of drug products, the agency views the principles of inclusion of women in product development programs and analysis of subgroup differences as being broader standards which apply equally to the clinical development of biological products and medical devices.

The new guideline reflects good drug development practice implicit in the law and regulations. Certain requirements, such as inclusion of adequate numbers of women and by-gender analyses, have been emphasized in the past. However, as with any new guideline, where sponsors have developed drugs in good faith relying on existing guidelines, they will have an opportunity to satisfy newly appreciated data needs after approval where this is compatible with the public health and the law. This new guideline does not change FDA's commitment to safe development of drugs but gives more flexibility to institutional review boards (IRB's), investigators, and patients in determining how best to ensure safety.

II. Background

A. Participation of Women in Clinical Studies

Over the past decade there has been growing concern that the drug development process does not produce adequate information about the effects of drugs in women. This concern arises from a number of sources.

Analyses of published clinical trials in certain therapeutic areas (notably cardiovascular disease) have indicated that there had been little or no participation of women in many of the studies. Certain major studies of the role of aspirin in cardiovascular and cerebrovascular disease, for example, did not include women, and this omission left the scientific community with doubts about whether aspirin was, in fact, effective in women for these indications. Similarly, published studies of anti-anginal drugs often had few or no women in them. It has been suggested that a similar situation might exist for the studies intended to support marketing approval of new drugs.

In addition, FDA notes that there has been little study of the effects of such aspects of female physiology as the menstrual cycle and menopause, or of the effects of drugs widely used in women such as oral contraceptives and systemic progestins and estrogens, on drug action and pharmacokinetics.

Concern has also been expressed that the 1977 policy excluding women of childbearing potential from early drug studies may have led to a more general lack of participation of women in drug development studies, and thus to a paucity of information about the effects of drugs in women. In addition to concerns about whether the policy interfered with development of adequate data on drug therapy in women, the 1977 guideline, seen from the viewpoint of the 1990's, has appeared rigid and paternalistic, leaving virtually no room for the exercise of judgment by responsible female research subjects, physician investigators, and IRB's

Concerns about the adequacy of data on the effects of drugs in women have arisen at a time when FDA, drug developers, and the scientific community have focused increasingly on the need to individualize treatment in the face of the wide variety of demographic, disease-related, and individual patient-related factors that can lead to different responses to drugs in subsets of the population. Optimal use of drugs requires identification of these factors so that appropriate adjustments in dose, concomitant therapy, or monitoring can be made.

Subgroup-specific differences in response can arise because of variation in a drug's pharmacokinetics (i.e., the drug's concentration in plasma or elsewhere as a function of time) or pharmacodynamics (the body's response to a given concentration of the drug).

B. Pharmacokinetic and Pharmacodynamic Differences Among Patients

Important variations in pharmacokinetics can arise from many factors:

1. A number of demographic characteristics may affect pharmacokinetics: Older people are more likely to have decreased renal function, which may cause drugs excreted by the kidney to accumulate; younger people metabolize theophylline more rapidly; ethnic groups differ in the prevalence of metabolic abnormalities such as slow acetylation and G6PD deficiency; women metabolize certain substances at rates different from men (for example, they metabolize alcohol and ondansetron more slowly).

2. Diseases other than the one being studied may alter the pharmacokinetics of many drugs: Kidney disease may decrease the ability to excrete drugs in

the urine; liver disease can interfere with the metabolism of drugs or with their excretion into the bile.

3. The presence of other drugs may lead to pharmacokinetic interactions: Quinidine and fluoxetine inhibit the metabolism of imipramine and desipramine, as well as that of many other drugs metabolized by cytochrome P450 2D6 (debrisoquin hydroxylase); ketoconazole and erythromycin inhibit the metabolism of terfenadine. In such cases, toxic blood concentrations of the drug whose metabolism is inhibited can occur even while a constant dose of the drug is maintained.

4. In addition, other differences between individual subjects may affect pharmacokinetics. For example, small body size or muscle mass may lead to higher blood concentrations after a given dose.

Documented subgroup pharmacodynamic differences are fewer, but have been observed, including increased sensitivity to beta-blockers in Asians, decreased sensitivity to beta-blockers in the elderly, decreased responsiveness to the blood pressure-lowering effects of adrenocortical extract (ACE) inhibitors and beta-blockers in African-Americans, and increased sensitivity to the central nervous system effects of midazolam in older people.

Despite the many examples of documented pharmacokinetic and pharmacodynamic differences in population subsets, there has often been insufficient attention in the course of drug development to looking for such differences among individuals in responses to drugs, including differences related to gender. In the case of gender, some have suggested the lack of information may have resulted from the exclusion of women from clinical trials. A number of studies have evaluated this possibility.

In 1983 and 1989, FDA examined the relative numbers of individuals from two important demographic groups, women and the elderly, in the data bases of new drug applications (NDA's). FDA found, in general, that the proportions of women and men included in the clinical trials were similar to the respective proportions of women and men who had the diseases for which the drugs were being studied, taking into account the age range of the population studied. The General Accounting Office (GAO) conducted a larger study of drugs approved during the period 1988 through 1991, with generally similar findings. Thus, women typically represent a majority of patients in NDA data bases of drugs used to treat conditions more common (or more commonly treated) in women (e.g., arthritis and depression) and a minority, although usually a sizable one of about 30 percent or more, in conditions that occur predominantly in males in the age ranges usually included in clinical trials (e.g., angina pectoris). Appendix I of the guideline includes additional details of these surveys.

Although women have been included in the later phases of clinical trials, inclusion alone is not sufficient for adequate assessment of potential gender differences. There must be an effort to use the data to discover such differences. An FDA guideline issued in 1988 ("Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications") called for analyses of gender-related differences in response. FDA and GAO examined NDA's to see whether analyses of this kind were being conducted and submitted. Both examinations found that in many cases (about half) the data bases were not being analyzed to determine whether there were gender, age, or race differences in response to drugs.

A further reason for the lack of information about potential gender differences in drug response is the lack of specific studies of pharmacokinetics in women, even where gender-related differences in pharmacokinetics might be expected or important. There are a variety of potential differences of this type, including differences due to menopause or the menstrual cycle, or to concomitant oral contraceptive or estrogen use, as well as differences based on different body fat proportion, and differences in weight or muscle mass.

C. FDA Guidance on Individualization of Treatment

Since 1988, FDA has taken several major steps to encourage development of data that support informed individualization of treatment:

1. The agency's 1988 guideline entitled, "Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications," calls for analyses of NDA data to identify variations among population subsets in favorable responses (effectiveness) and unfavorable responses (adverse reactions) to drugs. The population subsets that should be evaluated routinely include demographic subsets, such as different genders, age groups and races, people receiving other drug therapy, and people with concomitant illness.

2. The agency has addressed specifically the need to develop information on a particular demographic subset, the elderly, in the 1989 guideline entitled, "Guideline for the Study of Drugs Likely to be Used in the Elderly."

3. In the **Federal Register** of November 1, 1990 (55 FR 46134), the agency proposed to amend the labeling regulation (21 CFR 201.57) to require a "Geriatric Use" section that would contain available information on experience with the drug in the elderly and describe any needed modifications in the use of the drug in that population. In the **Federal Register** of October 16, 1992 (57 FR 47423), the agency proposed to amend the same regulation to facilitate inclusion of information on the use of drugs in children.

D. Changes in the Guideline

The new guideline discusses FDA's expectations regarding inclusion of patients of both genders in drug development, analyses of clinical data by gender, assessment of potential pharmacokinetic differences between genders, and, where appropriate, assessment of pharmacodynamic differences and the conduct of specific additional studies in women. The policy applies to all drug or disease specific clinical guidelines based on the 1977 guideline, that exclude women of childbearing potential from participation in early studies of drugs.

III. Revised Policy on Inclusion of Women of Childbearing Potential in Clinical Trials

A. The 1977 Guideline—"General Considerations for the Clinical Evaluation of Drugs"

The 1977 guideline set forth a policy on, among other things, the inclusion of women of childbearing potential in clinical trials. The policy stated that, in general, women of childbearing potential should be excluded from the earliest studies of a new drug, that is, phase 1 and early phase 2 studies. Phase 1 refers to the first introduction of a new drug into humans, who are often, but not always, healthy volunteers, to study the basic tolerability of the drug, its metabolism, and its short-term pharmacokinetics. With the exception of some early studies in life-threatening diseases, phase 1 studies usually do not have therapeutic intent. Phase 2 refers to the initial controlled trials of a drug to study its effectiveness. Before the first such study, there is generally no evidence that the drug is of therapeutic value in humans.

If adequate information on effectiveness and relative safety were amassed during phase 1 and early phase 2, the guideline stated that women of

childbearing potential could be included in subsequent studies of effectiveness, that is, later phase 2 and phase 3 studies, so long as animal teratogenicity and the female part of animal fertility studies had been completed. The policy did not specifically address the manner in which the early human evidence of safety and effectiveness and the results of animal reproduction studies should be used to make decisions about participation of women in later trials, leaving these considerations to the usual risk-benefit assessment made by the patient, physician, and IRB, with subsequent FDA review.

In the 1977 guideline, the term "women of childbearing potential" was defined very strictly, essentially referring to all premenopausal women physiologically capable of becoming pregnant, including women on oral, injectable, or mechanical contraceptives, single women, celibate women, and women whose partners had been sterilized by vasectomy. There was no provision for the use of pregnancy testing to identify women who could participate in studies without a risk of fetal exposure. The 1977 guideline also noted, however, that women of childbearing potential could receive investigational drugs in the earliest phases of testing, even in the absence of adequate reproduction studies in animals, when the drugs were intended for life-saving or life-prolonging treatment.

The effect of the 1977 guideline has been that women generally have not been included in phase 1 nontherapeutic studies or in the earliest controlled effectiveness studies (i.e., early phase 2), except for studies of life-threatening illnesses, such as acquired immune deficiency syndrome (AIDS) and cancer.

B. Reasons for Revising the 1977 Policy

The policy set forth in the 1977 guideline has been under discussion for several years within and outside the agency, and there has been increasing sentiment that it should be revised. For example, in October 1992, FDA and the Food and Drug Law Institute cosponsored a meeting on women in clinical trials of FDA-regulated products at which many speakers described the current restrictions as paternalistic and overprotective, denying young women the opportunity available to men and older women to participate in early drug development research.

Although the 1977 guideline has not resulted in a failure to include adequate numbers of women in the later phases of clinical trials, it has restricted the early accumulation of information about response to drugs in women that could be utilized in designing phase 2 and 3 trials, and has perhaps delayed appreciation of gender-related variation in drug effects. The early exclusion also may have perpetuated, in a subtle way, a view of the male as the primary focus of medicine and drug development, with women considered secondarily. There is reason to believe that earlier participation of women in studies would increase the likelihood that gender-specific data might be used to make appropriate adjustments in larger clinical studies (e.g., different doses in women or weight adjusted (milligram per kilogram) dosing instead of fixed doses).

The agency believes that removal of the prohibition on participation of women of childbearing potential in phase 1 and early phase 2 trials is consistent with congressional efforts to prevent unwarranted discrimination against such women. For example, in the employment context, the Pregnancy Discrimination Act, as interpreted by the U.S. Supreme Court in the landmark case of *International Union, United Automobile, Aerospace and Agricultural Implement Workers, UAW* v. *Johnson Controls, Inc.*, 111 S.Ct. 1196 (1991), prohibits the blanket exclusion of pregnant women from jobs they are qualified to perform solely because the working conditions of those jobs pose potential risks to exposed fetuses. The Court emphasized that "decisions about the welfare of future children must be left to the parents who conceive, bear, support, and raise them, rather than to the employers who hire those parents." While the purposes of clinical trials to develop safe and effective drugs are manifestly different from the purposes of private employment, FDA takes serious note of the Court's position on a woman's right to participate in decisions about fetal risk and believes it is appropriate to consider the Court's opinion in developing policy on the inclusion of women in clinical trials.

C. Current FDA Position on Participation of Women of Childbearing Potential in Early Clinical Studies

The agency has reconsidered the 1977 guideline and has concluded that it should be revised. This does not reflect a lack of concern for potential fetal exposure or indifference to potential fetal damage, but rather the agency's opinion that (1) exclusion of women from early trials is not medically necessary because the risk of fetal exposure can be minimized by patient behavior and laboratory testing, and (2) initial determinations about whether that risk is adequately addressed are properly left to patients, physicians, local IRB's, and sponsors, with appropriate review and guidance by FDA, as are all other aspects of the safety of proposed investigations.

The agency is, therefore, withdrawing the restriction on the participation of women of childbearing potential in early clinical trials, including clinical pharmacology studies (e.g., dose tolerance, bioavailability, and mechanism of action studies), and early therapeutic studies. It is expected that, in accordance with good medical practice, appropriate precautions against becoming pregnant and exposing a fetus to a potentially dangerous agent during the course of study will be taken by women participating in clinical trials. It is also expected that women will receive adequate counseling about the importance of such precautions, that efforts will be made to be sure that a woman entering a trial is not pregnant at the time the trial begins (i.e., a pregnancy test detecting the beta subunit of the hCG molecule is negative), and that the woman participant is fully informed about the current state of the animal reproduction studies and any other information about the teratogenic potential of the drug. As is the case for all studies carried out under an investigational new drug application (IND), the adequacy of the precautions taken will be considered by FDA in its review of protocols. In situations where enrollment continues over a prolonged period (unlikely for early clinical studies) and significant new information about teratogenicity becomes available, the sponsor has the responsibility to transmit this information quickly to the investigator and to current as well as potential study participants in the informed consent process.

The agency recognizes that this change in FDA's policy will not, by itself, cause drug companies or IRB's to alter restrictions they might impose on the participation of women of childbearing potential. We do not at this time perceive a regulatory basis for requiring routinely that women in general or women of childbearing potential be included in particular trials, such as phase 1 studies. However, as this guideline delineates, careful characterization of drug effects by gender is expected by the agency, and FDA is determined to remove the unnecessary Federal impediment to inclusion of women in the earliest stages of drug development. The agency is confident that the interplay of ethical, social, medical, legal and political forces will allow greater participation of

women in the early stages of clinical trials.

In some cases, there may be a basis for requiring participation of women in early studies. When the disease under study is serious and affects women, and especially when a promising drug for the disease is being developed and made available rapidly under FDA's accelerated approval or early access procedures, a case can be made for requiring that women participate in clinical studies at an early stage. When such a drug becomes available under expanded access mechanisms (for example, treatment IND or parallel track) or is marketed rapidly under subpart E procedures (because an effect on survival or irreversible morbidity has been shown in the earliest controlled trials), it is medically important that a representative sample of the entire population likely to receive the drug has been studied, including representatives of both genders. Under these circumstances, clinical protocols should not place unwarranted restrictions on the participation of women.

The agency advises that this guideline represents its current position on the clinical evaluation of drugs in humans. This guideline does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person.

IV. Comments

Interested persons may, on or before November 19, 1993, submit to the Dockets Management Branch (address above) written comments regarding this guideline. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. These comments will be considered in determining whether further amendments to, or revisions of, the guideline are warranted.

The new guideline replaces that portion of the 1977 guideline that dealt with women of childbearing potential. The text of the new guideline on gender differences follows:

Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs

I. Introduction

The Food and Drug Administration (FDA) advises that this guideline represents its current position on the clinical evaluation of drugs in humans. This guideline does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person.

The principles of inclusion of women in product development programs and analysis of subgroup differences outlined in this guideline also apply to the clinical development of biological products and medical devices.

A. Abstract

In general, drugs should be studied prior to approval in subjects representing the full range of patients likely to receive the drug once it is marketed. Although in most cases, drugs behave qualitatively similarly in demographic (age, gender, race) and other (concomitant illness, concomitant drugs) subsets of the population, there are many quantitative differences, for example, in dose-response, maximum size of effect, or in the risk of an adverse effect. Recognition of these differences can allow safer and more effective use of drugs. Rarely, there may be qualitative differences as well. It is very difficult to evaluate subsets of the overall population as thoroughly as the entire population, but sponsors are expected to include a full range of patients in their studies, carry out appropriate analyses to evaluate potential subset differences in the patients they have studied, study possible pharmacokinetic differences in patient subsets, and carry out targeted studies to look for subset pharmacodynamic differences that are especially probable, are suggested by existing data, or that would be particularly important if present. Study protocols are also expected to provide appropriate precautions against exposure of fetuses to potentially dangerous agents. Where animal data suggest possible effects on fertility, such as decreased sperm production, special studies in humans may be needed to evaluate this potential toxicity.

B. Underlying Observations

The following general observations and conclusions underlie the recommendations set forth in this guideline:

1. Variations in response to drugs, including gender-related differences, can arise from pharmacokinetic differences (that is, differences in the way a drug is absorbed, excreted, metabolized, or distributed) or pharmacodynamic differences (i.e., differences in the pharmacologic or clinical response to a given concentration of the drug in blood or other tissue).

2. Gender-related variations in drug effects may arise from a variety of sources. Some of these are specifically associated with gender, e.g., effects of endogenous and exogenous hormones. Gender-related differences could also arise, however, not because of gender itself, but because the frequency of a particular characteristic (for example, small size, concomitant hepatic disease or concomitant drug treatment, or habits such as smoking or alcohol use) is different in one gender, even if the characteristic could occur in either gender. Proper management of patients of both genders thus requires that physicians know all the factors that can influence the pharmacokinetics of a drug. An approach is needed that will identify, better than is done at present, all such factors. Understanding how various factors may influence pharmacokinetics will greatly enhance our ability to treat people of both genders appropriately.

3. For a number of practical and theoretical reasons, the evaluation of possible gender-related differences in response should focus initially on the evaluation of potential pharmacokinetic differences. Such differences are known to occur and have, at least to date, been documented much more commonly than documented pharmacodynamic differences. Moreover, pharmacokinetic differences are relatively easy to discover. Once reliable assays are developed for a drug and its metabolites (such assays are now almost always available early in the development of the drug), techniques exist for readily assessing gender-related or other subgroup-related pharmacokinetic differences.

Formal pharmacokinetic studies are one means of answering questions about specific subgroups. Another approach is use of a screening procedure, a "pharmacokinetic screen" (see "Guideline for the Study of Drugs Likely To Be Used in the Elderly"). Carried out in phase 2 and 3 study populations, the pharmacokinetic screen can greatly increase the ability to detect pharmacokinetic differences in subpopulations and individuals, even when these differences are not anticipated. By obtaining a small number of blood concentration determinations in most or all phase 2 and 3 patients, it is possible to detect markedly atypical pharmacokinetic behavior in individuals, such as that seen in slow metabolizers of debrisoquin, and pharmacokinetic differences in population subsets, such as patient populations of different gender, age, or race, or patients with particular underlying diseases or

concomitant therapy. The screen may also detect interactions of two factors, e.g., gender and age. The relative ease with which pharmacokinetic differences among population subsets can be assessed contrasts with the difficulty of developing precise relationships of most clinical responses to drug dose or to the drug concentration in blood, which usually would be necessary when attempting to observe pharmacodynamic differences between two subgroups.

A final reason to emphasize pharmacokinetic evaluation is that it must be carried out to allow relevant assessment of pharmacodynamic differences or relationships. Assessing pharmacodynamic differences between groups or establishing blood concentration-response relationships is possible only when groups are reasonably well matched for blood concentrations. Enough pharmacokinetic data must therefore be available to permit the investigator to administer doses that will produce comparable blood concentrations in the subsets to be compared or, alternatively, to compare subsets that have been titrated to similar blood concentrations.

4. The number of documented gender-related pharmacodynamic differences of clinical consequence is at this time small, and conducting formal pharmacodynamic/effectiveness studies to detect them may be difficult, depending on the clinical endpoint. Such studies are therefore not routinely necessary. The by-gender analyses of clinical trials that include both men and women, however, which are specified in the 1988 guideline entitled "Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications" are not difficult to carry out. Particularly if these analyses are accompanied by blood concentration data for each patient, they can detect important pharmacodynamic/effectiveness differences related to gender.

C. Inclusion of Both Genders in Clinical Studies

The patients included in clinical studies should, in general, reflect the population that will receive the drug when it is marketed. For most drugs, therefore, representatives of both genders should be included in clinical trials in numbers adequate to allow detection of clinically significant gender-related differences in drug response. Although it may be reasonable to exclude certain patients at early stages because of characteristics that might make evaluation of therapy more difficult (e.g., patients on concomitant therapy), such exclusions should usually be abandoned as soon as possible in later development so that possible drug-drug and drug-disease interactions can be detected. Thus, for example, there is ordinarily no good reason to exclude women using oral contraceptives or estrogen replacement from trials. Rather, they should be included and differences in responses between them and patients not on such therapy examined. Pharmacokinetic interaction studies (or screening approaches) to look at the interactions resulting from concomitant treatment are also useful.

Ordinarily, patients of both genders should be included in the same trials. This permits direct comparisons of genders within the studies. In some cases, however, it may be appropriate to conduct studies in a single gender, e.g., to evaluate the effects of phases of the menstrual cycle on drug response.

Although clinical or pharmacokinetic data collected during phase 3 may provide evidence of gender-related differences, these data may become available too late to affect the design and dose-selection of the pivotal controlled trials. Inclusion of women in the earliest phases of clinical development, particularly in early pharmacokinetic studies, is, therefore, encouraged so that information on gender differences may be used to refine the design of later trials. Note that the strict limitation on the participation of women of childbearing potential in phase 1 and early phase 2 trials that was imposed by the 1977 guideline entitled, "General Considerations for the Clinical Evaluation of Drugs," has been eliminated.

There is no regulatory or scientific basis for routine exclusion of women from bioequivalence trials. For certain drugs, however, it is possible that changes during the menstrual cycle may lead to increases in intra-subject variability. Such variability could be related to hormonally-mediated differences in metabolism or changes in fluid balance. Sponsors of bioequivalence trials are encouraged to examine available information on the pharmacokinetics and metabolism of the test drugs and related drugs to determine whether there is a basis for concern about variability in pharmacokinetics during the menstrual cycle. Where the available information does raise such concern, measures could be taken to reduce or adjust for variability, e.g., administration of each drug at the same phase of the menstrual cycle, or inclusion of larger numbers of subjects. Sponsors are encouraged to collect data that will contribute to the understanding of the relationship between hormonal variations and pharmacokinetics.

D. Analysis of Effectiveness and Adverse Effects by Gender

FDA's guideline on the clinical and statistical sections of NDA's calls for analyses of effectiveness, adverse effects, dose-response, and, if available, blood concentration-response, to look for the influence of: (1) Demographic features, such as age, gender, and race; and (2) other patient characteristics, such as body size (body weight, lean body mass, fat mass), renal, cardiac, and hepatic status, the presence of concomitant illness, and concomitant use of drugs, including ethanol and nicotine. Analyses to detect the influence of gender should be carried out both for individual studies and in the overall integrated analyses of effectiveness and safety. Such analyses of subsets with particular characteristics can be expected to detect only relatively large gender-related differences, but in general, small differences are not likely to be clinically important. The results of these analyses may suggest the need for more formal dose-response or blood concentration-response studies in men or women or in other patient subsets. Depending on the magnitude of the findings, or their potential importance (e.g., they would be more important for drugs with low therapeutic indices), these additional studies might be carried out before or after marketing.

E. Defining the Pharmacokinetics of the Drug in Both Genders

The factors most commonly having a major influence on pharmacokinetics are renal function, for drugs excreted by the kidney, and hepatic function, for drugs that are metabolized or excreted by the liver; these should be assessed directly as part of the ordinary development of drugs. The pharmacokinetic effects of other subgroup characteristics such as gender can be assessed either by a pharmacokinetic screening approach, described in the 1989 guideline entitled, "Guideline for the Study of Drugs Likely to Be Used in the Elderly," or by formal pharmacokinetic studies in specific gender or age groups.

Using either a specific pharmacokinetic study or a pharmacokinetic screen, the pharmacokinetics of a drug should be defined for both genders. In general, it is prudent to at least carry out pilot studies to look for major pharmacokinetic differences before conducting definitive controlled trials, so that differences that might lead to the

need for different dosing regimens can be detected. Such studies are particularly important for drugs with low therapeutic indices, where the smaller average size of women alone might be sufficient to require modified dosing, and for drugs with nonlinear kinetics, where the somewhat higher milligram per kilogram dose caused by a woman's smaller size could lead to much larger differences in blood concentrations of drug. Gender may interact with other factors, such as age. The potential for such interactions should be explored.

Three pharmacokinetic issues related specifically to women that should be considered during drug development are: (1) The influence of menstrual status on the drug's pharmacokinetics, including both comparisons of premenopausal and postmenopausal patients and examination of within-cycle changes; (2) the influence of concomitant supplementary estrogen treatment or systemic contraceptives (oral contraceptives, long-acting progesterone) on the drug's pharmacokinetics; and (3) the influence of the drug on the pharmacokinetics of oral contraceptives. Which of these influences should be studied in a given case would depend on the drug's excretion, metabolism, and other pharmacokinetic properties, and on the steepness of the dose-response curve.

Hormonal status during the menstrual cycle may affect plasma volume and the volume of distribution (and thus clearance) of drugs. The activity of certain cytochrome P450 enzymes may be influenced by estrogen levels and, in addition, microsomal oxidation by these enzymes may decline in the elderly more in men than women. Oral contraceptives can cause decreased clearance of drugs (e.g., imipramine, diazepam, chlordiazepoxide, phenytoin, caffeine, and cyclosporine), apparently by inhibiting hepatic metabolism. They can also increase clearance by inducing drug metabolism (e.g., of acetaminophen, salicylic acid, morphine, lorazepam, temazepam, oxazepam, and clofibrate). Certain anticonvulsants (carbamazepine, phenytoin) and antibiotics (rifampin) can reduce the effectiveness of oral contraceptives. Many of the potential interactions of gender and gender-related characteristics (e.g., use of oral contraceptives) can be evaluated with the pharmacokinetic screen. In some cases, specific studies will be needed.

F. Gender-Specific Pharmacodynamic Studies

Because documented demographic differences in pharmacodynamics appear to be relatively uncommon, it is not necessary to carry out separate pharmacodynamic/effectiveness studies in each gender routinely. Evidence of such differences should be sought, however, in the data from clinical trials by carrying out the by-gender analyses suggested in the guideline on the clinical and statistical sections of NDA's. These analyses of controlled trials involving both genders are probably more likely to detect differences than studies carried out entirely in one gender. Experience has shown that gender differences can be detected with such approaches.

If the by-gender analyses suggest gender-related differences, or if such differences would be particularly important, e.g., because of a low therapeutic index, additional formal studies to seek such differences between the blood level-response curves of men and women should be conducted. Even in the absence of a particular concern based on the by-gender analyses, if there is a readily measured pharmacodynamic endpoint, such as blood pressure or rate of ventricular premature beats, and if there are good dose-response data for the overall population, it should be feasible to develop dose response data from population subsets (e.g., both genders) in the critical clinical trials.

G. Precautions in Clinical Trials Including Women of Childbearing Potential

Appropriate precautions should be taken in clinical studies to guard against inadvertent exposure of fetuses to potentially toxic agents and to inform subjects and patients of potential risk and the need for precautions. In all cases, the informed consent document and investigator's brochure should include all available information regarding the potential risk of fetal toxicity. If animal reproductive toxicity studies are complete, the results should be presented, with some explanation of their significance in humans. If these studies have not been completed, other pertinent information should be provided, such as a general assessment of fetal toxicity in drugs with related structures or pharmacologic effects. If no relevant information is available, the informed consent should explicitly note the potential for fetal risk.

In general, it is expected that reproductive toxicity studies will be completed before there is large-scale exposure of women of childbearing potential, i.e., usually by the end of phase 2 and before any expanded access program is implemented.

Except in the case of trials intended for the study of drug effects during pregnancy, clinical protocols should also include measures that will minimize the possibility of fetal exposure to the investigational drug. These would ordinarily include providing for the use of a reliable method of contraception (or abstinence) for the duration of drug exposure (which may exceed the length of the study), use of pregnancy testing (beta HCG) to detect unsuspected pregnancy prior to initiation of study treatment, and timing of studies (easier with studies of short duration) to coincide with, or immediately follow, menstruation. Female subjects should be referred to a study physician or other counselor knowledgeable in the selection and use of contraceptive approaches.

H. Potential Effects on Fertility

Where abnormalities of reproductive organs or their function (spermatogenesis or ovulation) have been observed in experimental animals, the decision to include patients of reproductive age in a clinical study should be based on a careful risk-benefit evaluation, taking into account the nature of the abnormalities, the dosage needed to induce them, the consistency of findings in different species, the severity of the illness being treated, the potential importance of the drug, the availability of alternative treatment, and the duration of therapy. Where patients of reproductive potential are included in studies of drugs showing reproductive toxicity in animals, the clinical studies should include appropriate monitoring and/or laboratory studies to allow detection of these effects. Long-term followup will usually be needed to evaluate the effects of such drugs in humans.

Appendix I

I. Surveys of Participation of Women in Clinical Trials in New Drug Applications (NDA's)

The extent of participation of women in the data bases of NDA's has been examined several times in recent years, by FDA in 1983 and 1989, and by the General Accounting Office (GAO) in 1992. In general, the genders were represented to approximately the extent one would predict from the gender prevalence of the condition treated by the drug in the age group studied. The relative disease prevalence in men and women can vary with age. Consider, for example, the participation of women in studies of anti-anginal drugs. Almost all patients in angina studies, which require vigorous treadmill exercise tests, are under 75 years old and the large

majority are under 65. Although eventually women develop symptomatic coronary artery disease in their 60's, 70's, and 80's, and become similar to men in the prevalence of this condition, they are much less likely than men to be affected in their 40's, 50's, and early 60's. The overall NDA data base for an anti-anginal drug, made up primarily of people 50 to 65, will therefore include a significantly greater proportion of men than women. Efforts to include more very old patients in trials, i.e., patients in their 70's and 80's, should lead to a greater proportion of women in trials of anti-anginal drugs.

Results of the FDA and GAO surveys are described below. Also included is an analysis of gender distribution in recently approved or submitted NDA's for antidepressant drugs. This analysis was conducted to evaluate the frequently heard claim that this class of drugs is studied predominantly (or even exclusively) in males despite the wide use of antidepressants in women.

A. The 1983 Survey

Primarily carried out to assess the inclusion of the elderly in NDA's, the 1983 survey looked at the age and gender prevalence of patients included in 11 pending NDA's. The NDA's were chosen because they were readily available and did not need to be retrieved from storage; figures were taken by FDA staff from the pending applications. In one case (ranitidine), the values represent only domestic patients for only one claim, leading to a small number of patients; many more patients (those included in foreign studies, or in studies of other claims) were available for safety evaluation.

Table 1 shows the results of the survey. As expected, the non-steroidal anti-inflammatory drugs (NSAID's) were studied predominantly in women, because arthritis, especially rheumatoid arthritis, is more common in women. This predominance was slightly less prominent in the case of zomepirac, which was studied extensively for pain (gender-neutral), in addition to arthritis. The hypnotic drug (triazolam) and the antibiotics (cefoperazone and netilmycin) were studied in approximately equal proportions of men and women. The patient populations included in the NDA's for verapamil, for angina, and bumetanide, for heart failure, were about two-thirds male, and about two-thirds of the patients were less than 60 years old, an age group in which angina and heart failure are more prevalent in men than in women. In the patients over age 70, representing 10 percent of the bumetanide patients and 7 percent of verapamil patients, the gender distribution was about equal (49 percent women in the verapamil studies and 45 percent women in the bumetanide studies). Studies of ranitidine for duodenal ulcer, a predominantly male disease, included about 75 percent males. Other indications for this drug, such as gastric ulcer, would be expected to have a different gender distribution. The two anti-cancer drugs in this survey were studied principally for exclusively male conditions, cancer of the prostate and testis.

B. The 1989 Survey

In an effort to avoid possible selection bias, all drugs approved in 1988 were surveyed; this time the sponsors provided the data. FDA asked them to provide data reflecting "the principal data base used for safety review" in the latest safety update and asked that phase 1 subjects/patients be excluded. Sponsors gave either data on all patients or only patients given the test drug; the estimates of gender exposure should not be greatly affected by this difference.

Table 2 shows the results of the 1989 survey for 12 of the 20 drugs approved in 1988. Because sponsors had little control over gender distributions in the small populations available for study, four orphan drugs were omitted from the survey (tiopronin for prevention of cystine stones; ethanolamine oleate for esophageal varices; ifosfamide, third-line therapy for testicular cancer; and mesna, a prophylactic agent for ifosfamide-induced hemorrhagic cystitis). Also omitted were three contrast agents for single dose uses (but these agents are in the 1992 GAO survey), and a topical product (oxiconazole cream) for which gender distribution was not available.

Again, the anti-inflammatory drug (diclofenac) was studied predominantly in women (more than two-thirds of the patients), as was nimodipine, for prevention of vascular spasm after subarachnoid hemorrhage, also a female-predominant condition. Pergolide, an anti-Parkinson's disease drug; astemizole, an antihistamine; and octreotide, a drug for symptoms of carcinoid tumor, were studied in about equal numbers of men and women. The studies of the cardiovascular drugs nicardipine (angina and hypertension) and carteolol (hypertension) included 59 and 67 percent men, respectively, reflecting the male gender predominance of angina, and perhaps hypertension, in the relatively young (two-thirds of the patients were under the age of 60) populations studied. Nizatidine and misoprostol were studied extensively in duodenal ulcer, a predominantly male disease, with about 70 percent of patients being male, although approval of misoprostol was for a different claim. Cefotiam, an intravenous antibiotic, was studied mainly in elderly patients (65 percent over 60; 36 percent over 70); about two-thirds were male, for unclear reasons. The topicals were studied in a predominantly young population (about 90 percent under the age of 60), more often in males. Certain tinea infections (tinea cruris and tinea pedis) are more common in males, accounting for the high proportion (72 percent) of males in studies of naftifine. Why photoplex was studied somewhat more in males (63 percent) is not clear.

C. The GAO Survey

In 1992, the GAO analyzed the gender, age, and race distribution of all NDA's approved from January 1988 through June 1991. Data were collected by means of a questionnaire sent to the sponsor of each drug. The number of patients receiving the test drug during drug development, domestic studies only, was requested, and patients were broken down by gender, age (<15, 15 to 49, 50 to 64, >65), and race. The age distribution data allow a separate analysis of women of childbearing potential (taken here as women age 15 to 49). Data are available for 53 drugs (of 63 drugs approved during the 3 1/2-year period, 4 drugs intended for single gender use and 6 whose sponsors provided no, or no usable, questionnaire were omitted).

The results of the GAO survey are given in Tables 3A and 3B for phase 2 and 3 patients. The tables show gender distribution overall for the whole data base and for the 15 to 49 age group as well. For anti-inflammatory, anti-infective, central nervous system/anesthetic, topical, antihistamine, and cancer drugs, women constituted 40 percent or more of the patients studied, with occasional exceptions. The most striking exception is mefloquine, where only 11 percent of patients were women. This occurred because the primary studies of mefloquine for treatment of malaria were conducted in Thai military personnel. Women fairly consistently represented less than 40 percent of the patients for anti-ulcer drugs (duodenal ulcer, a male-predominant condition, was a principal disease studied for nizatidine, omeprazole, and misoprostol) but accounted for 55 percent of the patients in studies of dipentum, a drug for ulcerative colitis (ulcerative colitis is more common in women). Women consistently made up less than 40 percent of the populations studied for

cardiovascular disease, including populations used to evaluate agents used to diagnose or evaluate coronary artery disease, except for nimodipine (for spasm after subarachnoid bleed) and adenosine (for supraventricular tachycardia). For drugs to treat ventricular arrhythmias and angina, both commonly the result of coronary disease, the fraction of women ranged from 15 percent (bepridil, for unresponsive angina) to 20 to 30 percent (propafenone, moricizine, and indecainide), reflecting the lower rate of coronary artery disease in younger women and the fact that most patients in studies are under 60 years old. Studies of drugs for hypertension (carteolol, doxazosin, nicardipine, isradipine, ramapril, pinacidil) included 27 to 42 percent women. In some cases, these drugs were being evaluated for other claims, such as angina or heart failure, which are male predominant in the age groups studied. For all of the antihypertensives, there were at least 290 women in the domestic data base, enough to detect significant gender differences in response.

Of interest is the observation that there was no tendency for women to represent a lower percentage of patients in the 15 to 49 age group than in the overall population. There is thus no suggestion in these data that the restriction on participation of women of childbearing potential in early trials carries over to later phase 2 or 3 trials.

D. Antidepressants

By chance, none of the surveys included any antidepressant drugs, a class of drug frequently cited as needing study in women, both because women are frequently given antidepressants and because of suspected interactions of the drugs with the menstrual cycle.

Table 4 shows gender participation for sertraline and paroxetine, the two most recently approved antidepressants, as well as two agents likely to be approved within the next year. Women, as expected based on past experience, represented 58 to 65 percent of the patients.

II. Tables

TABLE 1

Drug	n	Percent of total	
		Female	Male
Anti-inflammatory:			
Benoxaprofen (Oraflex)	3,446	64	36
Ketoprofen (Orudis)	1,579	68	32
Zomepirac (Zomax)	3,479	60	40
Cardiovascular:			
Verapamil (Isoptin)	1,810	36	64
Bumetanide (Bumex)	838	27	72
Hypnotic:			
Triazolam (Halcion)	4,254	49	51
Antibiotic:			
Cefoperazone (Cefobid)	1,958	52	48
Netilmycin (Netromycin)	3,376	43	57
Anti-ulcer:			
Ranitidine (Zantac)	193	23	77
Anti-cancer (prostate, testes):			
Leuprolide (Lupron)	387	17	83
Etoposide (Vepesid)	259	16	84

TABLE 2

Drug	n	Percent of total	
		Female	Male
Anti-inflammatory:			
Diclofenac (Voltaren)	8,175	69	31
Cardiovascular/cerebrovascular:			
Nicardipine (Cardene)	2,962	41	59
Carteolol (Cartrol)	1,536	33	67
Nimodipine (Nimotop)	1,301	64	36
Anti-ulcer:			
Nizatidine (Axid)	2,063	31	69
Misoprostol (Cytotec)	8,687	28	72
Antibiotic:			
Cefotiam (Ceradon)	844	33	67
Anti-Parkinson:			
Pergolide (Permax)	1,836	45	55
Antihistamine:			
Astemizole (Hismanal)	1,356	48	52
Anti-carcinoid symptoms:			
Octreotide (Sandostatin)	455	49	51
Topical (tinea, sunscreen):			
Naftifine (Naftin)	452	28	72
Photoplex	227	37	63

TABLE 3A.— ALL AGES

Drug	n	Percent of total	
		Female	Male
Anti-inflammatory/Analgesic:			
Dezocine (Dalgan)	1,417	60	40
Diclofenac (Voltaren)	1,714	64	36
Etodolac (Lodine)	5,395	65	35
Ketorolac (Toradol)	1,248	64	36
Anti-infectives:			
Ofloxacin (Floxin)	3,585	56	44
Cefmetazole (Zefazone)	2,769	67	33
Cefixime (Suprox)	1,859	60	40
Fluconazole (Diflucan)	983	36	64
Naftifine (Naftin)	222	38	62
Cefpiramide	1,325	39	61
Mefloquine (Lariam)	1,319	11	89
Oxiconazole (Oxistat)	886	35	65
Central Nervous System/Anesthetic:			
Clomipramine (Anaframil)	3,826	54	46
Propofol (Dipravan)	696	48	52
Clozapine (Clozaril)	581	37	63
Estazolam (Prosan)	1,243	50	50
Pipecuronium (Arduan)	580	52	48
Doxacurium (Nuromax)	987	39	61
Pergolide (Permax)	1,667	43	57
Cardiovascular:			
Nimodipine (Nimotop)	343	69	31
Adenosine (Adenocard)	109	48	52
Doxazosin (Cardura)	698	42	58
Pinacidil (Pindac)	1,774	36	64
Nicardipine (Cardene)	1,915	37	63
Benazepril (Lotensin)	2,130	32	68
Isradipine (Dynacirc)	1,842	27	73
Propafenone (Rhythmol)	3,328	30	70
Ramapril (Altace)	1,723	33	67
Carteolol (Cartrol)	1,253	28	72
Moricizine (Ethmozine)	1,017	21	79
Indecainide (Decabid)	761	23	77
Bepridil (Vascor)	884	15	85
Cancer:			
Octreotide (Sandostatin)	569	38	62
Carboplatin (Paraplatin)	2,214	77	23
Levamisole (Ergamisol)	1,038	48	52
Ondansetron (Zofran)	939	29	71
Diagnostics:			
Technescan Mag 3	160	43	57
Ioversol (Optiray)	1,101	45	55
Gadopentetate (Magnevist)	410	41	59
TC–99M Sestamibi (Cardolyte)	1,102	29	71
TC–99M Exametazime (Ceretec)	202	28	72
Iotralan (Osmovist)	545	31	69
Topicals:			
Photoplex	371	40	60
Fluticasone (Cutivate)	730	42	58
Halobetasol (Ultravate)	662	46	54
Metipranolol (Optipranolol)	465	53	47
Cefotiam (Ceradon)	715	34	66
Rev-Eyes	646	47	53
Gastrointestina 1:			
Olsalazine (Dipentum)	98	55	45
Nizatidine (Axid)	3,854	35	65
Misoprostol (Cytotec)	1,917	37	63
Omeprazole (Losec)	2,189	26	74
Antihistamine:			
Astemizole (Hismanal)	979	41	59

TABLE 3B.—AGES 15 TO 49

Drug	n	Percent of total	
		Female	Male
Anti-inflammatory/Analgesic:			
Dezocine (Dalgan)	1,142	61	39
Diclofenac (Voltaren)	577	55	45
Etodolac (Lodine)	3,155	65	35
Ketorolac (Toradol)	NA	NA	NA
Anti-Infectives:			
Ofloxacin (Floxin)	2,890	60	40
Cefmetazole (Zefazone)	1,621	72	28
Cefixime (Suprox)	879	70	30
Fluconazole (Diflucan)	759	64	36
Naftifine (Naftin)	151	36	64
Cefpiramide	362	44	56
Mefloquine (Lariam)	1,189	9	91
Oxiconazole (Oxistat)	NA	NA	NA
Central Nervous System/Anesthetic:			
Clomipramine (Anaframil)	3,277	55	45
Propofol (Dipravan)	514	58	42
Clozapine (Clozaril)	510	35	65
Estazolam (Prosan)	784	42	58
Pipecuronium (Arduan)	263	57	43
Doxacurium (Nuromax)	623	37	63
Pergolide (Permax)	357	63	37
Cardiovascular:			
Nimodipine (Nimotop)	195	63	37
Adenosine (Adenocard)	62	43	57
Doxazosin (Cardura)	62	43	57
Pinacidil (Pindac)	682	37	63
Nicardipine (Cardene)	596	39	61
Benazepril (Lotensin)	602	27	73
Isradipine (Dynacirc)	692	27	73
Propafenone (Rhythmol)	604	46	54
Ramapril (Altace)	622	23	77
Carteolol (Cartrol)	410	24	76
Moricizine (Ethmozine)	193	31	69
Indecainide (Decabid)	94	44	56
Bepridil (Vascor)	93	13	8
Cancer:			
Octreotide (Sandostatin)	391	34	66
Carboplatin (Paraplatin)	563	70	30
Levamisole (Ergamisol)	195	50	50
Ondansetron (Zofran)	288	19	81
Diagnostics:			
Technescan Mag 3	101	47	53
Ioversol (Optiray)	370	51	49
Gadopentetate (Magnevist)	183	29	71
TC–99M Sestamibi (Cardolyte)	402	34	66
TC–99M Exametazime (Ceretec)	26	50	50
Iotralan (Osmovist)	327	34	66
Topicals:			
Photoplex	296	34	66
Fluticasone (Cutivate)	405	45	55
Halobetasol (Ultravate)	360	45	55
Metipranolol (Optipranolol)	70	41	59
Cefotiam (Ceradon)	NA	NA	NA
Rev-Eyes	531	47	53
Gastrointestinal:			
Olsalazine (Dipentum)	72	60	40
Nizatidine (Axid)	2,302	32	68
Misoprostol (Cytotec)	945	33	67
Omeprazole (Losec)	NA	NA	NA
Antihistamine:			
Astemizole (Hismanal)	NA	NA	NA

TABLE 4.—ALL AGES

Drug	Date	n	Percent of total	
			Female	Male
Sertaline (Zoloft)	1991	2,979	58	42

TABLE 4.—ALL AGES—Continued

Drug	Date	n	Percent of total	
			Female	Male
Paroxetine (Paxil)	1992	4,126	65	35
Pending No. 1	NA	2,181	62	38
Pending No. 2	NA	2,256	62	38

Dated: July 19, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

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H.R. 588/P.L. 103–51

To designate the facility of the United States Postal Service located at 20 South Main in Beaver, Utah, as the "Abe Murdock United States Post Office Building". (July 16, 1993; 107 Stat. 270; 1 page)

H.J. Res. 213/P.L. 103–52

Designating July 2, 1993 and July 2, 1994 as "National Literacy Day". (July 16, 1993; 107 Stat. 271; 2 pages)

Last List July 8, 1993

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103d Congress, 1st Session, 1993

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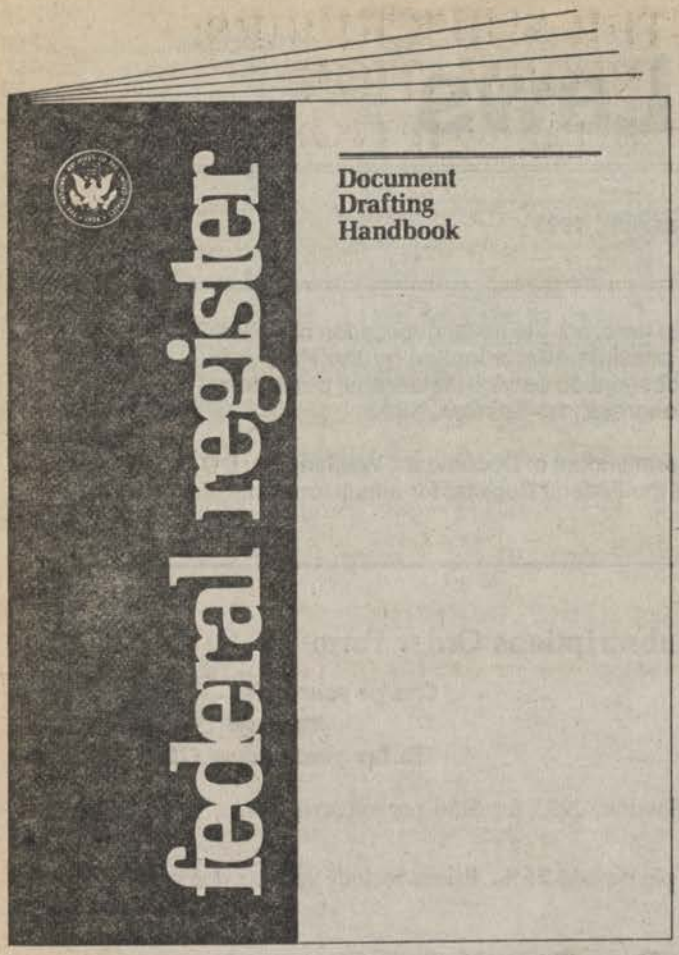

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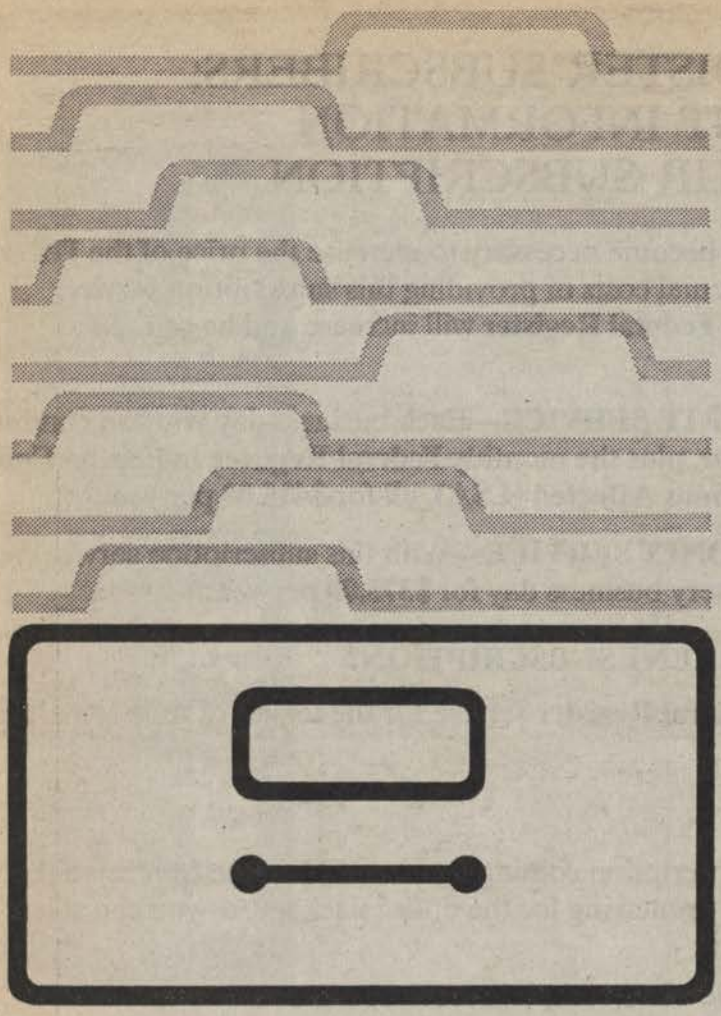

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